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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD) .No.21340 of 2014

and

M.P. (MD) Nos.1 and 2 of 2014

1.Dr.S.Chandralekha

2.D.K.Veluswamy

3.K.S.Senthil Kumar

..Petitioners

Vs.

State represented by
The Drugs Inspector,
Plani Range,
Office of the Drugs Inspector,
Block No.7, Door No.1/2
Renganayagi Nagar,
Siluvathur Road,
Dindigul,
Dindigul District.

..Respondent

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the Private Complaint in C.C.No.234 of 2014 on the file of the Judicial Magistrate, Palani, Dindigul District dated 14.10.2014 offences under Sections 18(c) read with 27 (b) (ii) and under Section 18-A read with 28 of Drugs and Cosmetics Act, 1940 filed by the respondent and quash the same as illegal.

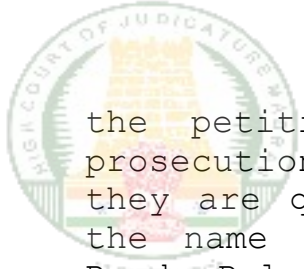
For Petitioners: Mr.T.Lajapathi Roy

For Respondent : Mr.A.P.G.Ohm Chairma Prabhu
G.A.

O R D E R

This petition is filed to quash the private complaint in C.C.No.234 of 2014 on the file of the Judicial Magistrate, Palani, Dindigul District, having been taken cognizance for the offence under Sections 18(c) read with 27 (b) (ii) and under Section 18-A read with 28 of Drugs and Cosmetics Act, 1940.

2.The learned counsel appearing for the petitioners would submit that the petitioners are arraigned as A1 to A3. The petitioners 1 and 2 are the qualified medical practitioners and they have right to keep some medicines to treat their own patients. They were also having necessary bills to the said drugs, from whom, it was purchased. The third petitioner is concerned, he is working as a Senior Manager under the control of



the petitioners 1 and 2. The offences as alleged by the prosecution are not at all attracted against the petitioner, since they are qualified medical practitioners and running a clinic in the name and style of M/s. Iswarya Fertility Centre at Dindigul Road, Palani. The entire allegations are false. The allegations are that the drugs are purchased, stocked and exhibited for distribution or for sale on the racks of the first floor and were also distributed by M/s. Iswarya Fertility Centre to their branches without a valid wholesale drug license. In fact, at the time of inspection by the Drugs Inspector, the person, incharge of the premises gave categorical statement that they are having four branches in Tamil Nadu and the drugs were supplied to their three different branches from Palani only. The respondent sent a show cause notice to the petitioners on 21.03.2013, for which, the petitioners issued detailed reply on 10.04.2013 stating that the above said facts. Even then, without satisfying the same, the respondent lodged the present complaint. Therefore, the petitioner sought for quashing the entire proceedings.

3. Per contra, the learned Government Advocate (criminal side) would submit that the petitioners without valid drug license required under the Drugs and Cosmetics Act, purchased, stocked and exhibited for distribution or for sale on the racks of M/s. Iswarya Fertility Centre. Further, on inspection, so many drugs were seized and there are documents to connect the charges as against the petitioners. Therefore, he prayed for dismissal of the quash petition.

4. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (criminal side) appearing for the respondent and perused the materials available on record.

5. The petitioners 1 and 2 are qualified Doctors. The third petitioner is working as a Senior Manager under the petitioners 1 and 2. The petitioners 1 and 2 are running a clinic in the name and style of M/s. Iswarya Fertility Centre, Dindigul Road at Palani. According to the complainant, he found stock of various drugs in a separate room for sale and distribution. However, according to the petitioners, they are doctors by profession and they were in possession of drugs only for their patients and they were not for sale or distribution. While being so, it is relevant to extract the definition of offence under Section 18(c) of Drugs and Cosmetics Act, 1940, which reads as follows:

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

a)

b)

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

Section 27 is the penal Section under which the offence is punishable and Section 27(b)(ii) of the Act, reads thus:

"27. Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter.- Whoever, himself or by any other person on his behalf manufactures for sale, sells, stocks or exhibits for sale or distributes.-

(a)

(b) any drug -

(i)

(ii) without a valid license as required under clause (c) of section 18, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more:

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than three years and of fine of less than one lakh rupees; "

6. In this regard, it is relevant to cite the judgment of this Court reported in **2011(2)MWN 9Cr.) 380 - Dr.S.Selvam Vs. State**, wherein, this Court has held as follows:

"7. It is admitted that the petitioner is running a hospital under the name and style Mathura Hospital at Thenkasi. Admittedly, it is a nursing



home. According to the complainant, he found stock of various drugs in a separate room for sale and distribution. However, according to the petitioner, he is a Cardiologist by profession and he was in possession of the drug only for the administration of the patient and it is not for sale or distribution. He also alleged that the landlord, who is also a Doctor by profession, had falsely implicated the petitioner.

8. Section 18(c) of the Act runs as follows:

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

Section 27 is the penal section under which the offence is punishable and this section runs thus:

Whoever himself or by any other person on his behalf manufactures for sale, sells, stocks or exhibits for sale or distributes-

(a) any drug -

(i) deemed to be misbranded under clause (a), clause (b), clause (c), clause (d) or clause (g) of Section 17 or adulterated under Section 17B; or

(ii) without a valid licence as required under clause (c) of Section 18. shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to ten years and shall also be liable to fine; Provided that the Court may, for any special reasons to be recorded in writing, impose a sentence of imprisonment of less than one year."

