



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.09.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.(MD).No.14745 of 2014 and
M.P.(MD) No.1 of 2014

1. M/s.Venkateshwara Hatcheries Private Limited,
rep. by Thiru. Jitendra M.Desai Director

2. Jitendra M.Desai

3. G.Chinnaraj

4. S.Arasalwar

..Petitioners

Vs.

State rep. by
Drugs Inspector,
Theni Range, Madurai Zone,
O/o.Assistant Director of Drugs Control,
No.5 Ramiah Street, Shenoy Nagar,
Madurai - 20.

..Respondents

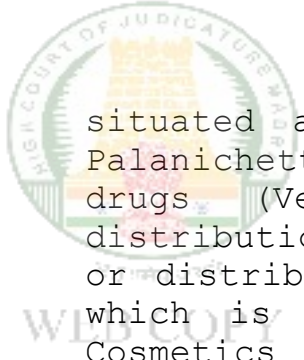
PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records in S.T.C.No.4 of 2014 pending on the file of the Judicial Magistrate, Theni and quash the same as illegal.

For Petitioners	: Mr.C.Arul Vadivel Alias Sekar
For Respondents	: Mr.A.P.G.Ohm Chairma Prabhu Government Advocate (CrI.side)

O R D E R

This quash petition is filed to quash the criminal proceedings in S.T.C.No.4 of 2014 pending on the file of the Judicial Magistrate, Theni, having been taken cognizance for the offences under Sections 18(c) of the Drugs and Cosmetics Act, 1940 read with condition 4(ii) of the condition of licence in Form 21-B of the Drugs & Cosmetics Rules 1945 punishable under Section 27(d) of the said Act.

2.The case of the prosecution is that by the order dated 13.03.2012 issued by the Assistant Director of Drugs Control, Madurai Zone, Madurai - 20, the respondent conducted a joint inspection in the premises of M/s.Saravana's Poultry Farms,



situated at Door No.6-2/2, 2nd Floor, Kali Complex, TBN Road, Palanichettipatty, Theni on 14.03.2012 and found that allopathic drugs (Veterinary) were stocked, exhibited for sale or distribution on the racks and observed that the drugs were sold or distributed by the said concern without having valid license, which is in contravention of Section 18(c) of the Drugs and Cosmetics Act, 1940. Further, the complaint/respondent alleged that the relevant purchase invoices were also seized under Form 16. The seizure documents revealed that the drugs supplied by the first petitioner to the said Poultry Farm under invoices. Therefore, the respondent issued show cause notice, for which, the first petitioner also sent reply. After receipt of the reply, the respondent submitted a proposal to the Director of Drugs Control, Chennai and requested to grant sanction to prosecute the petitioners. On sanction, the present complaint has been lodged and the learned Judicial Magistrate had taken cognizance in S.T.C.No.4 of 2014 for the above said offences. These proceedings is under challenge in this petition.

3.The learned counsel appearing for the petitioner would submit that the learned Judicial Magistrate ought not to have taken cognizance, since he has no power to try the case as per Drugs and Cosmetics (Amendment) Act, 2008 (Act 26 of 2008). As per Section 32(2) of Amended Act, no Court inferior to that of a Court of Session shall try an offence punishable under the Drugs and Cosmetics Act. The amended Act came into force with effect from 10.08.2009, but, the complaint was admittedly filed before the learned Judicial Magistrate only on 03.12.2013 and on the date of complaint, the learned Judicial Magistrate has no jurisdiction to take cognizance of the complaint.

4.He would further submit that even assuming that M/s.Saravana Poultry Farms exhibits the drugs for sale or distribution contravening the provisions of Section 18(c) of the Drugs and Cosmetics Act, 1940, the petitioners are no way connected in the said offence. It is not the case of the prosecution that the petitioners have previous knowledge of the alleged exhibition or distribution of sale of drugs by M/s.Saravana's Poultry Farm. Admittedly, the alleged occurrence had been occurred in the premises of M/s.Saravana's Poultry Farm at Theni, whereas, no complaint has been filed as against M/s.Saravana's Poultry Farm. Further, he would submit that the petitioners sent detailed reply for the show cause notice issued by the complainant stating that the Drugs supplied by the petitioners to M/s.Saravana's Poultry Farm only for their own use for their Farm and the drugs were stored in their Farm premises. It is never exhibited for sale and the respondent did not produce any bills and relevant purchase invoices. Further, he would submit that as per the case of prosecution, the complainant seized 10 x 15 ml and 7 x 30 ml of sterile diluent for vaccine (distilled water) supplied by the petitioner's company were

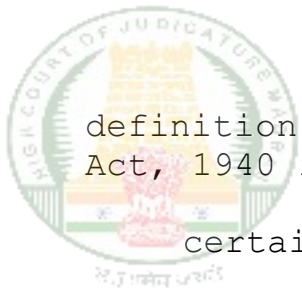


recovered from M/s.Saravana's Poultry Farm. Therefore, there is no absolutely no prima facie and iota of evidence to attract the offences as alleged by the prosecution and thus, he prayed for quashment of the complaint.

