

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.O.P.Nos.16915 and 16955 of 2014

and

M.P.Nos.1, 1 of 2014, Crl.M.P.Nos.9942 and 9943 of 2016

1.K.Ramlal Jain

Proprietor of M/s.Kawarlal and Company
No.27, Raghunayakulu Street,
Chennai - 600 003.

..1st petitioner in Crl.O.P.No.
16915/2014 / petitioner in
Crl.O.P.No.16955/2014

2.K.Parasmal Jain

Proprietor of M/s.Kawarlal and Sons
No.27, Raghunayakulu Street,
Chennai - 600 003.

..2nd petitioner in Crl.O.P.No.
16915/2014

Vs.

Union of India

represented by Drug Inspector,
Office of the Deputy Drugs Controller (India)
Central Drugs Standard Control Organization,
South Zone, 2nd Floor,
Sastri Bhavan, Annexe,
Chennai - 600 006.

.. Respondent in both petitions

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for the records in C.C.Nos.265 of 2012 and 1565 of 2011 on the file of learned XV Metropolitan Magistrate, George Town, Chennai and quash the same.

For Petitioners : Mr.N.R.Elango, senior counsel
for Mr.S.Baskaran

For Respondent : No appearance
Mr.D.Chandran,
Senior Central Government Standing Counsel

COMMON ORDER

Petitioners seek quash of proceedings in C.C.Nos.265 of 2012 and 1565 of 2011 on the file of learned XV Metropolitan Magistrate, George Town, Chennai.

2. Heard learned senior counsel for petitioners and perused records.

3. In C.C.Nos.1565 of 2011 and 265 of 2012 on the file of learned XV Metropolitan Magistrate, George Town, Chennai, the respondent's allegation is of commission of offence u/s.13(1)(a) r/w 9(B)(e) and 10(bb) of Drugs and Cosmetics Act, 1940 and 467 r/w 120-B IPC. The basis of allegations of commission of said offences is e-mail communications from the personal e-mail account of the complainant and the response thereto received from a company in China.

4. Communications between respondent/complainant and the answering chinese company read as follows:

"Crl.O.P.No.16955 of 2014

30.07.2009

Dear Ms.Rice,

How are you ? Today, I have another query on Azithromycin.

Today a consignment of 1000 kg Azithromycin, bearing Batch No.0906025, Mfg. Dt:2009.6.28, Exp.Dt:2013.6.28 has arrived Chennai Sea Port from Sunwell Chemicals Ltd, Zhejlang, China claimed to be manufactured by you. This office has received the documents for clearance (Invoice, and Certificate of Analysis). Please conform whether the above mentioned batches of this Azithromycin was manufactured by you. This is a check from our office in view of the recent problems in import of drugs from traders of China. An early reply is essential to take a decision in clearing this consignment.

Dear Ms Shanthi Gunasekaran,

Thanks for your mail.

Kindly note our Azithromycin one batch is only 825kg, for 0906025 this batch we only sold 500kg to Kawarlal, which just arrived Chennai Sea Port, this 500kg is manufactured by us and supplied by us.

But this 1000kg Azithromycin which from Sunwell chemicals Ltd this is surely not manufactured by us, to protect your people and our company's reputation, we here request you to stop the material enter in your market.

Dear Ms.Rice

Thanks for your mail.

Please verify the enclosed invoice and CoA, submitted by the importer and inform me your comments. You can see from the invoice that Azithromycin, batch 0906025 (1000kg) is invoiced for Kawarlal, by Sunwell.

What do you mean by "for 0906025 batch we only sold 500kg to Kawarlal, which just arrived Chennai Sea Port"? Regarding the sale to Kawarlal you have mentioned, is it direct from you or through traders ? Can I see the copy that invoice ? Also please inform whether the CoA I have enclosed was issued

by you not ?

Dear Ms Shanthi,

Thanks for your mail.

I have checked this batch 0906025 COA, it is not issued by us. First we never writes sales peoples' mail address in COA, second as my earlier mail mentioned our one batch size is 825 kg, how it come to 1000kg for one batch. Last his batch material we already sold 500kg to Kawarlal directly, so impossible that batch 0906025 has totally 1500 kg.

Regarding to Kawarlal 500kg, we sold to them directly, for invoice I will send you tomorrow morning and our COA.

31.07.2009

Dear madam,

We are forwarding the e-mail received from China

Madam,

The Drug Controller of India.

Invoice No: AR3022 Date : June-29-2009

AZITHROMYCIN USP26

BATCH NO: 0906025

IS MANUFACTURE BY US ONLY & WE CONFIRM THIS TO YOU.

WE WELCOME AND PLEASE FEEL FREE FOR CONTACT US AT ANY TIME.

02.08.2009

Dear Mr.Rice

I am forwarding the message, I received from our importer Kawarlal.

Is this sent by you to Kawarlal ?

