

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on 07.08.2017

Orders Pronounced on 30.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CrI.O.P.No.25780 of 2010

and

M.P.Nos.1 and 1 of 2010

1. Ratanshi Shah

2. Kirti Shah

... Petitioners/Accused 3 & 4

.. Vs ..

State represented by

Drugs Inspector,

Salem II Range,

O/o. Assistant Director of Drugs Control,

Salem Zone,

Salem - 5.

... Respondent/Complainant

सत्यमेव जयते

Prayer:- Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the entire records in C.C.No.107 of 2010 on the file of the Judicial Magistrate No.2, Sankagiri and quash all further proceedings against the accused.

For Petitioners : Mr.P.Ramesh Kumar

For Respondent : Mr.B.Ramesh Babu,
Government Advocate (CrI.Side)

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ORDER

Accused Nos.3 and 4 are the petitioners herein.

2. This Criminal Original petition is filed by the petitioners under Section 482 of Cr.P.C., to quash the proceedings against them in C.C.No.107 of 2010 pending on the file of the learned Judicial Magistrate No.2, Sankagiri.

3. The brief facts, which are necessary for determination of the case, are as follows:-

The respondent herein/complainant has filed the above complaint alleging that on 21.07.2008, the complainant went to the premises of Government Hospital, Edappadi, Salem, and drawn a sample of 4X10X10's - Ferrous Sulphate with Folic Acid tablets, Batch No.13016, Mfg Date 05/08, Exp. Date 04/10, Manufactured by the first accused M/s.Healthy Life Pharma Pvt Ltd. It would appear that on 21.07.2008 samples of the said drug were then forwarded for analysis to the Government Analyst (drugs), Chennai - 6. The Government

analyst (Drugs), by its report dated 06.04.2009, declared the sample so drawn as being not of standard quality for the reason that the sample does not conform to label claim with respect to the content of Folic Acid on 60%. In this regard, a letter was issued by the respondent to the Medical Officer, Government Hospital, Edapadi, on 21.04.2009 and a reply was received by the respondent stating that the product was supplied by the Tamil Nadu Medical Services Corporation Ltd., Salem. Thereupon, the said Tamil Nadu Medical Services Corporation Ltd., Salem, was addressed for information and their reply dated 09.05.2009 was that the product was supplied by the first accused with a total quantity of 7,97,600 tablets. Subsequently, on 12.05.2009, the respondent has sent a notice to the first accused, interalia, to show cause why action should not be taken against the company for having sold a drug, which was not of standard quality in contravention of the provision of Section 18(a)(i) of Drugs and Cosmetics Act. Along with the notice, the first accused has received a copy of the analyst report and a portion of what was described as a sealed sample. Since the reply was not satisfactory, a complaint for the offences under Sections 18(a) (i) r/w.27(d) and 18(B) of Drugs and Cosmetics Act 1940 for having manufactured for sale and sold a Not of

standard quality drug namely, Ferrous Sulphate with Folic Acid tablets and having not furnished the copies of relevant records of manufacturing and testing of drug Ferrous Sulphate with Folic Acid tablets, was being preferred against the petitioners, after obtaining sanction from the Director of Drugs Controller, Chennai.

4. Learned counsel appearing for the petitioners submitted that the petitioners/Accused Nos.3 and 4 are being prosecuted in the capacity of Directors of the first accused company. However, as early as on 18.06.2005, they have resigned as Directors from the first accused company and necessary Form No.32 was also filed before the Registrar of Companies and hence, the learned counsel sought for quashing of the proceedings insofar as the petitioners/A.3 and A.4 are concerned.

5. Learned Government Advocate (Crl.Side) has filed counter on behalf of the Drugs Inspector and submitted that in response to the show cause notice issued by the Department, based upon the particulars furnished by the reply dated 19.05.2009, the petitioners herein have been arrayed as accused.

6. Learned counsel appearing for the petitioners has produced a copy of the list of Directors from 01.04.2008 to 31.03.2009. The relevant entry being

Sl.No.	Name	Date of Appointment	Date of Resignation
1.	Mr.Manu T.Shah	21.09.1999	--
2.	Mrs.Kavita M.Shah	18.06.2005	--

7. Accordingly, this Court finds that the petitioners herein have already resigned the job from the post of Directors of the first accused company and as on the date of manufacturing, as per the label in the sample seized by the Department relating to 2008, on which date, as per Form No.32 Cessation of Director was effected in 19.02.2010 wherein, accused Nos.3 and 4/petitioners herein are not the Directors on the crucial date and only the two persons as mentioned above are the Directors. Since these petitioners are not the Directors of the first accused company on the date of alleged commission of the offence i.e., in May 2008, date of manufacturing of the seal in question, I have no hesitation to hold that the petitioners cannot be prosecuted in respect of a sample manufactured during the period May 2010, when

they have already resigned the job from the post of Directors of the first accused company. As per Form No.32 filed on 07.07.2005, the first petitioner/Mr.Ratanshi Shah and the second petitioner/Mr.Kirti Shah have resigned on 18.06.2005 and inspection on the date of manufacturing is only on 21.07.2008. Accordingly, the proceedings in C.C.No.107 of 2010 is liable to be quashed only as against the petitioners/A.3 and A.4 are concerned.

8. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.107 of 2010 pending on the file of the learned Judicial Magistrate No.II, Sankagiri, is quashed only in respect of the petitioners/A.3 and A.4.

9. It is made clear that the other grounds raised regarding the sample test and lab test conducted by the Department during the course of inspection have to be decided only during the course of trial and it is open to the State to prosecute against appropriate persons. The connected miscellaneous petitions are closed.

