

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 30.06.2016

PRONOUNCED ON: 06.07.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.9252 of 2016 and Crl.M.P. Nos.4787 and 4788 of 2016

- 1 Laborate Pharmaceuticals India Ltd.
Unit -2, No.31, Rajban Road
Nariwala
Paonta Sahib (H.P.)
represented by its Director
M.Ajay Bhatia
 - 2 Ajay Bhatia
Director of Laborate Pharmaceuticals India Ltd.
Unit - 2, No.31, Rajban Road
Nariwala, Paonta Sahib (H.P.)
 - 3 Aditiya Bhatia
Director of Laborate Pharmaceuticals India Ltd.
Unit -2, No.31, Rajban Road, Nariwala
Paonta Sahib (H.P.)
 - 4 Anita Bhatia
Director of Laborate Pharmaceuticals India Ltd.
Unit -2, No.31, Rajban Road, Nariwala
Paonta Sahib (H.P.)
 - 5 Sanjay Bhatia
Director of Laborate Pharmaceuticals India Ltd.
Unit -2, No.31, Rajban Road, Nariwala
Paonta Sahib (H.P.)
 - 6 Sunil Vashista
Vice President (Operations)
Person responsible for conduct of business
Unit -2, No.31, Rajban Road, Nariwala
Paonta Sahib (H.P.)
 - 7 State represented by
the Drugs Inspector
Tondiarpet - II Range
Zone - I, Chennai 600 006
- Petitioners
- vs.
- Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records in C.C. No.263 of 2015 now pending on the file of the XV Metropolitan Magistrate, George Town, Chennai and quash the same.

For petitioners Mr. P. Ranganatha Reddy
 for M/s. King & Patridge

For R7 Mr. C. Emalias, Addl. Public Prosecutor

ORDER

This Criminal Original Petition is filed seeking to call for the records in C.C. No.263 of 2015, now pending on the file of the XV Metropolitan Magistrate, George Town, Chennai and quash the same.

2 Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the seventh respondent-State.

3.1 On 05.09.2011, Mrs. P. Sankari, Drugs Inspector, Tondiarpet II Range, Zone I, Chennai, the respondent herein, visited the medical shop of one S. Serumathi and drew sample of CherryLab Cough Syrup B.No.ACLL-003,M/D:12/2010;E/D:11/2012; Mfd by: Laborate Pharmaceuticals India Ltd. (Unit) #31, Rajban Road, Nariwala, Paonta Sahib H.P., for analysis in terms of Sections 22 and 23 of the Drugs and Cosmetics Act, 1940 (for brevity "the Act"). The sample was sent to the Government Analyst and by report dated 27.01.2012, it was declared to be "not of standard quality", as the sample did not conform to label claim with respect to the content of Phenylephrine Hydrochloride (26.6%).

3.2 A show cause notice was issued to S. Serumathi, the person in-charge of the medical shop to disclose the name and address of the manufacturer of the drug as required under Section 18-A of the Act. In reply to the show cause notice, Serumathi stated that he does not know from whom the subject drug was purchased. Therefore, a separate case was initiated against Serumathi for various offences under Section 18 of the Act which is pending.

3.3 On observing the label on the subject drug, the respondent found that it has been manufactured by Laborate Pharmaceuticals India Ltd. (A1). Therefore, the respondent issued a show cause notice on 22.03.2012 to Laborate Pharmaceuticals India Ltd. (A1), enclosing a copy of the Analyst's report, as required under Section 25(2) of the Act. Laborate Pharmaceuticals India Ltd.(A1) sent a reply letter dated 14.05.2012 acknowledging receipt of the show cause notice on 04.04.2012. In the reply to the show cause notice, Laborate Pharmaceuticals India Ltd. (A1) contended that they have the licence to manufacture the subject drug, but, the drug would not have been properly stored by the retailer and at the Government laboratory.

3.4 It may be necessary to state here that Laborate Pharmaceuticals India Ltd. (A1) did not elect to adduce evidence controverting the Government Analyst's report, as required under Section 25(3) of the Act.

