

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.03.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Crl.O.P.No.21557 of 2010
and
M.P.No.1 of 2010

Jagadishbhai N.Davey,
Proprietor cum Competent Person of
M/s.Hindustan Surgical Agencies,
No.7, New No.24, Ground Floor,
Out house Sadasivam Street,
Gopalapuram,
Chennai-600 086. .. Petitioner

vs

State, rep. by its
Drugs Inspector,
Purasawalkam Range i/c,
Office of the Assistant Director of Drugs Control,
Zone II, II Floor, Old SDC Office Building,
DMS Campus,
259-261, Anna Salai,
Teynampet, Chennai-600 006. .. Respondent

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for records in C.C.No.12647 of 2006 on the file of the XV Metropolitan Magistrate, George Town and quash the same.

For Petitioner : Mr.P.Elango
For Respondent : Mr.B.Ramesh Babu
Govt. Advocate
(Crl. Side)

ORDER

This Criminal Original Petition has been filed by the petitioner to call for records in C.C.No.12647 of 2006 on the file of the learned XV Metropolitan Magistrate, George Town, Chennai and to quash the same.

2. The respondent has preferred a complaint against ten persons arraying the petitioner as accused No.5. All of them stand accused of offences under Sections 18(a)(i) read with 16 (1)(a) of the Drugs and Cosmetics Act, 1940, hereinafter referred to as 'the said Act', punishable under Section 27(d) of the said Act.

3. According to the complainant, on 16.9.2003 as per the orders of the Director of Drugs Control had gone to the first accused medicals and took samples of Augmenting 375, Amoxycillin and Clavulanate Potassium tables 375, manufactured by Medreich Sterilab Limited, 12th Mile, Old Madras Road, Virgonagar, Bangalore and the same was sent for analysis to the Government Drugs Testing Laboratory, Chennai and the same was declared as not of standard quality drug by the Government Analyst (Drugs) in Form 13 under report dated 28.10.2003 on the ground that the sample does not confirm to USP Specification for Amoxycillin and Clavulanate Potassium tablets in respect of assay for Amoxycillin 192.12mg as against the label claim of 250mg and clavulanic acid 41.39mg as against the label claim of 125mg respectively.

4. The actual manufacturer of the drugs is one Medreich Sterilab Limited Bangalore. M/s.Glaxo Smithkline Pharmaceuticals Limited, Hosur, acquired the drugs from them and delivered the same to Glaxo Smithkline Pharmaceuticals Limited, Chennai which in turn delivered the drugs to M/s.Hindustan Surgical Agencies, Chennai, through whom the petitioner have acquired the impugned drugs.

5. Notices were issued to the several accused. The manufacturer has sought examination of the second sample by the Central Drugs Laboratory, Calcutta and the analytical report submitted by such laboratory also informed that the drugs were substandard. According to the complainant, the manufacturer had contended that the drugs had been rendered substandard owing to the petitioner having stored the same under the normal temperature and not under refrigeration. The storage condition prescribed by the manufacturer was that the drugs were to be stored in a dry place below 25°C. The other aspects of the complaint are not connected with the issue on hand.

6.I heard Mr.P.Elango, learned counsel for the petitioner and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) for the respondent and perused the materials available on record.

7. Learned counsel for the petitioner submitted that the petitioner being pharmacist, would not be subject to prosecution in the facts and circumstances of the case. He submitted the petitioner stood protected from prosecution under Section 19(3) (c) of the said Act, as they had properly stored the drugs and maintained the same in the same state in which they were acquired by them.

8. Per contra, the learned Government Advocate (Criminal Side) submitted that because of improper storage of the drugs by the petitioner, the drugs rendered substandard. He would contend that a prima facie case stood made out against the petitioner and they would have to establish their innocence in the course of trial. Section 19(1) of the said Act provides that it shall be no defence in a prosecution for offence under Section 18 of the said Act to prove merely that the accused was ignorant of the nature, substance or quality of the drug or cosmetic in respect of which the offence had been committed.

9. In reply, the learned counsel for the petitioner submitted that neither in the show cause notice nor in the complaint, had it been averred that the petitioner had caused the drugs to be improperly stored and thereby rendered them substandard.

10. Section 18 of the said Act prohibits manufacture and sale of certain drugs and cosmetics. Section 18(a)(i) prohibits manufacture for sale or for distribution of selling of stocking or exhibiting or offering for sale or distributing any drug which is not of a standard quality or is misbranded, adulterated or spurious.

11. Section 19(3) of the said Act provides:

"19(3) A person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall not be liable for a contravention of section 18 if he proves

(a) that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof;

(b) that he did not know and could not, with reasonable diligence, have ascertained that the drug or cosmetic in any way contravened the provisions of that section; and

(c) that the drug or cosmetic, while in his possession was properly stored and remained in the same state as when he acquired it."

