

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2017

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.1712 of 2012

M.P.Nos. 1 & 2 of 2012

S.Kathirvel

... Petitioner/Accused-2

Vs

Union of India represented by
The Drug Inspector,
O/o, Deputy Drugs Controller (India),
Central Drugs Standard
Control Organisation,
South Zone, 2nd Floor,
Shastri Bhawan Annex,
Chennai - 600 006.

... Respondent/Complainant

Prayer :- Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.3696 of 2011 on the file of the learned X Metropolitan Magistrate Court, Egmore, Chennai and quash the same.

For petitioner : Mr.K.P.Prabu Raj
For Mr.R.Srinivas

For Respondent : Mr.N.Rajan
Senior Central Government Standing
Counsel.

O R D E R

The petitioner herein is a wholesaler possessing valid licence under the Drugs and Cosmetics Act. The case of the prosecution is that during the investigation conducted by the Drug Inspectors, the petitioner was found in possession of certain medicines, which were under the standard quality due to irregularity in the manufacturing process. The test report given by the Government Analyst dated 02.09.2010 also confirmed the same. Pursuant to the Government Analyst's report, a show cause notice was issued to the petitioner on 15.02.2010, for which a reply was given by the petitioner on 14.10.2010. Not being satisfied with the petitioner's reply and relying upon the investigation report, a complaint was lodged against the petitioner, after obtaining the proper sanction of prosecution against the petitioner and others for contravention under

Section 18(a)(i) punishable under Section 27(d) of Drugs and Cosmetics Act. In the said complaint, the manufacturer was arrayed as first accused and the petitioner was arrayed as second accused. Challenging the said complaint, the present proceedings has been filed.

2. Heard Mr.K.P.Prabu Raj, learned counsel appearing for the petitioner and Mr.N.Rajan, learned Senior Central Government Standing Counsel appearing for the respondent.

3. Mr.K.P.Prabu Raj, learned counsel appearing for the petitioner submitted that the petitioner is the wholesaler of drugs. According to him, the petitioner had purchased the tablets against proper invoice, after payment of sale price. Pursuant to the purchase, the petitioner had also properly stored the drugs in the licensed premises. Since the petitioner was not the manufacturer of the alleged substandard drug, he cannot be made liable for the offence. The learned counsel also relying upon Section 19(3) of the Drugs and Cosmetics Act has stated that since the petitioner was not the manufacturer of the drugs and he secured it from the duly licensed manufacturer and sold it properly in the licensed premises, he has the benefit of defence taken under Section 19(3) of the Drugs and Cosmetics Act. The learned counsel for the petitioner also submitted that the burden of proof to prove that the tablets are substandard is on the part of the prosecution and not on them.

4. Mr.N.Rajan, learned Senior Central Government Standing Counsel, on the other hand, contended that under Section 18(a)(i) of the Drugs and Cosmetics Act, the wholesaler is also liable for the offence punishable under Section 27(d). She would further argue that plea under Section 19(3) is not available to the petitioner, since he had violated the terms enumerated under Section 19(3) of the Drugs and Cosmetics Act.

5. I have carefully considered the contentions made by the respective counsel. Three pleadings were taken by the learned counsel for the petitioner:- One is that the petitioner, being a wholesaler, is not liable for any contravention. Second is, in view of the Section 19(3), the petitioner being a wholesaler, he shall not be liable for the offence under Section 18(i)(A) of the Drugs and Cosmetics Act. Third one is that the burden of proof is on the prosecution to prove that the petitioner is liable for the contravention.

6. On a perusal of Section 18(a)(i), it is seen that after the amendment of Section 18 in the year 1982, the Section reads as follows :-

"18. Prohibition of manufacture and
sale of certain drugs and
cosmetics :-

.....(a) Manufacturer for sale or for distribution, or sell, or stock or exhibit or offer for sale or distribute -

(i) any drug which is not of a standard quality, or is misbranded, adulterated or spurious;"

7. Admittedly, the petitioner is the wholesaler, who had purchased the tablets from the first accused, who is the manufacturer, and stored it in his licensed premises. Section 18 (a)(i) contemplate that the person who stock or distribute is also liable for the contravention of the provisions of the Act. As such the first plea that the petitioner is not liable, cannot be accepted.

8. Insofar as the second plea with regard to the defence under Section 19(3) is also not helpful for the petitioner in view of the following reasoning:-

Section 19(3) reads as follows:-

"19.Pleas:-

..... (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 the 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"

9. The plea taken under Section 19(3) is that the petitioner being a wholesaler has to necessarily prove that he had acquired the drugs from the licensed manufacturer and that he did not know with reasonable diligence that the drugs in any where contravened the provisions of Section under the Drugs and Cosmetics Act and properly stored.

