

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.1060 of 2014

ORDER :

This petition is filed by the petitioners/accused Nos.1 and 2 under Section 482 Cr.P.C seeking to quash the proceedings in C.C. No.473 of 2013 on the file of IV Additional Judicial Magistrate of the First Class, Chittoor District under which the learned Magistrate taken cognizance for the offences punishable under Sections 18(a)(i) read with Section 27(d) of the Drugs and Cosmetics Act, 1940.

2) Heard the learned counsel for the petitioners and the 1st respondent-State including for the Drugs Inspector 2nd respondent, represented by the Public prosecutor before admission and perused the material on record.

3) The contention of the learned counsel for the petitioners that there is no screening committee report that was considered which is mandatory and thereby the prosecution is not sustainable. The other contention is under Section 18(1)(a) below 70% should be prosecuted, whereas in this case to say 88.03% and the prosecution thereby is also unsustainable.

4) Even as per the guidelines filed for taking action on samples of drugs declared spurious or not of standard quality in the light of enhanced penalties under the Durgs

and Cosmetics (Amendment) Act, 2008, para Nos.7 and 8 a combined reading, there is a Constitution of screening committee, no doubt what para No.8 speaks is the Inspectors who can launch prosecution shall be on the basis of written permissions of the controlling authority and the controlling authority shall consider the recommendations of the screening committee while taking final decision in the matter. It is not a case that there is no permission of the controlling authority.

5) Having regard to the above, once there is a permission, the prosecution is sustainable, whether it is considered in screening committee report and whether it is mandatory to be considered is a matter to be adjudicated during trial.

6) So far as quantity excessive under Section 18(1)(a) concerned it is left open to raise a defence before the trial Court to consider before hearing on charges with reference to the provisions from the prosecution material only vide ***State of Orissa V. Debendranath Padhi***^[1]. Needless to say in the course of hearing on charges under Section 245 Cr.P.C, as it is the submission by the learned Public Prosecutor that the case may fall with committal proceedings as a case triable by the Court of Session and the trial Court also not considered the same and if it is a case triable by Court of Session and in the event of sustainability of the accusations to take proceedings under

Section 209 Cr.P.C. The petitioner is at liberty to file an application under Section 205 Cr.P.C. if at all charges to be framed for the trial and for the trial Court to consider and to decide on merits.

7) With the above observations, the criminal petition is disposed of. Consequently, the miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.26th August, 2015

KSH

[\[1\]](#) (2005)1 SCC 568