12. In the instant case, it is not the case of the prosecution that the petitioner is manufacturer of the drugs or the agent of the manufacturer for distribution thereof. It is not the prosecution case that the petitioner has acquired the drugs other than from a duly licensed distributor or dealer thereof. If, indeed, the petitioner has been found to be in violation of requirement of storage at the time of inspection and seizure of drug samples by the complainant from them, it would follow that the show cause notice issued to them would have informed such position and would have required them to answer there regards. Neither the show cause notice nor the complaint inform the petitioner violation of storage conditions.

13. As the drugs which were sold in retail by the petitioner were in standard packing provided by the manufacturer, on perusal of the complaint it is apparent that the tablets were sold by the manufacturer in strips of 6 tablets each, the question of the petitioner ascertaining the contravention or otherwise of the provision of Section 18 of the Act does not arise. Though normally defences provided under Section 19(3) of the Act are to be raised by the accused in the course of trial, in circumstances where the defences above stated are explicit on the face of the record, the trial would be an exercise of futility.

14. It is to apposite mention that accused Nos.1 and 2 have approached this Court for quashing of the criminal proceedings in CrI.O.P.No.28446 of 2009. By an order dated 26.6.2013, this Court quashed the proceedings in C.C.No.12647 of 2006 in so far as accused Nos.1 and 2 were concerned. The petitioner herein is the similarly placed person and the petitioner is entitled to get the benefit of the order passed by this Court in CrI.O.P.No.28446 of 2009.

15. For the foregoing reasons, this Criminal Original Petition is allowed and the proceedings in C.C.No.12647 of 2006 on the file of the learned XV Metropolitan Magistrate, George Town, shall stand quashed in so far as the petitioner herein is concerned. Consequently, connected miscellaneous petition is closed.

vs

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

To

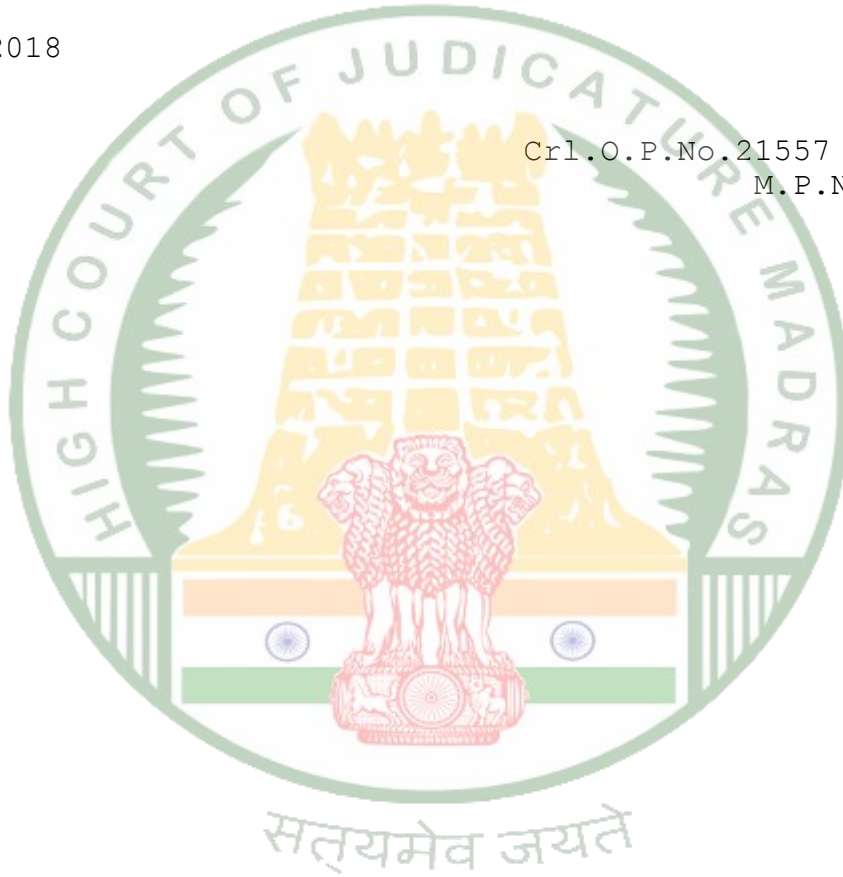
1.The XV Metropolitan Magistrate,
George Town, Chennai.

2.The Chief Metropolitan Magistrate,
Egmore, Chennai

+lcc to M/s.P.Elango, Advocate SR.NO.17988

RR(CO)
sm:23.10.2018

Crl.O.P.No.21557 of 2010 and
M.P.No.1 of 2010



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