

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2018
CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.27184 of 2017 &
Crl.M.P.Nos.15584 & 15585 of 2017

1.M/s. Lupin Limited,
No.508/3, Inner Ring Road, Ist Floor,
Madhavaram, Chennai - 60 rep. by its
Managing Director Dr.Kamal K.Sharma

2.Mr.K.Subramanian, age 50,
Authorized Signatory of M/s. Lupin Limited,
No.508/3, Inner Ring Road, Ist Floor,
Madhavaram, Chennai - 60.

3.M/s. Lupin Limited,
Vivekanand School Road,
Zirakpur, Chandigarh Highway,
Vill. Pabhat, Zirakpur 140105 rep. by its
Managing Director Dr. Kamal K. Sharma

4.Mr.A.K.Kothari, age 53
Authorized Signatory M/s Lupin Limited
Vivekanand School Road,
Zirakpur, Chandigarh Highway,
Vill. Pabhat, Zirakpur 140105.

.... Petitioners

Vs

State Rep. by
The Drugs Inspector
Salem II Range, Salem Zone,
O/o the Asst. Director of Drugs Control,
7, Thiruvalluvar Street,
Subramania Nagar, Salem - 5.

... Respondent

Prayer:Criminal Original Petition filed under Section 482
Cr.P.C. to call for the records in Complaint bearing C.C.No.7 of
2013 pending in the court of learned Judicial Magistrate - I,
Salem and quash the same.

For Petitioners : Mr.S.Shanmugavelayutham
Senior Counsel
for M/s.T.D.Selvan Babu

For Respondent : Mrs.P.Kritika Kamal,
Government Advocate (Crl. side)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.7 of 2013 on the file of the learned Judicial Magistrate - I, Salem.

2. Admittedly, the petitioners herein are the sellers having purchased the ACEMIZ gel from the accused 1 to 4, who are the manufacturers. The averments made in the complaint also states that the petitioners herein are the super stockist for the manufacturers and their agents.

3. According to the learned senior counsel for the petitioners, in view of the exemption under Section 19 of the Drugs and Cosmetics Act, 1940, the petitioners, since not being a manufacturer, has benefit of plea under Section 19(3) of the Drugs and Cosmetics Act, 1940. The accused nos. 5 to 8 herein are only sellers and not the manufacturers. By relying on the drug distribution licence issued to the fifth accused/Company and the invoice of having purchased the subject gel, he would submit that he was entitled to buy and stock the goods and therefore, the petitioners are not deemed to be an agent or manufacturer.

4. As rightly pointed out by the learned senior counsel for the petitioners, the drug distribution licence evidences the first petitioner herein as a seller and not as a manufacturer or an agent of the first accused. Likewise, it is seen from the invoices produced before this Court that the seized drugs have been purchased by the first petitioner herein from the manufacturers. In the light of the first petitioner's license and the aforesaid invoices, it can only be concluded that the petitioners herein were neither the manufacturer of the drugs nor the agent for the distribution thereof. While that being so, the petitioners would be entitled for the benefit under section 19(3) of the Drugs and Cosmetics Act, 1940.

5. The learned Government Advocate (Crl. side) by relying on the averments made in the complaint submitted that the petitioners herein are the agents of the first accused and therefore the benefit of Section 19(3) cannot be extended to the petitioners. Learned Government Advocate (Crl. side) further submitted that the benefit of plea also cannot be extended on the ground that the petitioners with the reasonable deliberations, could have ascertain that the drug contravened the provisions of that Section.

6. I am unable to comprehend as to how such an averment made

in the complaint can be maintainable, in view of the specific provisions under Section 19(3) of the said Act. As observed earlier, the petitioners herein possess valid license for drug distribution and purchased the drugs through a valid invoices. There is no material before the respondent herein evidencing that the petitioners herein were either the manufacturer or the agent of the manufacturer. A mere statement in the complaint that the first petitioner was the agent may not be sufficient to implicate the petitioners herein for contravention of the provision of the Drugs and Cosmetics Act.

7. In view of my earlier observations that the petitioner is only a seller, it can only be concluded that the complaint cannot be proceeded as against these petitioners in view of Section 19(3) of the said Act for a logical conclusion. While that being so, it would not be appropriate to subject the petitioners herein to the ordeal of a criminal trial.

8. In the result, the Criminal Original Petition stands allowed. The proceedings as against the petitioners herein/Accused Nos.5 to 8 stands quashed. It is made clear that the respondent herein is at liberty to proceed with the complaint as against the other accused. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Drugs Inspector
Salem II Range, Salem Zone,
O/o the Asst. Director of Drugs Control,
7, Thiruvalluvar Street,
Subramania Nagar, Salem - 5.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.T.D.Selvam, Advocate, S.R.No.5080

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RRK(19/02/2018)