

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.1130 of 2016

ORDER:

In this petition filed under Section 482 Cr.P.C, the petitioner seeks to quash the proceedings in S.C.No.49 of 2016 on the file of II Additional Sessions Judge, Visakhapatnam registered for the offences under Sections 18(c), 18(a)(i) r/w Section 16(1)(a), 18-A and 22(1)(cca) r/w Section 27(b)(ii), 27(d), 28 and 22(3) of Drugs and Cosmetics Act, 1940 (for short "the Act") .

2a) Brief facts of the case are that petitioner/accused is the proprietor of M/s.The Spurti Technologies situated at Plot No.201, 15-21-150/2, L.Chandraiah Complex, New Balaji Nagar, Kukatpally, Hyderabad. While-so, on 03.06.2014, the Drugs Inspector, Visakhapatnam (Sales)/complainant inspected M/s.The Care Medical and General Stores, D.No.10-50-11/5, Cellar, Care Hospital, Waltair Main Road, Ram Nagar, Visakhapatnam and found stocked Stericare FG, B.No.27, Date: April 2014, Mfg. Dt. Nil, Exp. Dt. Nil, Qty: 04x5Lt and B.No.28, Date: May 2014, Mfd. Dt. Nil, Exp. Dt. Nil; Mfd. by M/s.Golden Equipment Private Limited, Sy.No.123, Jeedimetla Road, Quthbullapur Road, Hyderabad Qty.18x5Lt and on observation of the label, the said drug, was not found with details of manufacturing licence and on suspicion taken sample and sent for analysis and informed the said seizure to the IV Additional Metropolitan Magistrate, Visakhapatnam as per the provisions of Section 23(5)(b) of the Drugs Act.

b) On 11.06.2014, complainant along with Drugs Inspectors, Balanagar and Jeedimetla—LWs.9 and 8 respectively inspected the petitioner's premises and observed that no Firm/Shop/Company was in existence in the location and to that effect he prepared spot proceedings.

c) On 18.06.2014, complainant received a letter from M/s.The Care Medical and General Stores, Ram Nagar, Visakhapatnam along with duplicate copy of purchase invoices, drug licenses and the details of the person responsible for day today business disclosing that they have purchased the said seized drug vide Invoice Nos.041 and 042 dated 15.05.2014 from petitioner and stated that the said drug was used by the hospital for the house-keeping department purpose and order was also placed by hospital management which is purely for the use of internal purpose of the hospital and no order was placed by the competent person of the firm and said stocks were kept near the license premises which is called as hold area by the security.

d) On 19.06.2014, complainant addressed a letter to the petitioner requesting to disclose the name, address and other particulars of the person from whom they acquired the said seized drugs and also sent notice to M/s.The Care Medical and General Stores, Visakhapatnam directing to furnish the particulars of drugs seized. Thereafter, lot of correspondence took place between the petitioner and complainant and ultimately found the petitioner manufactured and supplied the said drug without license to M/s.Care Hospital, Ram Nagar, Visakhapatnam and thereby contravened Section 18(c) of the Act.

3) Heard arguments of Sri B.Vijaysen Reddy, learned counsel for petitioner and learned Public Prosecutor for respondents.

4) The bone of contention in this case is whether the Stericare FG, stocked by the M/s. The Care Medical & General Stores, Visakhapatnam and inspected and seized by the Drugs Inspector is a drug within the meaning of Section 3(b) of the Drugs and Cosmetics Act, 1940 as contended by the complainant or whether the said commodity was only purchased by the aforesaid hospital management purely for the use of internal purpose of the hospital. According to the complainant, the commodity is a drug within the meaning of Section 3(b) of the Act and the same was seized by the Drug Inspector from M/s. The Care Medical & General Stores, Visakhapatnam and the said M/s. The Care Medical & General Stores, as per their letter dated 17.06.2014 informed that they have purchased the commodity i.e, Stericare FG from M/s. Spurti Technologies, Plot No.201, 15-21-150/2, L. Chandraiah Complex, New Balaji Nagar, Kukatpally, Hyderabad i.e, from the accused vide Invoice No.041 dated 15.05.2014 and Invoice No.042 dated 15.05.2014 for the house-keeping department purpose and order also placed by the hospital management and it was purely for the use of internal purpose of the hospital and no order was placed by the competent person of the firm and said stocks were kept near the licensed premises, which is called as hold area by the security, which is not in the licensed premises.