3.5 The respondent received the reply letter dated 14.05.2012 on 20.05.2012 and sent the third sample to Laborate Pharmaceuticals India Ltd. on 10.08.2012, as required under Section 23(4)(iii) of the Act. The respondent sent a reminder letter dated 10.08.2012, calling upon Laborate Pharmaceuticals India Ltd. to give details of the constitution of the firm as required under Section 18-B of the Act, for which, a reply was sent by Laborate Pharmaceuticals India Ltd. on 12.09.2012. Laborate Pharmaceuticals India Ltd. (A1) sent another reply letter dated 13.09.2012 stating that they do not agree with the report of the Government Analyst and wanted to adduce evidence controverting Government Analyst's report as per Section 25(3) of the Act. Since the letter dated 13.09.2012 was sent 7 months after the show cause notice, the respondent had no authority to send the third sample for further testing to the Central Laboratory.

3.6 As stated above, as per Section 25(3) of the Act, if any person wants to adduce evidence controverting the Government Analyst's report, a request should be made within 28 days from the date of receipt of the show cause notice. In this case, the show cause notice was issued on 22.03.2012 and in the reply letter dated 14.05.2012, Laborate Pharmaceuticals India Ltd. (A1) did not elect to adduce evidence controverting the Government Analyst's report and only in the communication dated 13.09.2012, they asked for sending the sample to the Central Laboratory. Hence, a belated request well beyond 28 days fixed by the statute cannot be entertained.

3.7 Since the reply given by Laborate Pharmaceuticals India Ltd. (A1) was not satisfactory, the respondent obtained sanction from the Government and filed a complaint against Laborate Pharmaceuticals India Ltd. (A1) and their Directors for various offences under the Act, challenging which, the petitioners/accused are before this Court.

4 Mr. P. Ranganatha Reddy, learned counsel for the petitioners/accused canvassed three main points.

i Samples were lifted on 05.09.2011 and the complaint itself was filed only in 2015, after a lapse of 4 years after the expiry of the shelf life of the drug and therefore, the petitioner lost the valuable opportunity to adduce evidence to controvert the Government Analyst's report.

ii The complaint was filed with a condone delay petition, in which, no notice was ordered and the delay was condoned by the Trial Court which is in violation of the Constitution Bench judgment of the Supreme Court in *Sarah Mathew vs. Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62.

iii The complainant has arrayed all the Directors of Laborate Pharmaceuticals India Ltd. (A1) as Accused 2 to 8 which is in violation of Section 34 of the Act.

5 In reply, Mr. C. Emalias, learned Additional Public Prosecutor submitted that the complaint was filed before the XV Metropolitan Magistrate Court, George Town, as early as on 28.11.2012, but, the Presiding Officer did not take the complaint on file and kept it pending for the reasons best known to him. Only after his transfer, at the persistent requests of the respondent and the learned Assistant Public Prosecutor (Grade II) of the XV Metropolitan Magistrate Court, George Town, the complaint was taken on file on 04.03.2015 and the case was numbered as C.C. No.263 of 2015. On instructions from the respondent, Mrs. P. Shankari, Drugs Inspector, the learned Additional Public Prosecutor submitted that the Drugs Inspectors of that Zone had filed several complaints under the Act against various persons during 2011 - 2012, which were not taken on file by the then Presiding Officer of the XV Metropolitan Magistrate Court, George Town, Chennai, who kept the same pending and left them at that, until his transfer.

6 This indeed sounded very intriguing to this Court because the complaint should be filed well ahead of the expiry of the shelf life of the drug, so that the accused who has elected to repudiate the Government Analyst's report, gets an opportunity through the Court to have the sample re-tested by the Central Laboratory.

7 Therefore, this Court called for the original records from the Trial Court and also a report from the Presiding Officer of the XV Metropolitan Magistrate Court, George Town, Chennai. The said Presiding Officer has sent the original records and also a report dated 21.06.2016 which is indeed appalling.

8 On a perusal of the aforesaid report dated 21.06.2016, it is seen that between 22.06.2011 and 28.11.2012, 8 complaints were filed by the Drugs Inspector before the XV Metropolitan Magistrate Court, George Town, Chennai, which was presided over by Mr. R. Alexander, against various pharmaceutical companies. No action was taken by him on the complaints. After the transfer of Mr. R. Alexander, one Mr. G. Christian assumed charge as XV Metropolitan Magistrate and had taken steps to take the complaints on file and issue process to the accused.

