

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.03.2017

CORAM

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

CRL.O.P.No.21558 of 2010

and

M.P.No.1 of 2010

1. The Firm of M/s.Prakash Pharmacy
rep. By its Partner, Dinukumer K.Metha
No.29/13, I Floor, Vasu Street
Chennai - 600 010.
2. Dinukumer K.Metha .. Petitioners

Vs

The State, rep. By its Drugs Inspector
Pursawalkam 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

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

For Petitioners : Ms.R.Vaishali
for M/s.S.R.Rajagopal

For Respondent : Mr.P.Govindarajan
Addl. Public Prosecutor

ORDER

The petitioners have filed this original petition under Section 482 of the Criminal Procedure Code to call for the records in C.C.No.12647 of 2006 on the file of the learned XV Metropolitan Magistrate, George Town, and quash the same.

2. The facts in brief are as under: The petitioners herein are accused 3 and 4. It is stated that the respondent on 16.9.2003 inspected the premises of the first accused and took

samples of certain medicines sent the same for analysis to the Drugs Testing Laboratory, Chennai. The said sample was declared as not of standard quality drug by the Government Analyst (Drugs) in Form 13 under report dated 28.10.2003.

3. It is averred that the respondent sent a notice dated 6.11.2003 to the first accused in the complaint and he sent reply on 17.11.2003 to the respondent stating that the drug had been acquired from the first petitioner herein, of which the second petitioner is a partner. The second petitioner vide letter dated 28.11.2003 informed the authority that they had purchased the drug from M/s.Hindustan Surgical Agencies, the fifth accused, on 30.8.2003. The fifth accused, in turn, informed that they had purchased the drug from M/s.Glaxo Smithkline Pharmaceuticals, Chennai (arrayed as accused 6, 7, 11 and 12 in the complaint), who, in their reply, submitted that they had purchased the same from Medreich Sterilab Limited, Bangalore.

4. After confirming that the sample was not of standard quality, a complaint under Section 200 of the Criminal Procedure Code was preferred against the petitioners herein and ten others and it is stated that the learned Magistrate had taken the complaint on file insofar as the petitioners herein alleging contravention of Section 18(a)(i) read with Section 16(1)(a) of the Drugs and Cosmetics Act, 1940, which are punishable under Section 27(d) of the said Act.

5. In such backdrop, the present criminal original petition is filed for the relief stated supra.

6. The learned counsel appearing on behalf of the petitioners vehemently contended that the ingredients of Section 18(a)(i) read with Section 16(1)(a) of the Drugs and Cosmetics Act are not made out against the petitioners and, therefore, the complaint is liable to be set aside as against them.

7. The learned counsel further contended that the petitioners have stocked the drug in the same condition as it was manufactured and, therefore, they cannot be made liable for the defect in the constitution of drug manufactured by the other accused. She added that the learned Magistrate failed to note that under Section 19(3) of the Act, the petitioners, not being manufacturers, cannot be made liable for any contravention of Section 18 of the Act.

8. Per contra, the learned Additional Public Prosecutor appearing on behalf of the respondent submitted that a prima facie case had been made out against the petitioners and they

have to establish their innocence during the course of trial and, thus, prayed for dismissal of this criminal original petition.

9. I heard M/s.R.Vaishali, learned counsel for the petitioners and Mr.P.Govindarajan, learned Additional Public Prosecutor for the respondent and perused the documents available on record.

10. At the outset, it is apposite to refer to an order dated 26.6.2013 passed by this Court in Crl.O.P.No.28446 of 2009, in respect of first and second accused in the very same C.C.No.12647 of 2006, wherein it has been held as under:

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

10. Section 19(3) of the Act reads as follows:

'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.'