10. In the present case in hand, the petitioner though had purchased from the duly licensed manufacturer, had not stated any where that the drugs purchased by him had contravened under Sections of the Drugs and Cosmetics Act.

11. As a matter of fact, Mr.N.Rajan, learned Senior Central Government Standing Counsel submitted that the petitioner was hand-in-glove with the first accused and he had knowingly purchased the tablets. If at all the petitioner is of the view that the drugs has not contravened the provisions under the Act, it is also open to him to establish the same during the course of trial. The wholesaler is liable under Section 18(a)(i) r/w 27 of the Drugs and Cosmetics Act and the defence that is available for such wholesaler under Section 19(3), is not available to a manufacturer. Whether or not the petitioner is entitled to take the plea under Section 19(3), is a matter to be decided during the trial and this Court cannot exercise its power under Section 482 Cr.P.C. and cannot go into the same to ascertain his reasonable diligences as to whether the tablets were properly stored or purchased from the duly licensed manufacturer.

12. With regard to the other point raised by the petitioner that burden of proof is on the prosecution, I am unable to accept the same. I any drug or cosmetic is seized from any person under Section 22(3) with the reasonable belief that such a drug is substandard, the burden of proving that such a drug was not substandard quality, is only on the person, who possess the drugs and not otherwise.

13. The learned counsel for the petitioner has also raised various other grounds touching upon the facts of the case which, I do not intend to give my opinion on such facts, since it may have a bearing on the trial. It is always open to the petitioner to raise all those factual aspects during the course of trial and thereafter. It is made clear that I have not expressed any of my view with regard to the merits of the case and that the trial Court shall independently examine the evidence placed before it for the purpose of coming to a conclusion.

14. In view of the above reasons, the criminal original petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

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Assistant Registrar(CCC)

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Sub Assistant Registrar

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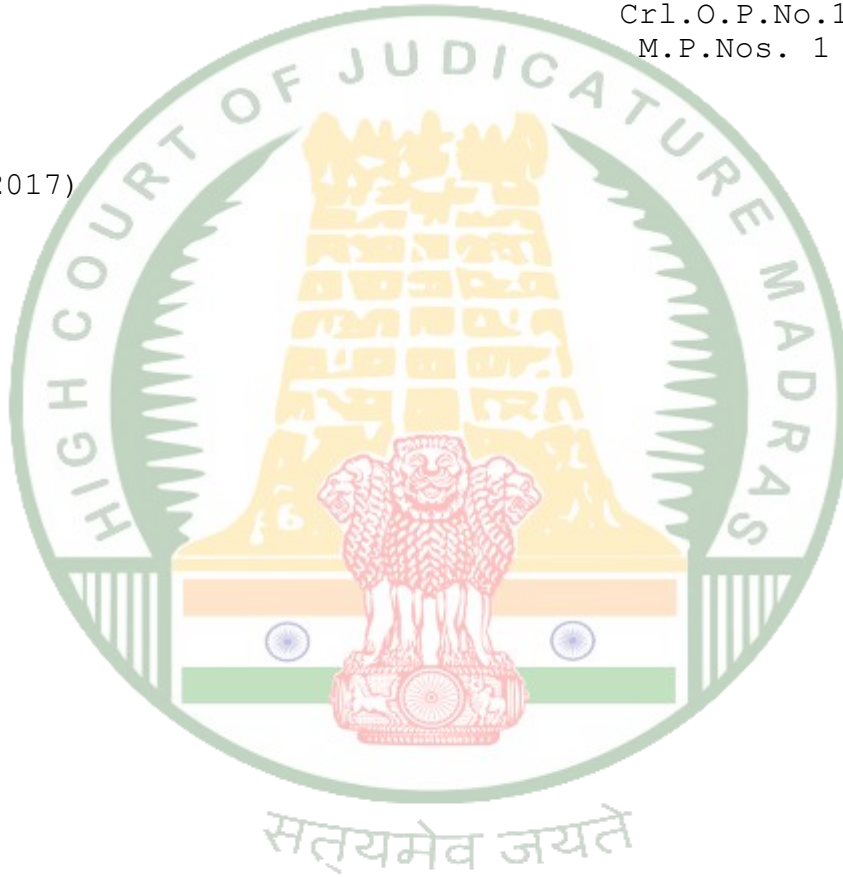
To

1. The Presiding Officer,
The X Metropolitan Magistrate Court,
Egmore, Chennai

+ 1 cc to Mr. N.Rajan, Advocate SR.83464
(Issue copy on payment of necessary Court fee)

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