

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.07.2018
Pronounced on : 05.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.13875 & 13876 of 2011
and
M.P.Nos.1 & 1 of 2011

1.M/s.Vinayak Manu Trade
Private Limited.
No.31, Industrial Area, Jhotwara,
Jaipur - 302 012.

2.Mr.Chandra Prakash Bansal,
Director,
M/s. Vinayak Manu Trade
Private Limited,
No.31, Industrial Area, Jhotwara,
Jaipur - 302 012.

3.Mr.Harak Chand Bansal,
Director,
M/s. Vinayak Manu Trade
Private Limited.
No.31, Industrial Area, Jhotwara,
Jaipur - 302 012.

... Petitioners/Accused
Nos.1 to 3 (in both the
Crl.O.P.Nos.)

Vs.

State represented by,
The Drugs Inspector,
Intelligence Wing,
Office of the Directorate of Drugs Control,
359, Anna Salai,
DMS Campus, Teynampet,
Chennai - 600 006.

... Respondent/Complainant
(in both the Crl.O.P.Nos.)

COMMON PRAYER: Criminal Original Petition is filed under
Section 482 of the Code of Criminal Procedure, to call for the
entire records in C.C.Nos.716 of 2011 & 717 of 2011
respectively on the file of the IV Metropolitan Magistrate,
Saidapet, Chennai and quash all further proceeding against the
accused.

For Petitioners : Mr.P.Ramesh Kumar
(in both the CrI.O.P.Nos.)

For Respondent : Mrs.V.Saratha Devi,
(in both the CrI.O.P.Nos.) Government Advocate
(CrI. Side)

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C O M M O N O R D E R

CrI.O.P.No.13875 of 2011 is directed against C.C.No.717 of 2011 pending trial before the IV Metropolitan Magistrate, Saidapet, Chennai for the offence punishable under Section 27-D of the Drugs and Cosmetics Act 1940.

2.CrI.O.P.No.13876 of 2011 is against C.C.No.716 of 2011 pending on the file of IV Metropolitan Magistrate, Saidapet, Chennai for the offence under Section 27-D of the Drugs and Cosmetics Act 1940.

3.Since the petitioners/accused and the respondent/complainant are common and the points involved are similar, I have decided to dispose of both the Criminal Original Petitions by way of a common order.

4.For the sake of convenience the petitioners are referred as "Accused" and the respondent as "complainant" as found in the complaint. These Criminal Original Petitions are for the offence under the Drugs and Cosmetics Act 1940 hereinafter referred as "the Act".

5.The complainant is an appointed and notified Drugs Inspector as per the Act, who is empowered to file the complaint.

6.The complaint in brief is that the 1st accused is a Company represented by its Director 2nd Accused, the 2nd and 3rd accused are its Directors. During the course of inspection, on 28.06.2010, the complainant had drawn samples of black disinfectant fluid (Phenolic type) as per schedule-0, Grade-1, normal type, batch No.BDF-50, Date of Manufacture April-10 and Date of expiry, October-11 Manufactured by the 1st accused under Form-17 No.007113 dated 28.06.2010 samples were taken and sent for analysis. BDF-50 pertains to C.C.No.716 of 2011. Likewise, BDF-51 batch Date of Manufacture April-10 and Date of expiry, October-11 Manufactured by the 1st accused under Form-17 No.007114 dated 28.06.2010 pertains to C.C.No.717 of 2011.

7.On 29.06.2010, the said samples were forwarded for analysis to the Government Analyst, the Government Analyst by its report dated 12.07.2010 declared the sample as being not of standard quality and did not confirm to Schedule-0 of the Act with respect to germicidal value (R.W.C) and contained 12

RWC as against 18 as per Schedule-0 of the Act. On 16.07.2010, the complainant had sent a letter to M/s.District Drug Ware House K.K.Nagar from where the sample were drawn to disclose the name and address of the person from whom the drug was acquired as per Section 18-A. A copy of the report in form 13 was also sent as per Section 25(2) of the Act.

8.The District Ware House K.K.Nagar disclosed that the drug was purchased from A1 under the invoice/Bill No.274 dated 19.06.2010. Thereafter, a show cause Memo dated 21.07.2010 was sent to A1 calling for explanation under Section 18(a)(i) of the Act, for having manufactured the drug for sale and sold the same, which is not of standard quality drug along with the analytical report in form-13. A reply was received by the complainant on 10.08.2010 from A1, who stated that black disinfectant fluid was manufactured with their pre-decided formula and no change made in the drug during complete manufacturing process and it was tested before release of goods. Further, reply to the show cause memo dated 24.08.2010 was sent by A1 requested that the sample be reanalyzed at Central Drugs Laboratory, Kolkatta.