In this message are you informing about 1000 kg Azithromycin sent by Sunwell Chemicals ?

Because the invoice number AR3022 and batch number 0906025 in this message are the same as that of 1000 kg Azithromycin from Sunwell.

Please clarify in connection with your earlier message

I am going to the material.

I will get back to you about material and label as soon as possible.

May I see your Invoice and CoA today as you have promised me earlier ?

03.08.2009

Dear Ms Shanthi,

Thanks so much for your mail.

Let us clarify again that this 1000 kg Azithromycin is not manufactured by us. For this batch 0906025 we only sold 500kg to Indian market, and kindly note again our one batch size is 825kg, as we already sold 500kg to Kawarlal directly, how it come to another 1000kg ? So this 1000kg surely not from us. Attached is our all shipping docs for 500 kg to Kawarlal.

Dear Mr.Rice

Thanks for your information about your sale of Azithromycin to Kawarlal.

What about the message I got from Kawarlal and forwarded to you ?

It has been claimed to be sent by you. Did you send that to Kawarlal ?

I am confused. Please clarify.

I will get back to you about material and label as soon as possible.

Dear Ms.Shanty,

Thanks for your mail.

Let me clarify again. Now in Indian market there is only 500kg Batch No.0906025 which we sold to Kawarlal directly. Another 1000kg which same Batch as ours is not from us. This material Kawarlal bought from Sunwell chemicals, it is not manufactured by us. Kindly note they just want use same batch to clear the 1000kg material which not manufactured by us.

Hope this time you can understand the situation.

Crl.O.P.No.16915 of 2014

29.07.2009

Dear Sir/Madam,

I am from Govt. of India's Central Drugs Standard Control Organization and in-charge of clearing drugs imported into India through Chennai Sea Port.

Today a consignment of 1000kg Tranexamic Acid, bearing Batch No.090601, 0090602, 090603, 090604 Mfg. dt: Jun 2009, Exp. Dt:Jun 2014 has arrived Chennai Sea Port from Zhejiang

Chemicals Import & Export Corporation, claiming the material to be manufactured by you.

Please conform whether this material was manufactured by you. This is a check from our office in view of the recent problems in import of drugs from traders of China.

An early reply is essential to take a decision in clearing this consignment.

Looking forward to an early reply.

Dear Mrs. Shanthi Gunasekaran,

Thank you very much for your information, I much appreciate that your government is taking actions against smuggle.

We hereby confirm to you that batch 090601, 090602 (0090602), 090603, 090604 are not manufactured by us, our batch number is designated as YYMMXXX (YY for the year, MM for the month, XXX is the batch sequence number in that month and M stands for mixed batch, 0906001M for example), furthermore, Zhejiang Chemicals Import & Export Corporation is not our agent, we did not sell Tranexamic acid to them.

Thank you very much for the efforts taking.

Dear Mr. Liang,

Thanks for your response of your batch numbering system. Now I have attached the documents received from the importer viz., - invoice, CoA of 4 batches duly signed and sealed, Batch Release certificate and CCPIT certificate. You may please verify the documents signed and sealed from your company and inform me whether these were issued by you or not.. Also you may send me a sample copy of your authentic certificates for my verification.

30.07.2009

Dear Mrs Shanthi Gunasekaran,

Thank you very much for the documents you have sent to me, the signatures of Mr. HOU Qiwei to the four COAs are all fake, but our company stamp and the signature of Mr. ZOU Zhenrong in the documents is the same to our original.

Attached here is our COA and batch release certificate for your reference. We sell to India Tranexamic acid BP the latest version, BP2009, not BP98.

Dear Mr.Liang

Thanks for your documents.

I could see the difference if signature of Mr.HOU Qiwei in the CoAs.

Where is the signature of Mr.ZOU Zhenrong ? In which Document ?

What is your comment on the CCPIT certificate ? Is it yours ?

Can you put all your comments in one letter (in your company's letter-head) and send it to me to initiate further action from our side ?

Dear Mrs Shanthi Gunasekaran,

As we are the manufacturer, our customers only need our Batch Release Certificate to clear customs, no other certificates. It's quite simple, as we did not sell into India through Chinese traders, so any other companies except for Hunan Dongting Pharmaceutical Co., Ltd. who export Tranexamic acid into India claiming goods is of Hunan Dongting origin are all fake.

Anytime if you want to check the genuineness of Tranexamic acid exported into India, you may contact with me.

Dear Mr Ling

Please confirm whether the CCPIT certificate is yours. Also can you give me all your comments put together in your company's letter head for further action from our side. Also I am going to see the goods today. I will tell you about the label on the material.

Dear Mrs Shanthi Gunasekaran,

We have never applied for a CCPIT certificate, I think the trader got it from CCPIT office with fake documents. As all our document use normal paper, so may be it is time to apply some anti-counterfeiting technic.

I'll prepare a official statement for our company next Monday after seeing the label."