9 When this Court wanted to call for explanation from Mr. R. Alexander, the Registry informed that he was removed from service on

08.12.2012, after the grave charges that were framed against him stood proved in a domestic enquiry. Of course, the charges relate to grave allegations, but, do not relate to his failure to take the complaints on file. Therefore, this Court cannot call for any explanation from him.

10 As stated above, the original complaint and records were sent by the present XV Metropolitan Magistrate, George Town, Chennai and on a perusal of the same, this Court finds that there is no material to show as to when the complaint was received by the XV Metropolitan Magistrate, George Town, Chennai. Normally, when a complaint is presented before the Magistrate, he is required to put his initials and date thereon and thereafter, the office will affix the date seal. In the complaint in the case at hand, neither the initials of the Magistrate nor the date seal is available. Mrs. P. Sankari, the Drugs Inspector, has signed the complaint on 27.11.2012 and the learned Assistant Public Prosecutor of the Court has counter signed on 28.11.2012.

11 On the directions of this Court, Mrs. P. Sankari, the Drugs Inspector and Mr. D. Kiraha Raj, learned Assistant Public Prosecutor, Grade II, attached to the Court of XV Metropolitan Magistrate, George Town, Chennai were present and they have filed individual affidavits.

12 In the affidavit dated 29.06.2016 filed by Mrs. P. Sankari, copies of which were furnished to the learned counsel for the accused, at paragraph nos.4 to 6, it is stated as under:

"4. I submit that on 28.11.2012, I have placed the complaint before the Mrs. A. Anitha, who was holding the post of Assistant Public Prosecutor-Gr.II, for approval, after getting approval from APP (approval entered in her charge sheet ledger at page nos.308 - 309 - Acknowledged by me dated 28.11.2012), it was filed before the learned XV MM, G.T., Chennai. At that time, Mr. Alexander holding the post of it. He had not taken and allotted Calendar Case Number. On repeated representations made by me and APP, the presiding officer not took it on file. Our efforts are ends in vain.

5. I further submits that after charge taken by Mr. D. Kirara Raj as Assistant Public Prosecutor Gr-II, he took the not numbered case files, including this case and filed a memo praying u/s 470 of CrI.P.C., prayed that took cognizance on the ground of interest of justice and in the interest of public health and safety. Then the Mr. Christian who was holding the post of XV MM, G.T., Chennai, taken in to file and allotted calendar case number C.C. No.263/2015 on 05.03.2015.

6 The prosecution was filed this present complaint

within time frame as contemplated under the procedure code. Hence, the delay in numbering case is not at all part of the State and prosecution."

13 Likewise, Mr. D. Kiraha Raj, learned Assistant Public Prosecutor, Grade II, attached to the XV Metropolitan Magistrate Court, George Town, Chennai, has filed an affidavit dated 30.06.2016, wherein, at paragraph nos. 4 to 6, he has stated as under:

"4 I submit that it was brought to my knowledge by Mrs. A. Anitha, APP, Gr.II, Predecessor, that the complaint was approved by her on 28.11.2012 and the said approval details was also duly entered in the Charge Sheet file-Register at Page No.308-309 and the same was acknowledged by the Drugs Inspector Tmt. Sankari, and it was also filed before Mr. Alexander who was Magistrate in XV MMC, G.T., Chennai.

5. I further submit that after taking charge as the Assistant Public Prosecutor Gr.-II, in the interest of the prosecution, I have listed out back logged cases which were not numbered in my Court. It was found that complaints filed by the Drugs Inspectors on various ranges are not numbered during the period from 2011 and 2012 and by that time, Mr. Alexander was holding the post of XV MM Magistrate. The present case C.C. No.263 of 2015 is one among it. Immediately, I have filed memos u/s 470 of Cr.P.C. for those unnumbered cases, including the present case, on the ground of interest of justice and in the interest of public health and safety. Subsequently, Mr. Christian who took charge as the XV MMC, G.T., Chennai, was satisfied on the facts and circumstances of the case and in the interest of justice, the XV Metropolitan Magistrate excluded the time in those cases for not numbering by his predecessor, since the complaint already been filed on 28.11.2012 by the prosecution and taken in to file and allotted calendar case number C.C. No.263/2015 on 05.03.2015.

6 I submit that the prosecution filed this present complaint within time frame as contemplated under the procedure code. Hence, the delay in numbering the case is not at all on the part of the State or prosecution."