a) As per complainant, on receiving the said information from M/s. The Care Medical & General Stores, Ram Nagar, Visakhapatnam, a letter dated 19.06.2014 was addressed to the accused requesting to disclose the name,

address and other particulars of the person from whom they acquired the seized drug as per Section 18-A of the Act and requested to furnish records and registers and other particulars of the drugs seized.

b) While the reply was awaited from the accused, in the meanwhile on instructions of the Director General, Drugs & Copy Rights, Drugs Control Administration, Hyderabad, the complainant sent the sample to the Government Analyst, Drugs Control Laboratory, Hyderabad to cause analysis of the sample. On 01.12.2014, the analytical report was received to the effect that the sample drug was "Not of Standard Quality". After receiving the said report, on 02.12.2014, LW.7 sent letter to the accused to disclose the name, address and other particulars of the person from whom they acquired the said Not of Standard Quality Drug. The said letter was undelivered and returned by the postal authorities without any remark. Ultimately on 12.02.2015, LW.7 received letter dated 27.01.2015 of the accused which disclosed that they purchased said Not of Standard Quality drug from M/s. Golden Equipment Pvt. Ltd, Plot No.11, Sri Venkata Ramana Complex, Tadbund X Roads, Secunderabad vide Invoice No.065/13-14 dated 11.03.2015. On receiving the said reply, LW.7 sent letter by registered post to M/s. Golden Equipment Pvt. Ltd., with a request to confirm sale of subject seized Drug vide Invoice No.065/13-14 dated 11.03.2014 and also requested to disclose the name, address and other particulars of the person from whom they acquired the same as per Section 18-A of the Act and also to furnish the records and registers. The said letter was undelivered and returned by the postal authorities with a remark "addressee left". Therefore, on 10.03.2015, LW7 again sent a letter to

accused with a request to disclose the name, address and other particulars of the person from whom they acquired the said Not of Standard Quality Drug and the same was undelivered.

c) Thus according to the complainant, the sealed commodity Stericare FG is a drug, which on analysis found to be Not of Standard Quality and the accused failed to furnish the details from whom he acquired the said Drug and hence he is liable for the offences under Sections 18(c), 18(a)(i) r/w Sec. 16(1)(a), 18-A and 22(1)(cca) r/w Sec. 27(b)(ii), 27(d), 28 & 22(3) of the Act.

5) The contention of the accused is already noted supra. As per which, the commodity seized was not a drug but it was a disinfectant intended for use of internal purpose of the hospital. Learned counsel for petitioner vehemently argued that the drug is not meant for human consumption and it is not a drug within the meaning of Section 3(b)(ii) of the Act and alleged drug is a Stericare FG, which is disinfectant and it is not intended for medical use and therefore, continuation of the criminal proceedings would amount to abuse of process of the Court. He relied upon several decisions in this regard.

6) On the other hand, learned Additional Public Prosecutor argued that the commodity seized was a drug, which on analysis found to be Not of Standard Quality and further, the petitioner/accused failed to give the particulars of the manufacturer from whom he acquired the said drug. Hence criminal case is maintainable.

7) Having regard to the above respective contentions, in the considered view of this Court, whether the commodity Stericare FG, is a drug within the

meaning of Section 3(b) of the Act or whether it is only a disinfectant intended for internal use of the hospital is a matter to be decided only after full-fledged trial. It should be noted that apart from the nature of the commodity, another allegation against the accused is that he failed to correctly intimate to the Drug Inspector about the manufacturer from whom he allegedly secured the drug. Therefore, the petitioner/accused shall face trial and vindicate his defence. As the matter stands, it is not a fit case to quash the proceedings.

8) Accordingly, this Criminal Petition is dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Date: 14.08.2018

Murthy/scs



U. DURGA PRASAD RAO, J