

*** THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

+ CRIMINAL PETITION No.8092 OF 2018

% 01.11.2018

Between:

1. M/s.R A Chem Pharma Limited
and another .. Petitioners

and

1. The State of A.P.,
Represented by the Public Prosecutor,
and 2 others .. Respondents

! Counsel for Petitioner/s : Sri Akkapeddi Srinivas

**^ Counsel for Respondents : The Public Prosecutor and
Sri T.K.Basha vali.**

< Gist:

> Head Note:

? Cases referred:

1. 2016 (1) ALD (CrI.) 980
2. [2013 (4) KHC 223]
3. 2012 (3) K.L.J 835

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY
CRIMINAL PETITION No.8092 OF 2018

ORDER:

Accused Nos.1 and 2 in Spl.S.C.No.13 of 2018, on the file of I Additional District and Sessions Judge, Krishna at Machilipatnam, filed this petition under Section 482 of Cr.P.C. to quash the order passed by the Court below in Crl.M.P.No.391 of 2018 in Spl.S.C.No.13 of 2018.

2. The petitioners are the accused for the offences under Section 18(c) punishable under Section 27(b)(ii), Section 18(b) punishable under Section 27(d) and Section 18 (a)(vi) read with Rule 74(o) read with Schedule M, punishable under Section 27(d) of the Drugs and Cosmetics Act (for short, 'the Act').

3. The petitioners filed Crl.M.P.No.4441 of 2016 before the Additional Judicial Magistrate of First Class, Jaggaiahpet, in the complaint filed by the Drug Inspector, to register the complaint as a Calendar Case, instead of P.R.C. The Magistrate dismissed the petition by order dated 22.02.2016. Aggrieved by the order of dismissal, the petitioners herein preferred Criminal Revision Petition No.8 of 2017 before the XVI Additional District and Sessions Judge, Nandigama, Krishna District. The District Judge dismissed the Criminal

Revision Petition, vide order dated 15.03.2017, while confirming the order dated 22.02.2016. Aggrieved thereby, the petitioners preferred Criminal Petition No.5641 of 2017, before this Court, to quash the dismissal order dated 15.03.2017. This Court, while disposing of the Criminal Petition on 02.02.2018, held that the offences under Section 27 (b) and 27(d) of the Act are triable by a Magistrate and requested the Sessions Court to frame appropriate charge against the accused and dispose of in terms of Section 228 Cr.P.C.

4. Thereafter, the petitioners filed a petition under Section 228 of Cr.P.C. read with Section 36 AB of the Act, in Special S.C.No. 13 of 2018 to frame charges and transfer their case to the Additional Judicial Magistrate of First Class, Jaggaiahpet, Krishna District, alleging that the Drug Inspector of Vijayawada (Mfg.), Vijayawada, Andhra Pradesh, has filed a complaint in the Court of the Additional Judicial Magistrate of First Class, Jaggaiahpet, Krishna District, against Accused Nos.1 to 4 (petitioners are Accused Nos.1 and 2), for contravention of Section 18(c), punishable under Section 27(b)(ii); Section 18(b) punishable under Section 27 (d) and Section 18(a)(vi) read with Rule 74(o) read with Schedule "M" of Drugs and Cosmetics Act, 1945 as amended. The offences allegedly committed by these petitioners are classified in Part

II of First Schedule of Cr.P.C., and are punishable with imprisonment for three years and upwards but not more than seven years. They are cognizable, bailable and triable by the Judicial First Class Magistrate. The offences punishable under Section 27 (b)(ii) and 27 (d) are not covered by Section 36 AB and the G.O. issued by the Government in exercise of power under Section 36 AB of the Act and therefore issue is directly covered by the judgment of this Court in **M/s.GABA Pharmaceuticals Private Limited, Hyderabad and others v. Union of India**¹ and the petitioners requested to pass appropriate orders framing charges against the petitioners and transfer the case to the Additional Judicial Magistrate of First Class, Jaggaiahpet.

