

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2017

CORAM:

THE HON'BLE MR.JUSTICE P. VELMURUGAN

Crl.R.C.No.195 of 2017

and

Crl.MP.Nos.2081 of 2017

1. M.Elangovan
M/s. Tychos Therapeutics (P) Ltd.

2. M.ElagovanPetitioners

Vs.

The Inspector of Police,
C.B.I, ACB,
Chennai.

..Respondent

PRAYER: Criminal Revision Case filed under section 397 and 401 of the Criminal Procedure Code praying to set aside the order dated 19.09.2016 passed in Cr.M.P.No.709 of 2015 and discharge the petitioners from the case pending trial in Special C.C.No.4 of 2015 on the file of the Special Judge (Under P.C. Act 1988) at Puducherry.

For Petitioners

: No appearance

For Respondent

: Mr.K.Srinivasan

Special Public Prosecutor for CBI

ORDER

This Criminal Revision Case filed by the petitioners under section 397 and 401 of the Criminal Procedure Code to set aside the order dated 19.09.2016 passed in Cr.M.P.No.709 of 2015 and discharge the petitioners from the case pending trial in Special C.C.No.4 of 2015 on the file of the Special Judge (Under P.C. Act 1988) at Puducherry.

2. Heard learned Special Public Prosecutor for CBI, for respondent and there is no representation on behalf of the petitioners.

3. The case of the petitioners is as follows:-

The second petitioner herein is the Managing Director of the first petitioner company. The respondent CBI has filed a final report under section 173 of Cr.P.C against five persons and A1 to A3 are the public servant of the Puducherry Government and the petitioners herein arrayed as A4 & A5 for the alleged offences punishable are under section 120-B r/w 420 IPC and Sec.13(2) r/w 13(1)(d) of Prevention of corruption Act, 1988. It is alleged in the charge sheet that the second petitioner has obtained manufacturing license from the licensing authority, Government of Puducherry and allowed to manufacture, supply and sell FDC/New Drugs in open marked, without subjecting such new

drugs to tests to ensure the safety and efficacy of those drugs and also without the recommendations of the expert committee, knowing full well that mandatory fees was not paid and the approval was not obtained from the Drugs Controller General, Government of India, New Delhi, by the said firms/companies and thereby made various patients to consume the same, putting the life and health of the patients/consumers at risk and thereby caused huge loss of revenue to the Government of India by petitioner's company to a tune of Rs.10.20 lakhs. Further alleged the A1 to A3 have conspired with A5 to cheat Government of India in the matter of issue drug manufacturing license and additional endorsements for FDC drugs and in pursuance of conspiracy fraudulently and dishonestly issued license to 68 drugs to the first petitioner's company(A4). There is no iota of evidence against A4 and A5 and they have been falsely implicated in the case without any evidence. The allegation in the charge sheet is not supported by any cogent either oral or documentary evidence and the respondent CBI has made the petitioners are accused in the case without any substantive materials. While pending CC, these petitioners have filed a petition before the trial Court in Cr.M.P.No.709 of 2015 praying for discharge petitioners/4th and 5th accused in C.C.No.4 of 2015 on the ground that the allegation of loss to the extent of ten lakhs and twenty thousand as alleged in the charge sheet are not correct and petitioners have paid the necessary payment towards license fee etc.,

enclosing with safety and efficacy data for approval of FDC on 26.03.2013 and 18.03.2014 respectively viz. before 18 months to the DCGI and the same is acknowledged. The petitioners have duly complied with the direction of the DCGI letter dated 15.01.2013. The respondent has mis-calculated and projected the alleged loss in the charge sheet with ill motives to falsely implicate the petitioners. The learned Special Judge without appreciating the merits of the case has dismissed the petition for discharge filed by the petitioners, in Crl.M.P.No.709 of 2015, by order dated 19.09.2015. Aggrieved by the above order, the petitioners have filed this Criminal Revision petition.

5. The learned Special Public Prosecutor for CBI would submit that the petitioners had obtained license for Fixed Drug Combinations without approval of Drugs Controller General (India). The side effects caused by the drugs would affect innocent patients and will emanate only when the scientific study is made. The prosecution has been launched to immediately prevent further sale of such unapproved drugs endangering human life. The fact that the Licensing Authority should have rejected the applications cannot stand since the first accused, who was the license authority has been charged along with the petitioners with various sections, including under section 120-B of IPC (Criminal Conspiracy). After investigation, the CBI has filed the charge sheet and Special Court has taken the cognizance of the offence in C.C.No.4 of 2015 in which the

petitioners have filed the petition for discharge from this case.

6. The learned Special Public Prosecutor for CBI, further would submit that the final report filed by CBI under section 173 of Cr.P.C. and the materials sent with it would prove the involvement of these petitioners, the role played by them and also the offence committed by them. Therefore, under this circumstances these petitioners have to face trial and prove their innocence. The learned Special Judge after considering all the materials placed before him has rightly dismissed the petition in Cr.M.P.No.709 of 2015 filed by these petitioners. There is no perversity or infirmity in the order passed by the learned trial Judge and the same is liable to be dismissed.

7. Heard the learned Special Public Prosecutor for CBI and also perused the materials placed before this Court like charge sheet, materials annexed with charge sheet and the discharge petition filed by the petitioners, before the Special Court, counter filed by CBI and also order passed by the Special Court.

8. On perusal of the above materials, prima facie case is made out against these petitioners and incriminating materials are also available against these petitioners to proceed further in this case. Therefore the reason stated

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by the Special Judge for dismissing the discharge petition is well founded and there is no reason to interfere with the order passed by the learned Special Judge.

9. In the light of the above discussion, this Criminal Revision petition fails and the same is dismissed. Consequently, connected miscellaneous petition is also closed.

02.08.2017

Index:yes/no
Internet:yes/no
dpq/bri

To

1. The Special Judge,
Puducherry.
2. The Inspector of Police,
C.B.I, ACB,
Chennai.
3. The Special Public Prosecutor for CBI cases,
High Court, Madras.

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