

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on : 12.07.2018
Pronounced on : 12.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.27381 of 2011
and
M.P.No.1 of 2011

- 1.M/s.Embiotic laboratories Pvt Ltd.,
 - 2.Mr.Kanthilal V.Jain Director,
M/s.Embiotic laboratories Pvt Ltd.,
 - 3.Mr.Harish K.Jain, Director,
M/s.Embiotic Laboratories Pvt Ltd.,
20C, Kumbalgodu Industrial Area,
Bangalore - 560 041.
- ... Petitioners/Accused 1 to 3

Vs.

State represented by,
The Drugs Inspector,
Erode II Range, Erode I Range (I/C),
52, EVN Road, 1st Floor,
Rajaganapathy Chambers, Erode-11,
Office of the Assistant Director of Drugs Control,
Coimbatore Zone, Coimbatore.

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in P.R.C.No.21 of 2011 on the file of District Munsif cum Judicial Magistrate Court, Perundurai, and quash all further proceeding against the accused.

For Petitioner : Mr.P.Ramesh Kumar
For Respondent : Mrs.V.Saratha Devi
Government Advocate [Crl. Side]

O R D E R

This Criminal Original Petition is filed by the petitioners, who are accused in P.R.C.No.21 of 2011 pending on the file of the District Munsif cum Judicial Magistrate Court, Perundurai for the offence under the contravention of Section 18(a)(i) of the Drugs and Cosmetics Act, 1940, which is punishable under Section 27(d) of the said Act.

2.The 1st petitioner/1st Accused is the company carrying on business manufacture of Pharmaceutical Drugs and the

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petitioners 2 and 3 are its Directors. The case as per the complaint is that, on 25.02.2010, the respondent/complainant had conducted an inspection at the Government Primary Health Centre, Getticheviyur, Gobi Taluk, Erode and drawn samples of Diclofenac Sodium Tablets I.P. 50 Mg, Batch No.DSN-435, M/D:une/09: E/D:May/11, Manufactured by the 1st petitioner and the samples are forwarded for analysis to the Government Analyst (Drugs) Chennai - 600 006. The Government Analyst (Drugs) by his report dated 17.04.2010 declared the sample so drawn as being not of standard quality and did not conform to IP Specifications for enteric Coated Tablets with respect to integration.

3. Thereafter, on 10.05.2010 a reply was received by the respondent/complainant from the Government Primary Health Centre, Getticheviyur, Gobi Taluk, Erode stating that the product was supplied by the District Drug Warehouse, TNMSC, Perundurai, and also replied that the subjected drug was supplied by the petitioners/accused company. Subsequently, on 18.06.2010 the respondent/complainant issued a notice to the 1st petitioner/1st accused, which was received on 22.06.2010, inter alia, to show cause why action should not be taken against the company for sold drugs, which was not standard quality in contravention of the provision of Section 18(a)(i) of said Act. The respondent/complainant sent notice along with the analyst report and a portion of sealed samples.

4. In response, the 1st petitioner/1st Accused had sent a reply dated 06.07.2010 stating that the report was not acceptable and sample tested at their end was found to be of standard quality. Since, the petitioner reply was not satisfactory and also obtaining sanction from the Director of Drugs Controller, Chennai - 600 006, the respondent/complainant filed a complaint for the offence under Section 18(a)(i) r/w 27(d) of the Act for manufactured the sale and sold a drug Not of Standard Quality.

5. The contention of the learned counsel for the petitioners is that, as per the request of the petitioners/Accused herein, the respondent/complainant had sent the third portion of the sample for further analysis to the Central Drug Laboratory, Kolkatta under Section 25(4) of the Act, and after completion of the analysis, it is found that the subject drug to be of standard quality by its report dated 06.06.2011.

6. Further contention of the learned counsel for the petitioners is that the report of the Central Drug Laboratory at Kolkatta would prevail over the report of the Government Analyst (Drugs) Chennai - 600 006, under Section 25 of the Act. He further contended that the sample is declared of standard quality by the Central Drug Laboratory. Hence, the prosecution against the petitioners is not sustainable in law and further continuation of the prosecution would be a

exercise in futility.