9. In 1979 SCC (Cri.) 356 (Mohd. Shabir Vs. State of Maharashtra) the Supreme Court has held as follows:

"We, therefore, hold that before a person can be liable for prosecution or conviction under Section 27(a) (i) (ii) read with Section 18(c) of the Act, it must be proved by the prosecution affirmatively that he was manufacturing the drugs for sale or was selling the same or had stocked them or exhibited the articles for sale. The



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possession simpliciter of the articles does not appear to be punishable under any of the provisions of the Act. If, therefore, the essential ingredients of Section 27 are not satisfied the plea of guilty cannot lead the Court to convict the appellant."

10. In 1992 MLJ (Cri.) 126 (V. Loganathan Vs. State by Drug Inspector, Chengalput Range, Kancheepuram) this Court has held as follows:

"...There is nothing in the complaint to show that the petitioner was dealing in distribution or selling the drugs at the time when he visited the place. The Supreme Court has pointed out that mere possession simpliciter would not amount to an offence under any of the provisions of the Act. Even the complaint does not disclose that the petitioner was selling, distributing or storing drugs for sale. In the circumstances, the contention of the learned counsel for the petitioner that the petitioner has not committed the offences under any of the said provisions of the Act and the prosecution is therefore abuse of process of law, has to be accepted and I find that the petitioner cannot be stated to have contravened Sec. 18 (a) and 18(C) of the Drugs and Cosmetics Act read with 27 and 28 of the said Act. ..."

11. In 2011 (1) MWN (Cr.) 93 (State by Drugs Inspector, Nagercoil Range, Nagercoil Vs. Dr. V. Shanmugam), the Single Judge of this Court has dealt with the similar case and held as follows:

"7. Following the principles laid down in the above said decision, this Court is of the considered view that on scrutiny, the prosecution has not established that the medicines were stocked for the purpose of sale."

12. Therefore, it is well settled that the possession simpliciter would not amount to contravention of Section 18(c) of the Act punishable under the Section 27(b)(ii) Drugs and Cosmetics



Act 1940. It contemplates stocking the drugs for the purpose of sale or distribution.

13. In the present case, it is admitted that the petitioner is running a nursing home and he was in possession of the drugs, which has been listed by the complainant. The possession is not denied. Whether it was exhibited for sale is to be considered. In the complaint, it is stated that the complainant has found stocks of various drugs in a separate room. There is no allegation that the stocks were exhibited for sale. It is further alleged that one Dr. Subramanian was summoned and he had produced original purchase bills alleged to have been issued by the petitioner. It is to be noted that there is rivalry between the petitioner and the landlord and only on his complaint, a Writ petition was disposed of for the consideration of the representation and subsequent inspection, which led to filing of a case. Therefore, without examining the persons in whose name the receipts issued the validity or truthfulness of the purchase bills cannot be established. Admittedly, the complainant has not seized any book of sales bills from the premises.

14. Normally, the High Court will not interfere in a criminal proceedings unless it is proved that there is an abuse of process of law or intended with harassment. In such circumstances, the Hon'ble Apex Court has highlighted the parameters in Bajanlal's case and the illustration vii of para 128 stands attracted which reads as follows:

vii) "Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

15. Therefore, the mere possession will not attract an offence under the Drugs and Cosmetics Act and the continuance of the proceedings is nothing but abuse of process of law, initiated with an intention to harass the petitioner, who is a practising Cardiologist. It is a fit case to interfere with the proceedings. Hence, the entire proceedings in C.C.No.269 of 2010 on the file of the learned Judicial Magistrate, Tenkasi, Tirunelveli District is quashed."



7.Considering the above said decision along with the present case, in this present case, as stated above, the petitioners 1 and 2 are running a Fertility Centre and they were in possession of drugs, which has been elicited by the complainant. The possession of the drugs are not denied. When that being so, whether it was exhibited for sale has to be considered. Even according to the complainant, he found stocks of various drugs in a separate room. There is no allegation that stocks were exhibited for sale. Therefore, the offence under Section 18(c) of Drugs and Cosmetics Act is not at all attracted as against the petitioners. Therefore, continuance of the proceedings is nothing but an abuse of process of law initiated with an intention to harass the petitioners.

8.In view of the considered opinion of this Court, this Court is inclined to quash the entire quash proceedings as against the petitioners. Accordingly, this criminal original petition is allowed and the Private Complaint in C.C.No.234 of 2014 on the file of the Judicial Magistrate, Palani, Dindigul District is quashed as against the petitioners herein. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar(CS-III)

To

1.The Judicial Magistrate, Palani.

2.The Drugs Inspector, Palani Range, Block No.7, Door No.1/2
Renganayagi Nagar, Siluvathur Road, Dindigul,Dindigul District.

3.The Chief Judicial Magistrate, Dindigul.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO MR.T.LAJAPATHI ROY, ADVOCATE IN SR NO.

Arul

BU/PM/SAR-III:02.11.2018 : 7P/6C

Cr1.O.P. (MD) .No.21340 of 2014
and

M.P. (MD) Nos.1 and 2 of 2014
01.10.2018