9.The complainant not satisfied with the reply from A1 on obtaining sanction to prosecute vide R.Dis.No.10701/1W2/2010 dated 10.11.2010 for the contravention under section 18(a)(i) of the Act, for accused having manufactured the drug for sale and sold which was not of standard quality, which is punishable under section 27(d) of the Act had filed the above complaint.

10.The learned counsel for the accused reiterated that reply given to the show cause notice is self explanatory wherein the details of the manufacturing procedure following the Act the drug was manufactured and on their request, to re-test the sample by the Central Laboratory, the same was sent to the Central Laboratory, Kolkatta and the Central Laboratory, Kolkatta had certified that the sample sent were analysed and found that they are as per standard quality with regard to phenol co-efficient value (R.W.O) and had issued the said certificate on 31.03.2011. As per section 25(4) the report of the Director of Central Drugs Laboratory shall be a conclusive evidence. The complainant fairly admits the same.

11.In view of the report dated 31.03.2011 issued by the Director Central Laboratory stating that the drug samples were of standard quality and specification, which report is a conclusive evidence. In view of the above, the continuation of the proceedings against the accused would be an abuse of process of Court.

12.Hence, these Criminal Original Petitions stands allowed and the proceedings as against the accused before the IV Metropolitan Magistrate, Saidapet, Chennai in C.C.Nos.716

of 2011 and 717 of 2011 are hereby quashed. Consequently, the connected Miscellaneous Petitions are closed.
ah

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

To

1.The IV Metropolitan Magistrate,
Saidapet, Chennai.

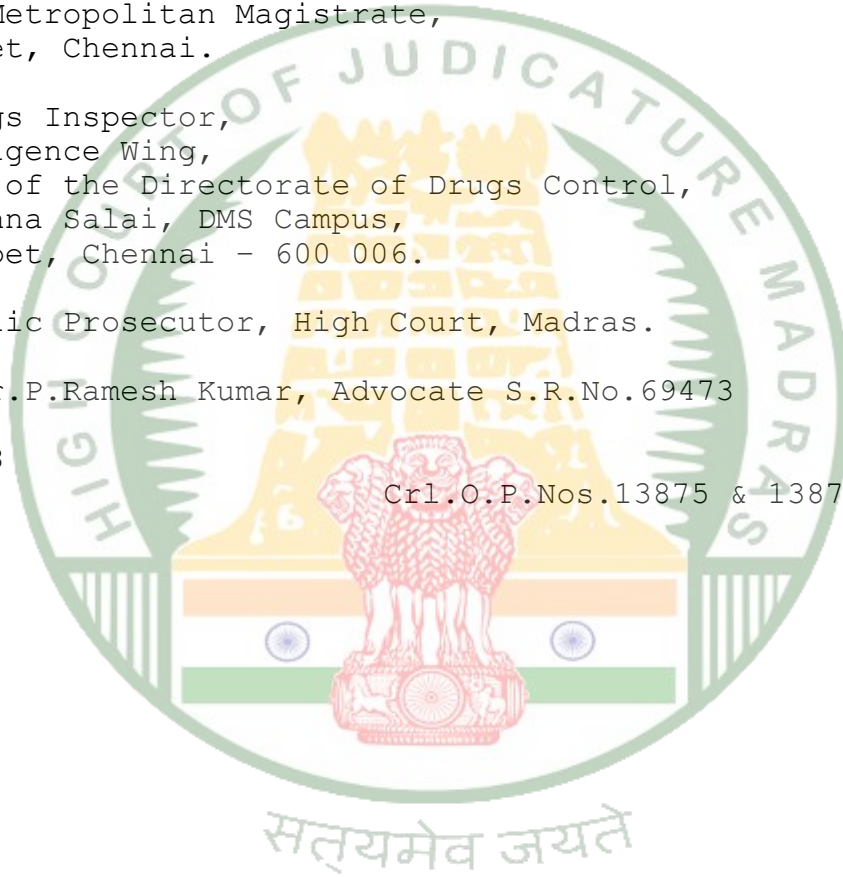
2.The Drugs Inspector,
Intelligence Wing,
Office of the Directorate of Drugs Control,
359, Anna Salai, DMS Campus,
Teynampet, Chennai - 600 006.

3.The Public Prosecutor, High Court, Madras.

+1cc to Mr.P.Ramesh Kumar, Advocate S.R.No.69473

KR/8/11/18

CrI.O.P.Nos.13875 & 13876 of 2011



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