

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2018

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.19394 of 2018 and

Crl.M.P.Nos.10256 and 10257 of 2018

R. Krishnamoorthy

... Petitioner/accused

/Vs/

State Rep.by

The Inspector of Police

SPE:CBI:ACB

Shastri Bhawan, Haddows Road,

Chennai - 600 006.

.... Respondent

Prayer in Crl.O.P.No.19394 of 2018: Criminal Original Petition filed under section 482 of Code of Criminal Procedure to call for the records in Spl.C.C.No.24 of 2015 in RC.MA1.2013.A.0056 pending on the file of Hon'ble Principal Special Judge for CBI Cases, Puducherry and quash the Final Report as against the petitioner.

For Petitioner : M/s. V.J. Arul

For Respondent : Mr. K. Srinivasan

Special Public Prosecutor for
CBI cases

O R D E R

The petitioner is ranked as 2nd accused in Spl.C.C.24 of 2015 pending trial on the file of the Principal Special Judge for CBI Cases, Puducherry for the offences under Section 120-B IPC r/w 420 IPC and 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988 and substantive offences there of.

2. The case of the prosecution in brief is that the petitioner with the aid of A1 obtained 70 drug licenses out of which, it was found that the Drugs Controller General of India (DCGI) had approved 7 drugs and the remaining 63 drugs were not approved. Thus, it was found that the manufacturing license/endorsements for the above 63 FDC/drugs were issued by A1 without subjecting the products to the safety, efficacy test and clinical tests as stipulated in the Drugs and Cosmetic Act / Rules providing for safeguarding the health of the consumers/patients. Therefore, finding that the life and the health of the consumers/patients are put at risk by manufacture of these unapproved drugs, the Drugs Controller General of India (DCGI), New Delhi vide his letter no.4-01/2013-DC (Misc 51) dated 7th May 2014 had confirmed that the

above said 63 drugs were unapproved and the petitioner/A2 who was the authorized person for the M/s. Serwin Pharmaceuticals had not obtained / applied for the approval from the Drugs Controller General of India and not paid the requisite fees for such approval of safety and efficacy whereas managed to get license from A1. The further allegation is that A1 knowing fully well that the approval of Drugs Controller General of India, New Delhi is mandatory and he, as a state licensing Authority, without authorization, had issued additional endorsements for the manufacture of FDC/new drugs as aforesaid in pursuance of criminal conspiracy and in abuse of his official position had cheated the Government of India to the tune of Rs.9,45,000/- which is the corresponding wrongful gain /pecuniary advantage for the petitioner/A-2 and thereby, the petitioner/A2 along with A-1 were chargesheeted for having committed the offences under Section 120-B IPC r/w. 420 IPC and 13(2) r/w. 13(1)(d) of PC Act, 1988 and substantive offences thereof.

3. The learned counsel appearing for the petitioner would fairly admit that similar cases have been filed against manufacturers like that of the petitioner and various other accused in the similar cases had approached this court by filing quash petitions and this Court had earlier dismissed the petitions stating that the matters agitated in the quash petitions can be tried only during the time of trial by letting in evidence and had thereby dismissed the application. He would also submit that he understands that some of the accused have gone on SLP and some of them have been admitted also. He would further submit that he is not pressing the application for the present.

4. The Special Public Prosecutor for CBI Cases would submit that in cases pending against drug manufacturers like that of the petitioner with the similar set of facts, the matters have been dealt with by this Court and this Court had dismissed the petitions on merits.

5. Having gone through the material, this Court is of the opinion that the grounds raised by the petitioner can be very well agitated at the time of trial by letting in evidence with regard to the drugs whether they are new drugs or that the drugs were already licensed and available in the market and whether the combination of drugs were licensed earlier itself. This is not a fit case for quashing the proceedings. In view of the above, the Criminal Original Petition stands dismissed.

6. At this juncture, the learned counsel for the petitioner would submit that the issues in the complaint relate to scientific details and licensing procedure and the personal appearance of the petitioner may not be required for all hearings and would pray for dispensing with the personal appearance of the petitioner during trial and the petitioner may be directed to appear as and when necessarily required by

the trial Court during the hearing.

7. Taking into consideration the submissions made by the learned counsels, the personal appearance of the petitioner before the trial Court is dispensed. However, the petitioner shall make himself available during the initial questioning and during the time of questioning under Section 313 of Cr.P.C. The petitioner shall also engage a counsel and co-operate with the day-to-day progress of the trial. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Special Judge for CBI Cases,
Puducherry.
2. The Special Public Prosecutor for CBI Cases,
High Court of Madras
Chennai-104.
3. The Inspector of Police
SPE:CBI:ACB
Shastri Bhawan, Haddows Road,
Chennai - 600 006.

+lcc to Mr.V.J.Arul Raj, Avocate SR.NO.61540

SS(CO)

sm:26.9.2018

CrI.O.P.No.19394 of 2018

and

CrI.M.P.Nos.10256 & 10257 of 2018

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