14 Vide G.O.Ms. No.2937, Home Department dated 30.10.1971, the Assistant Public Prosecutors who are borne in the cadre and who are regular Government servants attached to various Courts are required to maintain certain registers. One such register is Charge Sheet Register. The Charge Sheet Register is a register to be maintained by the Assistant Public Prosecutor attached to a Court, which will show the charge sheets that were submitted to him for vetting and clearance, before being presented to the Court. It is not maintained

as an individual register by the concerned Assistant Public Prosecutor, but, it is maintained as part of the Court register, inasmuch as the Assistant Public Prosecutor in charge of the Court will have to hand it over to the succeeding Assistant Public Prosecutor, on transfer.

15 In the case at hand, one Mrs. A. Anitha, Assistant Public Prosecutor, Grade II, was in charge of the XV Metropolitan Magistrate Court, George Town, Chennai. On her transfer, she has handed over the Charge Sheet Register to Mr. D. Kiraha Raj, the present incumbent.

16 This Court called for the original Charge Sheet Register, on a perusal of which, it is seen that the complaint prepared by Mrs. P. Sankari, is entered in Page Nos.308 and 309 that has been approved by Mrs. A. Anitha, learned Assistant Public Prosecutor on 28.11.2012. A photocopy of the relevant pages has also been furnished to the learned counsel for the accused across the Bar.

17 This Court has no reason to disbelieve the affidavits filed by Mrs. P. Sankari, the Drugs Inspector and Mr. D. Kiraha Raj, learned Assistant Public Prosecutor attached to the XV Metropolitan Magistrate Court, George Town, Chennai. This Court finds an insidious scheme, for, the case at hand is not the solitary case, but, one among 8 cases, in which the very same judicial officer has acted to be inactive.

18 Coming to the complaint in this case, Mr. D. Kiraha Raj, learned Assistant Public Prosecutor, Grade-II, has filed a memo dated 02.03.2015 before Mr.G.Christian, the XV Metropolitan Magistrate, George Town, Chennai, for condoning the delay for taking cognizance of the offence. Based on the said Memo, Mr. G. Christian, XV Metropolitan Magistrate, George Town, Chennai, passed an order on 04.03.2015 condoning the delay in presentation of the complaint and had taken cognizance of the offences under the Act.

19 In Sarah Mathew vs. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62, a Constitution Bench of the Supreme Court has very clearly held that it is the date of presentation of the complaint that is relevant for deciding the period of limitation and not the date of taking cognizance of the offence disclosed in the complaint.

20 If this Court accepts the assertion of Mrs. P. Sankari and Mr. D. Kiraha Raj, learned Assistant Public Prosecutor that the complaint was presented on 28.11.2012, there is no question of condoning the delay under Section 473, CrI.P.C. in the light of the ruling of the Supreme Court in Sarah Mathew's case. Perhaps, the learned Assistant Public Prosecutor and Mr. G. Christian, the XV Metropolitan Magistrate, George Town, Chennai, were not aware of this development in law and therefore, keeping public interest in mind, the learned Assistant Public Prosecutor has filed a memo under

Section 468 and 470 Cr.P.C. and the XV Metropolitan Magistrate has condoned the delay under Section 473, Cr.P.C. on 04.03.2015 and taken cognizance of the complaint.

21 From the facts and circumstances of the case, this Court has no reason to disbelieve the assertion of Mrs. P. Sankari, the Drugs Inspector and Mr. D. Kiraha Raj, learned Assistant Public Prosecutor, Grade-II, that the complaint was presented on 28.11.2012 to Mr. R Alexander, the then XV Metropolitan Magistrate, George Town, Chennai and it was taken cognizance on 04.03.2015 by Mr. G. Christian, who succeeded Mr. R. Alexander.

22 In Civil courts, all petitions are filed in the filing section in the Registry, where, they are entered in the Stamp Register and the date seal is affixed on the petition by the Office Assistant manning the counter. There is no such procedure in criminal Courts because criminal matters have to be dealt with alacrity. That is why, Rules of Practice enjoins the complainant to present the complaint directly to the Magistrate in the open court. If the Magistrate merely receives the complaint and stacks it in the shelf without even putting his initials and date thereon, the party cannot be made to suffer. Actus Curiae Neminem gravabit is a principle that is applicable in all its fours. The entire judicial system rests on the faith, the common man has in the functioning of the judicial officers. If that faith itself is belied, the edifice of judiciary will crumble like a pack of cards.