5. The respondents filed counter denying the material allegations *inter alia* contending that these petitioners have contravened Chapter IV of the Act, which deals with manufacture, sale and distribution of drugs (and cosmetics) covered under Sections 16 to 33-A and Chapter V, which deals with miscellaneous matters of the said Act. Section 32 of the Act deals with the cognizance of offences. Sub-Section 2 of Section 32, incorporated by the amendment as per Act 26 of 2008 with effect from 10.08.2009, wherein it is made clear that no Court inferior to that of a Court of Session shall try an

¹ 2016 (1) ALD (Crl.) 980

offence punishable under this Chapter IV of the Act. Therefore, the Sessions Court alone is competent to try the offences for contravention of Section 18 (c), punishable under Section 27(b)(ii); Section 18(b) punishable under Section 27 (d) and Section 18(a)(vi) read with Rule 74(o) read with Schedule "M" of the Act. It is also contended that Section 32(2) of the Act as amended applies to the present case. Apart from that, as per Section 36 AB (1) of the Drugs and Cosmetics (Amendment) Act, 2008, "the Central Government or the State Government in consultation with the Chief Justice of the High Court, shall notify for trial of offences relating to the adulterated drugs or spurious drugs, punishable under clauses (a) and (b) of Section 13, Sub-Section (3) of Section 22, Clauses (a) & (c) of Section 27, Section 28, Section 28-A, Section 28-B and clause (b) of Sub Section (1) of Section 30, by notification, designate one or more courts of Session as a special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification." In exercise of powers conferred by Section 36-AB (1) of Drugs and Cosmetics (Amendment) Act, 2008, the Government of Andhra Pradesh has designated the Courts of I Additional District and Sessions Judges in all the districts as Special Courts to try all the above mentioned offences vide G.O.Ms.No.98, dated

06.09.2011 of LAW (LA&J-HOME COURTS.C) Department. The G.O. does not exclude any other Sections of the Act to be tried by the same designated Court. Therefore, the I Additional District and Sessions Court alone is competent to try the case and the same cannot be transferred after framing of the charges by the I Additional District and Sessions Judge and requested to dismiss the petition confirming the order passed by the Court below. Accordingly, the said petition was dismissed vide order dated 11.07.2018.

6. Aggrieved by the said order, the petitioners preferred the present petition under Section 482 of Cr.P.C. to quash the dismissal order.

7. The petitioners relied upon the judgment of this Court in **M/s.Gaba Pharmaceuticals (supra)**, and other High Courts in **Zest Pharma and three others v. Drug Inspector, Thrissur²**, **M/s.Cooper Pharma and two others v. Drug Inspector, Bellary (in Criminal Petition No.11364 of 2012)**, **C.P.Udayadivakaran v. State of Kerala³**, **Mr.Rajendra v. The State of Maharashtra and the Drug Inspector, Jalgon (Crl.W.P.No.846 of 2016)** and **Suresh v. State of Kerala (Crl.A.No.633 of 2009)** to substantiate their contentions. The petitioners contended that the Special

² [2013 (4) KHC 223]

³ 2012 (3) K.L.J 835

Court dismissed the petition basing on G.O.Ms.No.98, constituting the Special Courts in the State of Andhra Pradesh for trial of offences specified under Section 36 AB of the Act., without appreciating the fact that the offences under Sections 27(b)(ii) and 27(d) are not included either under Section 36 AB of the Act or under the said G.O. Hence, the order is irregular and requested to direct the Special Court to transfer the case on the file of I Additional District and Sessions Judge, Machilipatnam, Krishna District, Andhra Pradesh to the Court of Additional Judicial Magistrate of First Class, Jaggaiahpet, Krishna District, Andhra Pradesh.

8. During hearing, learned counsel for the petitioners Sri Akkapeddi Srinivas, reiterated the contentions of the petition, while drawing attention of this Court to the principles laid down in M/s.Gaba Pharmaceuticals case (supra) and the G.O. issued by the Government, wherein it is specified that the Special Judges vested with the power to try the offences relating to adulterated drugs or spurious drugs punishable under clauses (a) and (b) of Section 13, Sub-Section 3 of Section 22, clauses (a) and (c) of Section 27, Section 28, Section 28A, Section 28 B and clause (b) of Sub Section (1) of Section 30 and other offences relating to adulterated drugs or spurious drugs. When the petitioners allegedly did not manufacture or sell adulterated or spurious drugs, question

of trial of offences by the Sessions Judge does not arise and at best, alleged production or manufacturing drugs without any licence, contravening Section 18 of the Drugs and Cosmetics Act, which is punishable under Section 27 (b) and (d) of the Act. Therefore, the Special Judge has no jurisdiction and the Additional Judicial Magistrate of First Class alone is competent to try the case for contravening of Section 18(c), punishable under Section 27(b)(ii); of Section 18(b) punishable under Section 27 (d) and of Section 18(a)(vi) read with Section 74(o) read with Schedule "M" of Drugs and Cosmetics Act, 1945 and requested to allow this petition setting aside the order passed by the Special Court and transfer the Special Sessions Case to the Court of Additional Judicial Magistrate of First Class, Jaggaiahpet, Krishna District, Andhra Pradesh, with a direction to register the same as Calendar Case, on receipt of record.