5. Learned senior counsel for petitioners brought to notice of this Court that the issue was probed by CBI and a closure report was filed by such agency before learned Additional Chief Metropolitan Magistrate, Egmore, Chennai on

22.11.2011. Such report *inter alia* informed that the Letter Rogatory process envisaged u/s.166-A Cr.P.C. could not be followed in the case since there was no treaty/understanding there regards with China. Learned senior counsel also submitted that the imported material after manufacture was re-exported to China under due clearance issued by Assistant Commissioner of Customs.

6. Be that as it may, this Court finds it unnecessary to consider further the facts of the case and would confine itself to the question of law. For easy understanding, Section 166-A Cr.P.C., is extracted hereunder:

“166-A. Letter of request to competent authority for investigation in a country or place outside India. - (1) Notwithstanding anything contained in this Code, if, in the course of an investigation into an offence, an application is made by the investigating officer or any officer superior in rank to the investigating officer that evidence may be available in a country or place outside India, any Criminal Court may issue letter of request to a Court or an authority in that country or place competent to deal with such request to examine orally any person supposed to be acquainted with the facts and circumstances of the case and to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing which may be in his possession pertaining to the case and to forward all the evidence so taken or collected or the authenticated copies thereof or the thing so collected to the Court issuing such letter.

(2) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.

(3) Every statement recorded or document or thing received under Sub-Section (1) shall be deemed to be the evidence collected during the course of investigation under this Chapter.”

7. While the proper investigating agency has informed inability to proceed u/s.166-A Cr.P.C., this Court finds that preference of complaint by respondent would serve no purpose whatsoever, particularly as records reveal that communications between respondent/complainant and answering China company are merely e-mails which bear no digital signature thereby making unavailable the presumption as to electronic records and electronic signatures u/s.85-B of the Indian Evidence Act and in the list of witnesses informed by respondent/complainant, person/s, who had authored e-mails addressed to respondent/complainant, understandably, have not been cited as witnesses.

The Criminal Original Petitions are allowed. The proceedings in C.C.Nos.265 of 2012 and 1565 of 2011 on the file of learned XV Metropolitan Magistrate, George Town, Chennai, are quashed.

30.06.2017

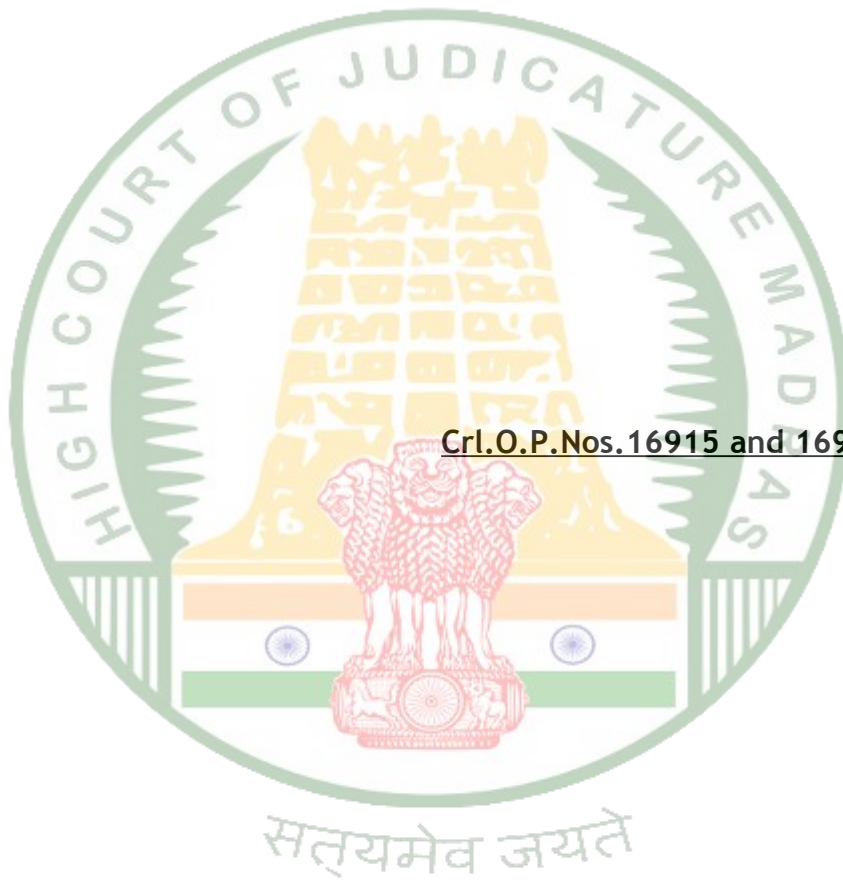
Index:yes/no
Internet:yes/no
gm
To

The XV Metropolitan Magistrate,
George Town, Chennai.

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C.T.SELVAM, J

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Crl.O.P.Nos.16915 and 16955 of 2014

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30.06.2017