

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.947 of 2017

ORDER :

The petitioners/ A.1 and A.2 of C.C.No.1082 of 2016 pending on the file of the XIV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad where the learned Magistrate has taken cognizance against the petitioners for the offence punishable u/ sec.18(c) r/ w 27(b)(ii) of the Drugs and Cosmetics Act, 1940 (for short 'the Act') which is outcome of private complaint of the 2<sup>nd</sup> respondent –Drugs Inspector, Ameerpet Zone, Hyderabad, dated 08.03.2016, sought for quashing the same.

2. Heard the learned counsel for the petitioners/ A.1 and A.2 and also the learned Public Prosecutor for the respondents.

3. The grounds urged in the quash petitioner are that the cognizance taken by the learned Magistrate against the petitioners for the offences supra is mechanical and laconic without assigning reasons and not outcome of any application of judicial mind and the penal provision has no application to the facts that was not properly considered in taking cognizance and issuing of summons to the accused and thereby said order is liable to be quashed. It is also the contention that as per Chapters IV of the Act, there is exemption for certain categories of persons under Schedule-A from penal consequences and as per schedule K(5) the Drugs supplied by a Registered Medical Practitioner to his own patients is exempted from the provision of Chapter IV with certain conditions and there is no allegation in the complaint or material annexed to the

complaint that the petitioner violated the same, that Section 18, Rule 123 and Schedule K(5) from combined reading establishes that the petitioner supplied all medicines to his own patients is no way offence thereby the cognizance order is liable to be set aside.

4. In the course of hearing the learned Senior Counsel representing the learned counsel for the petitioners/ A.1 and A.2 drawn attention of the Court to the cognizance order of the learned Magistrate which speaks as “*Taken on file u/ sec.27(b) of (ii) of D.C.Act, 1940 and issue SS Call on 10.08.2016.*” It is based on the office note as if the chargesheet filed by the Drugs Inspector-2<sup>nd</sup> respondent against the A.1 and A.2 for the offences u/ sec.32 of the Act, 1940 and Rules 1945 for the contravention of Section 18(c) of the Act punishable u/ sec.27(b)(ii) of the Act.

5. In fact, it is the private complaint to take cognizance and not any chargesheet filed by police to take cognizance and that office note is wrong and not even properly considered by the learned Magistrate and he did not apply his mind to the contents as to what offence that makes out and there is nothing to say the cognizance taken on the private complaint even.

6. From the above, leave about the other merits from the material on record as to whether the supply to the patients in the hospital includes sale but not of what is contended by the learned Public prosecutor and the giving of bills on the printed pro-forma of Amrutha Diabetic Centre and the contention that these sales are not even to the own patients but outsiders, the same is left open

without any expression on these merits but for suffice to say in answering the petition that the cognizance order is on its face unsustainable and suffice to quash by relegating the said complaint back to the file of the learned Magistrate if at all to take cognizance by application of mind to the facts afresh by virtue of this order.

In the result, the CrI.P.947 of 2017 is disposed of. Consequently, miscellaneous petitions, if any, pending shall stand closed.

Date:05.09.2017  
vvr

Dr. B. SIVA SANKARA RAO J,

