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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.10.2018
CORAM:
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P.(MD).No.3337 of 2014
and
M.P.(MD) Nos.1 and 2 of 2014

S.Singarayan

..Petitioner

Vs.

State represented by
The Drugs Inspector,
Nagercoil Range,
Office of the Drugs Inspector,
44 A, West Car Street,
Nagercoil - 629001.

..Respondent

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records of the proceedings in C.C.No.375 of 2013 on the file of the District Munsif - cum Judicial Magistrate at Eraniel, Kanyakumari District and quash the same.

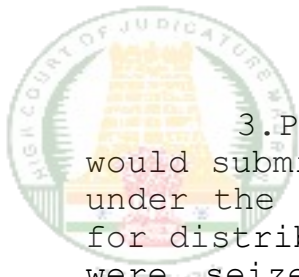
For Petitioner : Mr.K.Vamanan

For Respondent : Mr.V.Neelakandan, APP

ORDER

This petition is filed to quash the private complaint in C.C.No.375 of 2013 on the file of the District Munsif - cum Judicial Magistrate at Eraniel, Kanyakumari 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 petitioner would submit that the petitioner is a registered hereditary Indian medicine practitioner viz., Siddha and Ayurvedha, Homeopathy and his son is also a degree holder in B.H.M.S. (Bachelor Homeopathic Medicine and Surgery) and they are running a hospital at Manavalakurichi in the name and style of M/s.Glory Rayan Hospital and they have right to keep some medicines to treat their own patients. The offences as alleged by the prosecution are not at all attracted against the petitioner, since they are qualified medical practitioners and running a hospital. The entire allegations are false. The allegations are that the drugs are purchased, stocked and exhibited for distribution or for sale without holding valid drug licences. Therefore, the petitioner sought for quashing the entire proceedings.



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

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

5. The petitioner is a qualified Doctor. The petitioner along with his son is running a hospital in the name and style of M/s. Glory Rayan Hospital at Manavalakurichi. According to the complainant, he found stock of various drugs for sale and distribution. However, according to the petitioner, he is doctor by profession and he was in possession of drugs only for his 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)

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."

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 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.

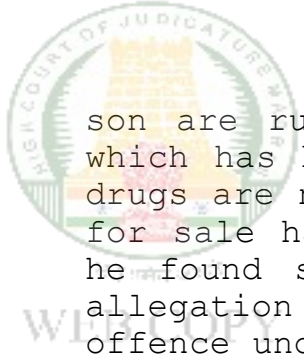
13. In the present case, it is admitted that the petitioner is running a nursing home and he was in possession of the drugs, which has been listed by the complainant. The possession is not denied. Whether it was exhibited for sale is to be considered. In the complaint, it is stated that the complainant 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 petitioner and his



son are running a Hospital 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 the hospital. 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 petitioner. Therefore, continuance of the proceedings is nothing but an abuse of process of law initiated with an intention to harass the petitioner.

8. In view of the considered opinion of this Court, this Court is inclined to quash the entire proceedings as against the petitioner. Accordingly, this criminal original petition is allowed and the Private Complaint in C.C.No.375 of 2013 on the file of the District Munsif - cum Judicial Magistrate at Eraniel, Kanyakumari District is quashed as against the petitioner herein. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Drugs Inspector,
Nagercoil Range,
Office of the Drugs Inspector,
44 A, West Car Street,
Nagercoil - 629001.

2. The District Munsif cum Judicial Magistrate, Eraniel.

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

+1CC to Mr.K.VAMANAN, Advocate, SR.No.88327

Cr1.O.P. (MD).No.3337 of 2014
and
M.P. (MD) Nos.1 and 2 of 2014
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