

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.11.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1288 of 2018
and CRL.M.P.No.15106 of 2018

1.M/s.Kwality Pharmaceuticals Ltd.,
Rep. by its Managing Director,
Ramesh Arora,
6th Mile Stone, Nag Kalan,
Majitha Road, Amritsar-143 601 (Punjab)

2.Ramesh Arora ... Petitioners

Vs

The State of Tamil Nadu Rep. by
The Drugs Inspector,
Kancheepuram I Range. ... Respondent

Criminal Revision Petition filed under Section 397 r/w 401
of Cr.P.C. praying to set aside the order dated 28.08.2018
passed in Crl.M.P.No.901 of 2017 in C.C.No.41 of 2010 by the
Chief Judicial Magistrate, Chengalpattu.

For Petitioners : Mr.P.Ramesh Kumar

For Respondent : Mr.P.Kritika Kamal, GA (Crl.Side)

O R D E R

This revision has been preferred to set aside the order
dated 28.08.2018 passed in Crl.M.P.No.901 of 2017 in C.C.No.41
of 2010 by the Chief Judicial Magistrate, Chengalpattu.

2.Heard Mr.P.Ramesh Kumar, learned counsel for the revision
petitioners and Ms.P.Kritika Kamal, learned Government Advocate
(Crl. Side).

3.On 18.09.2008, the Drug Inspector lifted samples of
multivitamin tablets from the medical store at Government
Headquarters Hospital, Kancheepuram and sent the same to the

State Government Analyst for analysis. The analysis report dated 16.04.2009 stated that the drug does not confirm to the label claim, with respect to content of Vitamin-A. The Drug Inspector traced the manufacturer of the said drug to M/s.Kwality Pharmaceuticals Private Limited/A1 and after giving the usual show cause notice, initiated a prosecution in C.C.No.41 of 2010 before the Chief Judicial Magistrate, Chengalpattu, for the offences under Section 18(a)(i) punishable under Section 27(d) and Section 18B punishable under Section 28 of the Drugs and Cosmetics Act, 1940. The accused challenged the State Government analysis report and therefore, the extra sample was sent to the Central Drug Laboratory, Kolkata, in terms of Section 25(4) of the Drugs and Cosmetics Act, 1940. The Central Drug Laboratory analysed the sample and by report dated 31.03.2010, opined that the content of Vitamin-A is nil and therefore, this case would fall under the category of spurious drugs, as defined under Section 17B of the Drugs and Cosmetics Act, 1940. Despite the receipt of the report, the charges were not altered as required under Section 216 Cr.P.C. The prosecution proceeded with the examination of witnesses and totally, three witnesses have been examined so far. While so, the prosecution filed a petition in Crl.M.P.No.901 of 2017 in C.C.No.41 of 2010 under Section 209 of Cr.P.C. and Section 17B (d) and 36AB of the Drugs and Cosmetics Act, 1940 contending that the case should be committed to the Court of Session for further trial, in the light of the evidence that the offence would fall within the contours of Section 17B of the Drugs and Cosmetics Act, 1940. The accused resisted the application. After hearing either side, the trial Court, by order dated 28.08.2018, has allowed Crl.M.P.No.901 of 2017 in C.C.No.41 of 2010 and thereby, has ordered the committal of the case to the Court of Session, challenging which, the accused is before this Court.

4.This petition deserves to be allowed on the short ground that, had the accused been charged for the offence under Section 17B (spurious drugs), on proof of the said charge, he could have been convicted and sentenced to a maximum period of five years, in terms of unamended Section 27(c) of the Drugs and Cosmetics Act, 1940. Even in that extreme case, the trial could have been conducted only in terms of entry No.2 in (ii) Classification of offence against other laws in Schedule-I of the Code of Criminal Procedure r/w 36A of the Drugs and Cosmetics Act, 1940 before the Magistrate and not before the Court of Session. Section 27 (c) of the Drugs and Cosmetics Act, 1940 was amended w.e.f. 10.08.2009, whereby, the punishment was enhanced to a minimum of seven years extending up to imprisonment for life. In view of the protection under Article 20(1) of the Constitution of India, the trial Court cannot sentence the accused in this case, in terms of the amended 27(c) because, the offence had taken place

on 10.09.2008 and the amendment came into effect only on 10.08.2009. Therefore, there is no necessity for committing this case to the Court of Session and accordingly, this petition is allowed and the impugned order of committal is set aside. Consequently, connected Miscellaneous Petition is closed. This is without prejudice to the power of the Chief Judicial Magistrate, Chengelpet to alter the charge under Section 216 Cr.P.C.

Sd/-
Assistant Registrar(CS CO)

//True Copy//

Sub Assistant Registrar

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To

1.Chief Judicial Magistrate,
Chengalpattu.

2.The Drugs Inspector,
Kancheepuram I Range.

3.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.P.Ramesh Kumar, Advocate Sr.No.78140

CRL.RC.No.1288 of 2018

NM(CO)
CSL/05.12.2018

सत्यमेव जयते

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