11. In the instant case, it is not the case of the prosecution that the petitioners are manufacturers of the drugs or the agent of the manufacturer for distribution thereof. It is not the prosecution case that the petitioners have acquired the drugs other than from a duly licensed distributor or dealer thereof. If, indeed, the petitioners have 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 petitioners violation of storage conditions. As the drugs which were sold in retail by the petitioners were in standard packing provided by the manufacturer, on perusal of complaint it is apparent that the tablets were sold by the manufacturer in strips of 6 tablets each, the question of the petitioners 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 in futility.

12. For the aforesaid reasons, this Criminal Original Petition stands 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 petitioners herein are concerned. Consequently, the connected miscellaneous petition is closed."

11. Even in the case on hand, it is not the case of the prosecution that the petitioners are manufacturers of the drugs or the agent of the manufacturer for distribution thereof. It is not the prosecution case that the petitioners have acquired the drugs other than from a duly licensed distributor or dealer thereof. If, indeed, the petitioners have 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. However, the show cause notice only alleges that the petitioners have stocked and sold the said drug which has been declared as not of standard quality. There is no mention in the show cause notice qua violation of storage conditions.

12. The decision of the learned Single Judge, referred supra, in respect of the first and second accused in the very same case, applies on all fours to the case on hand. As held by the learned Single Judge in the decision referred supra, 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 are explicit on the face of the record, the trial would be an exercise in futility.

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

vs

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

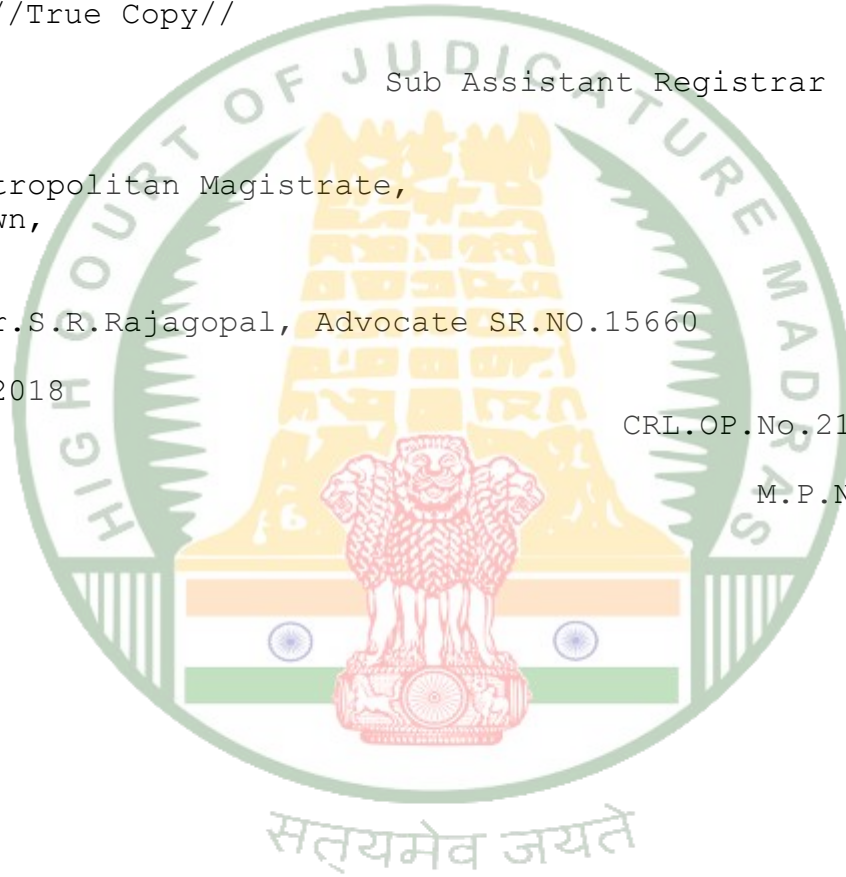
To

The XV Metropolitan Magistrate,
George Town,
Chennai.

+1cc to Mr.S.R.Rajagopal, Advocate SR.NO.15660

sm:31.10.2018

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