

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.16564 OF 2016

ORDER:

Heard learned counsel for the petitioners and learned Additional Public Prosecutor representing the State.

This criminal petition is filed under Section 482 of Cr.P.C to quash the proceedings in C.C.No.366 of 2016 pending on the file of Additional Judicial Magistrate of First Class, Siddipet for the offences punishable under Section 3 of the Essential Commodities Act, 1955 read with paras 14(1), 14(2) and 14(3) of the Drugs (Prices Control) Order, 1955.

The case of the prosecution is that the petitioners violated the paras 14(1), 14(2) and 14(3) of the Drugs (Prices Control) Order, 1955, which issued in exercise of power under Section 3 of the Essential Commodities Act.

The present petition is filed on the sole ground that the Drugs (Prices Control) Order, 1955 based on exercise of powers conferred under Section 3 of the Essential Commodities Act is ceased to exist as on the date of filing the complaint. While reiterating the said contention, learned counsel drawn the attention of this Court that the Drugs (Prices Control) Order, 1955 is superseded by Order, 1995. Para 14 of the said Order reads as follows:

14. Carrying into effect the price fixed or revised by the Government, its display and proof thereof.

14(1) Every manufacturer or importer shall carry into effect the price of a bulk drug or formulation, as the case may be, as fixed by the Government from time to time, within fifteen days from the date of

notification in the Official Gazette or receipt of the order of the Government in this behalf by such manufacturer or importer.

(2) Every manufacturer, importer or distributor of a formulation intended for sale shall display indelible print mark, on the label of container of the formulation and the minimum pack thereof offered for retail sale, the retail price of that formulation, notified in the Official Gazette or ordered by the Government in this behalf (with the words “maximum retail price [or max retail price or MRP] preceding it and “inclusive of all taxes” succeeding it), and “under Government Price Control” on a red strip in the case of Scheduled formulations:

PROVIDED that in the case of a container consisting of smaller saleable packs, the retail price of such smaller pack shall also be displayed on the label of each smaller pack and such price shall not be more than the pro-rata retail price of the main pack rounded off to the nearest paisa.

(3) Every manufacturer or importer shall issue a price list and supplementary price list, if required, in Form V to the dealers, State Drugs Controllers and the Government indicating reference to such price fixation or revision as covered by the order or Gazette notification issued by the Government, from time to time.

But this order is not in force. Hence, the petitioner is not liable to be proceeded for the said offence.

In view of the super-session of the Drugs (Price Control) Order of 1995 by order of 2013, which is published in the Gazette of India on 15.05.2013, the petitioners cannot be proceeded for the alleged violation as per paras 14 to 23 of the Drugs (Price Control) Order, 1955 and 1995, as the same were not in force in view of the super-session of the order and no similar provision is available in the present order in force i.e. 2013 order from 15.05.2013. Thus, the prosecution filed complaint under non existent order i.e. Drugs (Prices Control) Order, 1955 and filing of such complaint is nothing but an abuse of process of the Court and thereby the Court cannot

permit such proceedings by exercising inherent power under Section 482 Cr.P.C.

With the above observations, the criminal petition is allowed and the proceedings in C.C.No.366 of 2016 pending on the file of Additional Judicial Magistrate of First Class, Siddipet are hereby quashed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

28.12.2016
kvrn

M.SATYANARAYANA MURTHY,J

