

SMT. JUSTICE T. RAJANI

CRIMINAL PETITION No.75 of 2013

ORDER:

This Criminal Petition under Section 482 of Cr.P.C., is filed seeking to quash the proceedings in C.C.No.558 of 2010 on the file of the First Additional Judicial First Class Magistrate, Khammam, registered for the offence under Section 18(a)(i) read with Sections 16, 22(1)(cca) and 24 of Drugs and Cosmetics Act, 1940 (for short 'the Act') punishable under Sections 27(d), 22(3) and 28 of the Act, against the petitioners/A5 and A6.

2. The complaint is filed stating that on 12.09.2006, L.W.1- Drugs Inspector, went to the medical shop of L.W.2-B. Laxmi Kantha Rao, conducted inspection, took 200 Ruby Capsules and sent the same to the Government Analyst under Form-18 for analysis. After receipt of the analytical report, in Form-13, declaring the drug as 'not of standard quality, L.W.1 filed the complaint against A1 to A6.

3. Learned counsel for the petitioners submits that the petitioners/A5 and A6, who are the Distributors, have disbursed the drugs to the retailers and that A1 is the manufacturer and A2 and A3 are its Directors. He further submits that on receipt of notice from the second respondent with regard to the sale of substandard drugs, the petitioners/A5 and A6 have issued a reply stating that they recalled all the drugs from the retailers.

4. The petitioners are charged for the offence under Section 18(a)(i) read with Sections 16, 22(1)(cca) and 24 of the Act punishable under Sections 27(d), 22(3) and 28 of the Act.

Section 18(a)(i) is extracted as under:

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

From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf—

(a) manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale or distribute—

(i) any drug which is not of a standard quality, or is misbranded, adulterated or spurious;

Section 22 of the Act is not relevant for Distributors.

Section 27 of the Act is extracted as under:

"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 or for distribution, or sells, or stocks or exhibits or offers for sale or distributes, 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.

In view of the aforesaid provisions, the manufacturer, who manufactures the substandard quality of drugs, is liable to be prosecuted.

5. Hence, this Court opines that continuation of proceedings against the petitioners/A5 and A6, who are Distributors, would be an abuse of process of the Court.

6. In the result, the Criminal Petition is allowed, quashing the proceedings in C.C.No.558 of 2010 on the file of the First Additional Judicial First Class Magistrate, Khammam, against the petitioners/A5 and A6. Miscellaneous applications, if any, pending in this criminal petition shall stand dismissed.

15th November, 2018

T. RAJANI, J

sj