7.The learned counsel for the respondent/complainant has filed a counter stating that the procedure followed during inspection and drawing the samples and about the third sample being sent to the Central Drug Laboratory, Kolkatta. The Central Drug Laboratory, Kolkatta certificate dated 06.06.2011 is filed along with the counter.

8.On perusal of the report, it is found that the sample obtained was of standard quality and the petitioners prayed to pass orders as per the section 25(4) of the Drugs and Cosmetics Act, 1940, as follows...

"Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in contravention of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused, cause the sample of the drug ²³[or cosmetic] produced before the Magistrate under sub-section (4) of section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein."

9.In view of the above, on perusal of the materials, it is found that the Central Drug Laboratory, Kolkatta had issued a certificate that the drug is of standard quality. Hence, further continuation of the proceeding against the petitioners would be abuse of process.

10.On the above finding, the proceedings in P.R.C.No.21 of 2011 pending on the file of the District Munsif cum Judicial Magistrate Court, Perundurai stands quashed.

11.Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

Vv2

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

To

1.The District Munsif cum Judicial Magistrate Court,
Perundurai.

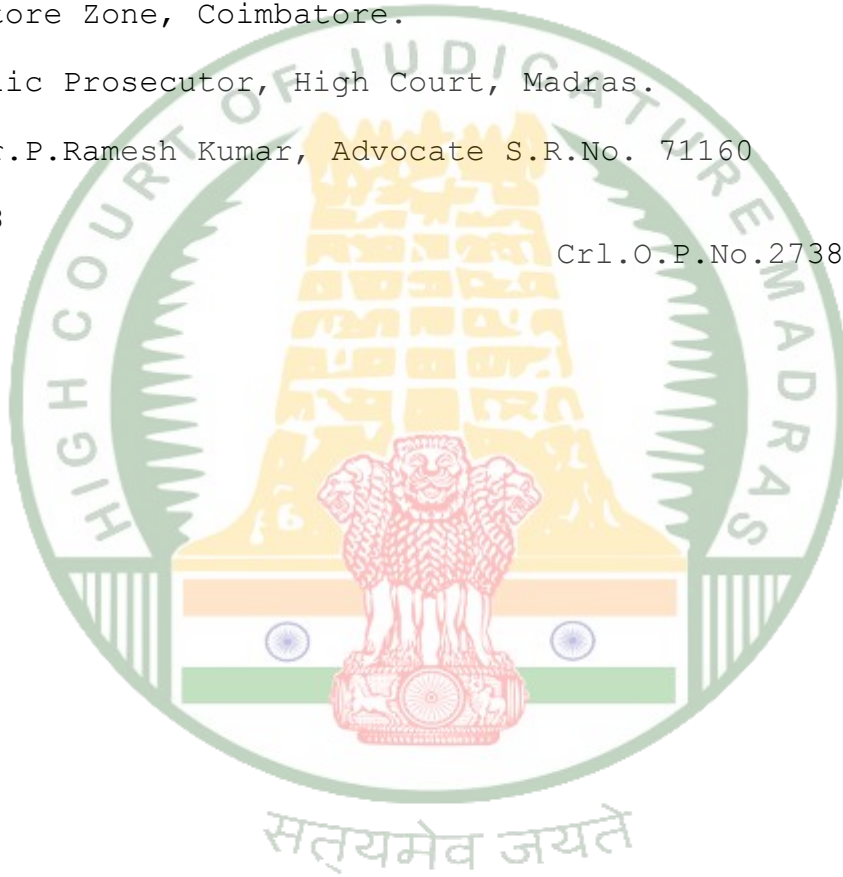
2.The Drugs Inspector,
Erode II Range, Erode I Range (I/C),
52, EVN Road, 1st Floor,
Rajaganapathy Chambers, Erode-11,
Office of the Assistant Director of Drugs Control,
Coimbatore Zone, Coimbatore.

3.The Public Prosecutor, High Court, Madras.

+lcc to Mr.P.Ramesh Kumar, Advocate S.R.No. 71160

KR/8/11/18

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