IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2016

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Crl.O.P.No.26483 of 2016
and Crl.M.P.Nos.13245 and 13246 of 2016

1.M/s.Res Sancta
rep. By Rajeev Chauhan, Partner
2.Rajeev Chauhan
3.Samar Singh Chandel
4.Bhagwan Singh Saini
5.Ganesh Dutt Sharma ... Petitioners

Vs

State of Tamil Nadu, rep. By
A.Chandra Mary,
Drugs Inspector, Hosur Range,
O/o.The Assistant Director of
Drugs Control,
No.7, Thiruvalluvar Street,
Salem Zone, Subramaniya Nagar,
Salem-5. ... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.35 of 2016 on the file of the learned Judicial Magistrate No.I, Hosur and quash the same.

For Petitioners: Mr.P.Ranganatha Reddy,
for M/s.King and Patridge

For respondent : Mr.C.Emalias,
Addl. Public Prosecutor

ORDER

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The present criminal original petition has been filed to call for the records in C.C.No.35 of 2016 pending on the file of the learned Judicial Magistrate No.I, Hosur and quash the same.

2. On the basis of the complaint given by the respondent as against the petitioners for the contravention of Section 18(a)(i) of Drugs and Cosmetics Act 1940 and is punishable under Section 27(d) of the Drugs and Cosmetics Act

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1940 before the learned Judicial Magistrate No.I, Hosur, a case was registered in Crime No.35 of 2016. To quash the said proceedings, the petitioners have come up with the present petition.

3. Learned counsel appearing for the petitioners submitted that the first petitioner is a firm and the petitioners 2 to 5 are its partners. The first petitioner firm is manufacturing the drugs prescribed under various schedules under the manufacturing licenses in Form-25 and Form-28 of Drugs and Cosmetics Rules, 1945 issued by the Licensing and Controlling Authority, Food and Drugs Administration, Himachal Pradesh. The first petitioner was also granted approval in relation to Bro-Mycodex Syrup by the Drugs Controlling and Licensing Authority, Baddi, pursuant to which, the first petitioner had manufactured Bro-Mycodex Syrup. While so, the respondent conducted an inspection at the licensed premises of the petitioners viz., M/s.Raj Pharma, No.22/10, Najundeswara Temple Street, Hosur, Krishnagiri, and during the inspection, sample of Bro-Mycodex Syrup with the particulars was drawn from the said medical store. In terms of the provisions of Section 23 of the Drugs and Cosmetics Act, 1940, the respondent forwarded one sample portion of the Bro-Mycodex Syrup taken from the said store to the Government Analyst (Drugs), Drugs Testing Laboratory, Chennai and the Government Analyst, vide its report dated 1.6.2015 in Form-13 reported that the sample is not of standard quality as defined in the Drugs and Cosmetics Act and the Rules framed thereunder for the reason that the Assay of Terbutaline Suplhate is less than the limit as claimed in the label. Subsequently, the respondent issued a show cause memo dated 24.11.2015 along with the said report to the first petitioner, calling for explanation for the alleged contravention of the provisions of the Drugs and Cosmetics Act for having manufactured sub-standard drugs for sale and distribution. The first petitioner vide reply dated 10.12.2015 which was submitted within the stipulated period of 28 days provided under Section 25(3) of the Drugs and Cosmetics Act, controverted the Government Analyst Report since the sample of the subject drug tested by the petitioner was found to be of standard quality. In the light of the contravention, within the statutory period, the first petitioner is entitled to get the sample tested by the Central Drug Laboratory, Calcutta under Section 25(4) of the Drugs and Cosmetics Act, 1940.

4. Learned counsel appearing for the petitioners further submitted that since the Government Analyst report was disputed by the first petitioner within the statutory period of 28 days, the respondent made an application before the learned Judicial Magistrate No.I, Hosur, to send the second portion of the sample to the Central Drug Laboratory for analysis under Section 25(4) of the Drugs and Cosmetics Act, 1940 and the

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learned Magistrate by allowing the said application, sent the sample to the Central Drug Laboratory, Calcutta. After analysis, the Central Drug Laboratory, Calcutta, sent a report wherein it has been stated that "In the opinion of the undersigned, the sample is of standard quality in regard to the test for Assay of Terbutaline Sulphate. " In view of the report of the Central Drug Laboratory, Calcutta, the allegations made in the impugned complaint are false and devoid of any materials. In such circumstances, the continuation of the impugned prosecution as against the petitioners would severely prejudice their goodwill and reputation. Thus, the learned counsel appearing for the petitioners sought to quash the criminal proceedings pending against the petitioners in C.C.No.35 of 2015 on the file of the learned Judicial Magistrate No.I, Hosur.

5. On the said submissions made by the learned counsel appearing for the petitioners, I have also heard the learned Additional Public Prosecutor and perused the entire materials available on record.

6. From the materials available on record, I find that on the basis of the application filed by the respondent, the learned Magistrate sent the sample to the Central Drug Laboratory, Calcutta and after analysis, the Central Drug Laboratory, Calcutta has sent a report and the findings of the said report read as follows:-

> " In the opinion of the undersigned, the sample is of standard quality in regard to the test for Assay of Terbutaline Sulphate. "

Since the report of the Central Drug Laboratory, Calcutta, clearly shows that the sample is of standard quality, I am of the opinion, that the allegations and averments levelled against the petitioners fail to disclose any cognizable offence. Hence, the continuation of the proceedings will be nothing but an abuse of process of law, which leads to unwanted harassment to the petitioners.

7. For all the above reasons, the proceedings in C.C.No.35 of 2016 pending on the file of the learned Judicial Magistrate No.I, Hosur, are liable to be quashed and the same is accordingly, quashed and the criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

sbi

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To

1.The Drugs Inspector, Hosur Range,
O/o.The Assistant Director of
Drugs Control,
No.7, Thiruvalluvar Street,
Salem Zone, Subramaniya Nagar,
Salem-5.

2.The Judicial Magistrate No.I,
Hosur.

3.The Public Prosecutor,
High Court, Madras.

+2cc to M/s King & Partridge, Advocate sr.73876

Crl.O.P.No.26483 of 2016

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