23 In the teeth of the finding of this Court that the complaint in this case was given on 28.11.2012 to the XV Metropolitan Magistrate, George Town, Chennai, the question of condoning the delay does not arise at all and ergo, the question of issuing notice to the accused for condoning the delay also does not arise.

24 As regards the other submission of the learned counsel for the petitioners that the petitioners have lost their valuable right in having second sample sent to the Central Laboratory for re-analysis, this Court is of the considered view that the accused had not elected to repudiate the Government Analyst's Report within 28 days as required under Section 25(3) of the Act. Had the accused elected to adduce evidence controverting the Government Analyst's report in terms of the Act, there can be force in the submission of the learned counsel for the petitioners. In this case, the complaint has been filed on 28.11.2012 before the expiry of the shelf life of the drug, which, even according to the petitioner is three years.

25 Coming to the third contention with regard to vicarious liability of the Directors, the learned counsel for the petitioners has relied on the following judgments:

i Jethmal Himmatmal Jain and Others vs. State of Maharashtra, 1981 SCC Online Bom 54

ii State of Karnataka vs. Pratap Chand and others
(1981) 2 SCC 335

iii Jethmal Himmatmal Jain and Others vs. State of
Maharashtra, 1981 SCC Online Bom 54

iv State of Rajasthan vs. Sanjay Kumar and Others,
(1998) 5 SCC 82

v State of Haryana vs. Unique Farmaid (P) Ltd. and
others, (1999) 8 SCC 190

vi Amery Pharmaceuticals and another vs. State of
Rajasthan, (2001) 4 SCC 382

vii Medicamen Biotech Limited and another vs. Rubina
Bose, Drug Inspector, (2008) 7 SCC 196

viii Pannalal Sunderlal Choksi and Others vs. State
of Maharashtra and another, 2000 (4) Mh.L.J.674

ix State of NCT of Delhi vs. Rajiv Khurana, (2010)
11 SCC 469

x Pondy Chemicals represented by its Managing
Partner vs. State represented by N. Gunasekaran, Drugs
Inspector, 2011 (1) RCR (CrI.) 726

xi Embiotic Laboratories (P) Ltd. & 2 others vs.
Drugs Inspector, Erode I Range, 2013 (2) MWN (Cr.) 567

xii Tidal Laboratories Pvt. Ltd., Mumbai & 4 others
vs. State of Tamil Nadu, represented by Drugs Inspector,
Adyar Range, Anna Salai, Teynampet, Chennai - 6, 2013 (2)
MWN (CrI.) 608

26 The judgments relied upon by the learned counsel for the petitioners, with regard to vicarious liability provisions, relate to in pari materia provisions in other statutes like the Negotiable Instruments Act, 1881, etc. Whereas, the Supreme Court in Dinesh B. Patel and Others vs. State of Gujarat and another, (2010) 11 SCC 125, has dealt with Section 34(2) of the Act and has refused to follow the interpretation given to similar provisions found in Section 141 of the Negotiable Instruments Act on the ground of public health. It is apposite to extract the relevant passage from the said judgment as under:

"10. Under the peculiar circumstances of this case and realizing the seriousness of the allegations, we would not take a technical view based on pleadings in the complaint. Mr. Raichura contended that as per the settled

law by this Court in complaints under Section 138 of the Negotiable Instruments Act against company and directors also specific averment about the active role of directors in running the company has to be made, failing which the directors cannot be proceeded against. Same logic should apply even in the present case. We cannot agree. Firstly, the language of Section 34 (2) of the Act substantially differs from the language of Section 141 of the Negotiable Instruments Act. Secondly, here we are dealing with the offence which has the direct impact on the public health. We, therefore, would choose not to interfere with the order of the High Court. It will be open for the directors to show to the Trial Court that they had nothing to do with the manufacture process and, therefore, they should not be held liable under Section 34 (2) of the Act."