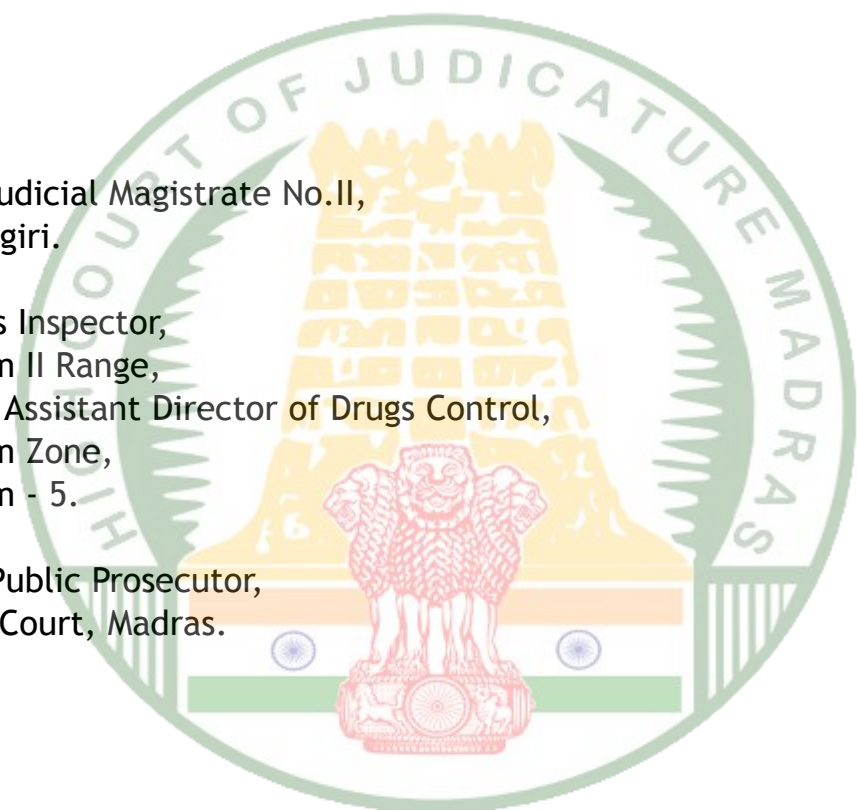
30.08.2017

Index : Yes/No

Internet : Yes
Jrl

To

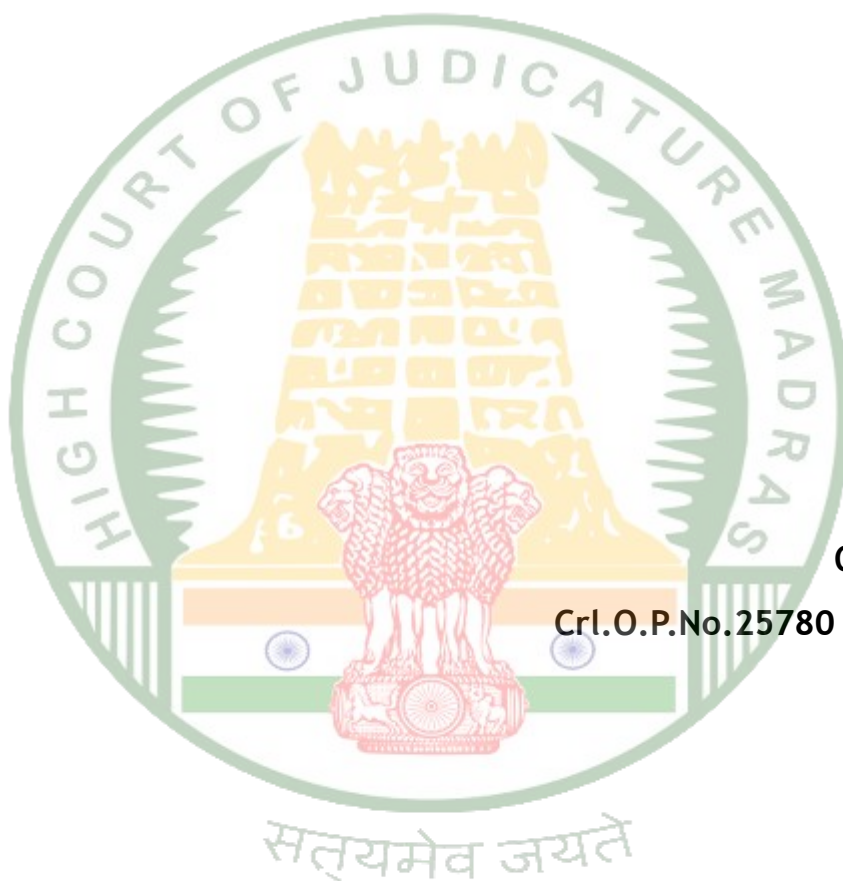
1. The Judicial Magistrate No.II,
Sankagiri.
2. Drugs Inspector,
Salem II Range,
O/o. Assistant Director of Drugs Control,
Salem Zone,
Salem - 5.
3. The Public Prosecutor,
High Court, Madras.

The seal of the High Court of Judicature Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital in front of it. The lion capital is set against a background of the Indian national flag's saffron, white, and green horizontal stripes. The words "HIGH COURT OF JUDICATURE MADRAS" are inscribed in a green circular border around the central image. Below the seal, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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RMT.TEEKAA RAMAN, J.

Jrl



Order in
Crl.O.P.No.25780 of 2010

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