5.Per contra, the learned Additional Public Prosecutor filed counter and submitted that only M/s.Saravana Poultry Farm have kept the drugs, which is violation of the provisions of Drugs and Cosmetics Act. Therefore, the respondent rightly lodged the complaint as against the petitioners. Further, he would submit that as per Section 36-A of Drugs and Cosmetics Act, 1940, the learned Judicial Magistrate has jurisdiction to take cognizance of the complaint. Further, M/s.Saravana Poultry Farm is not a poultry farm and it is a wholesale drug dealing concern involved in purchase, stocking and sale or distribution of drugs. It functioned without requisite drug licence and it was also confirmed by the drugs stocked for sale, drug purchase bills and distribution or sale records seized under Form 16 in the presence of two independent witnesses by the respondent. Therefore, there is prima facie case against the petitioners and all the points raised by the petitioners are factual aspect and as such, these have to be gone into a full-fledged trial and sought for dismissal of the quash petition.

6.Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor and perused the materials available on record.

7.It is seen from the documents filed by the petitioners that licence issued under Form 21-B in favour of the first petitioner is valid from 30.09.2009 to 29.09.2014. One of the condition in the licence 4(ii) is that no sale of any drug shall be made for purposes of resale to a person not holding the requisite licence to sell, stock or exhibit for sale or distribute the drug. As far as the petitioners are concerned, they have no valid licence and admittedly, the prosecution did not seize any drugs kept for the purposes of resale to a person not holding the requisite licence. It is also seen from the show cause notice issued by the respondent, item Nos.5 and 6 are pertaining to the petitioners. Item Nos.5 and 6 are nothing but sterile diluent for vaccine and the quantity is 10 bottles of 15 ml and 7 bottles of 30 ml sterile diluent and they were seized from one M/s.Saravana's Poultry Farm at Theni and they were purchased for their own use. The petitioners also sent proper reply to the show cause memo dated 02.04.2012 issued by the respondent that on request of M/s.Saravana's Poultry Farm, the petitioners supplied drugs for their own and they categorically stated that all the vaccines are for their personal use only and at the time of inspection, they were stored in the Farm premises only. Therefore, the offence under Section 18(c) of Drugs and Cosmetics Act, 1940 is not attracted as against the petitioners. The



definition of offence under Section 18(c) of Drugs and Cosmetics Act, 1940 reads as follows:

"18.Prohibition of manufacture and sale of certain drugs and cosmetics.-

a)

b)

c) manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale, or distribute any drug or cosmetic, except under, and in accordance with the conditions of, a license issued for such purpose under this Chapter.

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis:

Provided further that the Central Government may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the manufacture for sale or for distribution, sale, stocking or exhibiting or offering for sale or distribution of any drug or class of drugs not being of standard quality."

8.It is mandate that manufacture of drugs for sale or for distribution, sale, stocking or exhibiting or offering for sale. But even, as per the allegations, the petitioners did not exhibit the drugs for sale or for distribution. Therefore the offence under Section 18(c) of Drugs and Cosmetics Act, 1940 cannot be sustained as against the petitioners.

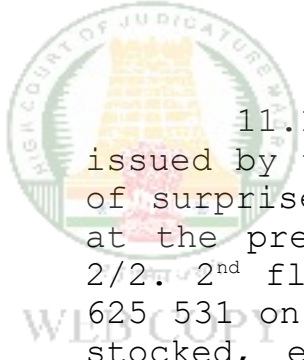
9.Insofar as the jurisdiction to have taken cognizance for the offence under the Drugs and Cosmetics Act is concerned, Section 32(2) defines as follows:

"32.Cognizance of offences.-

(1)

(2) Save as otherwise provided in this Act, no Court inferior to that of a Court of Session shall try an offence punishable under this Chapter."

10.The amended Act came into force with effect from 10.08.2009, whereas, the complaint lodged by the respondent before the learned Judicial Magistrate, Theni was only on 03.12.2013. Therefore, on the date of filing of the complaint, the learned Judicial Magistrate has no jurisdiction to entertain any complaints under the Drugs and Cosmetics Act. Therefore, for want of jurisdiction and power, the learned Judicial Magistrate is ~~not~~ ^{not} empowered to entertain such, the present complaint cannot be maintained before the learned Judicial Magistrate, Theni as against the petitioners.



11. It is also seen from the show cause notice that was issued by the respondent to the petitioners that during the course of surprise inspection made by the team of Drugs Control Officials at the premises of M/s.Saravana's Poultry Farm situated at No.6-2/2, 2nd floor, Kali Complex, TBN Road, Palanichettypatti, Theni - 625 531 on 14.03.2012, certain categories of Veterinary drugs were stocked, exhibited for sale or distribution on the racks and observed that Veterinary drugs were found to be sold or distributed without valid drug licences, which is in contravention of Sec 18(c) of the Drugs and Cosmetics Act, 1940. Hence, the Veterinary drugs along with documents were seized under Form 16 and Mahazar dated 14.03.2012 as per Sec 22(1)(c) & 22(1)(cc) of the said Act. Further, the respondent also seized the documents and found that those drugs were supplied to M/s.Saravana's Poultry Farm. Therefore, it is clear that the seized drugs were not exhibited for sale or resale by the petitioners. In overall, the entire complaint is nothing but clear abuse of process of law.

12. In view of the above discussion, this criminal original petition is allowed. The entire criminal proceedings in S.T.C.No.4 of 2014 pending on the file of the Judicial Magistrate, Theni is quashed as against the petitioners herein. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Judicial Magistrate, Theni.
2. The Drugs Inspector,
Theni Range, Madurai Zone,
O/o.Assistant Director of Drugs Control,
No.5 Ramiah Street, Shenoy Nagar,
Madurai - 20.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.C.ARUL VADIVEL @ SEKAR, ADVOCATE IN SR No. 87818

ARUL

TE/SKN/SAR-4 : 14/11/2018 : 5P/5C

<https://hcservices.ecourts.gov.in/hcservices/>

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