27 That apart, in S. Mohan Lal vs. R. Kondiah, [(1979) 2 SCC 616], the Supreme Court has very clearly held as under:

"It is not a sound principle of construction to interpret expressions used in one Act with reference to their use in another Act; more so, if the two Acts in which the same word is used are not cognate Acts. Neither the meaning, nor the definition of the term in one statute affords a guide to the construction of the same term in another statute and the sense in which the term has been understood in the several statutes does not necessarily throw any light on the manner in which the term should be understood generally. On the other hand it is a sound, and, indeed, a well known principle of construction that meaning of words and expressions used in an Act must take their colour from the content in which they appear."

28 The prosecution for an offence under Section 138 read with Section 141 of the Negotiable Instruments Act is between two individuals in connection with dishonoured cheque, whereas, the prosecution under the Act is not a civilis between two private individuals, but, is intended for securing and safeguarding public health. Hence, Section 34(2) of the Act cannot be interpreted through the prism of the judgments governing Section 141 of the Negotiable Instruments Act. When a sub-standard drug is manufactured and sold in the market, the company and its Directors do reap the monetary benefits from it. It is for them to show during trial that things had happened without their knowledge or consent, for, facts that are exclusive to their knowledge, have to be established by them by virtue of Section 106 of the Evidence Act. Thus, the prosecution cannot be quashed under Section 482 Cr.P.C. in a matter arising under the Act by placing reliance upon judgments given under the Negotiable Instruments Act.

In the result, this Criminal Original Petition is dismissed.
Connected Crl.M.Ps. are closed.

Sd/-
Assistant Registrar (CS IV)

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Sub Assistant Registrar

cad

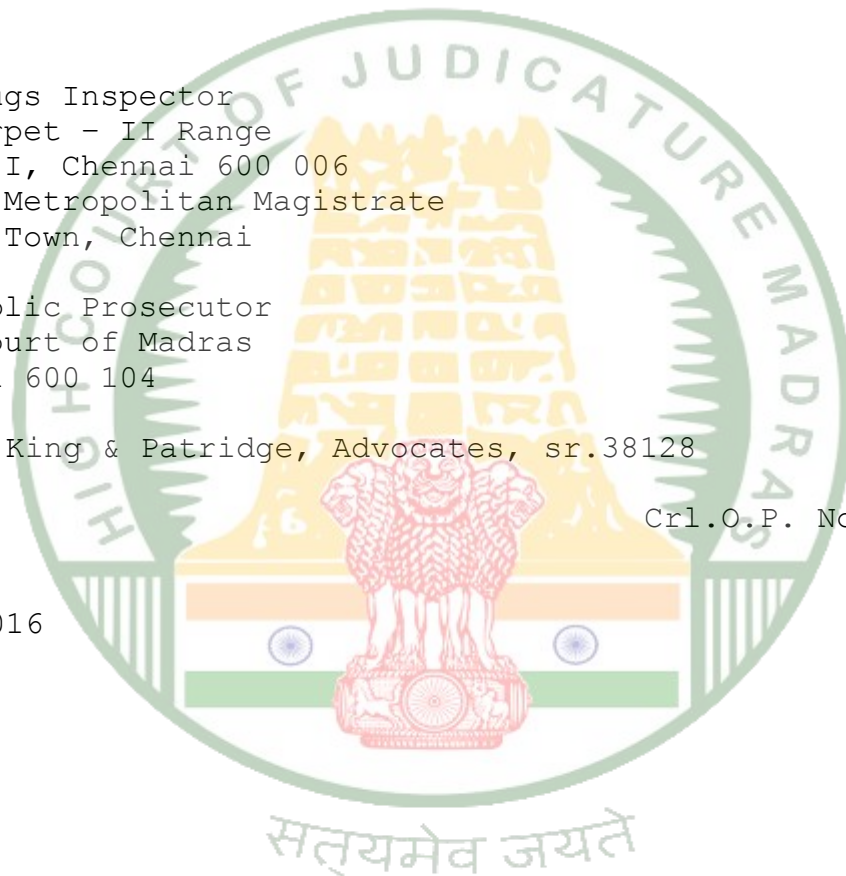
To

- 1 The Drugs Inspector
Tondiarpet - II Range
Zone - I, Chennai 600 006
- 2 The XV Metropolitan Magistrate
George Town, Chennai
- 3 The Public Prosecutor
High Court of Madras
Chennai 600 104

1 cc to M/s.King & Patridge, Advocates, sr.38128

Crl.O.P. No.9252 of 2016

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