9. Learned Public Prosecutor mainly contended that the Additional District Judge is designated to try various offences under the Act and the petitioners cannot claim such relief in the present petition, since no other Court is competent to try those offences punishable under various provisions of the Act and requested to dismiss the petition.

10. As seen from the complaint filed before the Magistrate by the second respondent, the offences allegedly committed by the petitioners are punishable under Section 27(b)(ii) and (d) for violation of Sections 18 (b) and (c) of the Act and also Sections 18(a)(vi) read with Rule 74 (o) of Rules framed under the Act, as the petitioners allegedly manufactured drugs, without obtaining licence. Therefore, according to the complainant, the petitioners committed the offences punishable under Section 27(b)(ii) and (d) for contravention of Section 18(b),(a)(vi) Rule 74(o) of the Act. Section 36AB deals with power of the Government to designate any one of the judges for trial of the cases exclusively to try the offences under the provisions of the Act, in consultation with the High Court. The Government of Andhra Pradesh, in consultation with the High Court, designated the First Additional District and Sessions Judge of all the districts (Machilipatnam herein) to try and dispose of the cases for the offences relating to adulterated drugs or spurious drugs punishable under clauses (a) and (b) of Section 13, Sub Section (3) of Section 22, clauses (a) and (c) of Section 27, Section 28, Section 28A, Section 28B and clause (b) of Sub Section (1) of Section 30 and other offences relating to adulterated drugs or spurious drugs, arising from the respective Sessions Divisions and the said Court shall exercise jurisdiction over the said Sessions

Divisions. Therefore, the First Additional District and Sessions Judge, by virtue of G.O.Ms.No.98, dated 06.09.2011 is designated to different classes of offences specified under the notification. Conspicuously, the G.O. is silent with regard to trial of offences punishable under Sections 27(b) and (d) for violation of Section 18 (d) and Sections 18 (b) and (c) of the Act and also Sections 18(a)(vi) and Rule 74 (o) of the Act. The punishment prescribed for the offences is three years and can be expanded upto maximum term of seven years. But such case is triable by the Court of Judicial First Class Magistrate and attracts the provisions of Cr.P.C. The Special Sessions Judge assumed jurisdiction, though the Court is not competent to try the offences punishable under Section 27 (b)(ii) and (d) and for violation of Sections 18 (b) and (c) of the Act and also Sections 18(a)(vi) read with Rule 74 (o) of the Act. The assumption of jurisdiction which is not vested on the Special Sessions Judge under the provisions of the Act is illegal. The Sessions Judge though discussed about the provisions of the Act and the Rules framed thereunder, but did not assign any specific reasons for denying the relief claimed by these petitioners. On the other hand, in para 15, the Sessions Judge accepting the contentions of the Additional Public Prosecutor, held that A1 being the Managing Director of A1 Company and A4 is the Director of A3

Company were prosecuted by the Drug Inspector (Mfg.), Vijayawada, for the offences under Sections 18 (c) of the Act and also Sections 18(b) and Section 18 (a)(vi) read with Rule 74 (o) read with Schedule M, punishable under Sections 27(b)(ii) and 27(d) of the Act. When the Government Order confers power on the Special Judge to try specific offences referred supra. The offences punishable under Sections 27 (b)(ii) and 27 (d) for violation of Sections 18 (b) and (c) of the Act and also Sections 18(a)(vi) read with Rule 74 (o) of the Act and Rules frames thereunder, such offences are not triable by the Court of Sessions. On the other hand, in the G.O. itself it is clear that the Special Court is the First Additional District and Sessions Judge who is designated, only to try the offences relating to adulterated or spurious drugs for the offences punishable under Clauses (a) and (b) of Section 13, Sub-Section (3) of Section 22, Clauses (a) and (c) of Section 27, Section 28, Section 28A, Section 28B and Clause (b) of Sub Section (1) of Section 30. Here, it is not the case of prosecution or the complainant that the petitioners are manufacturing and selling any spurious or adulterated drugs, but manufacturing products without obtaining licence, in contravention of Sections 18 (a), 18 (b) and Section 18(a)(vi) punishable under Sections 27(b)(ii), 27(d) and Rule 74(o) read with Schedule 'M' of the Act. Therefore, no power is

conferred on the Special Sessions Judge to try the said offences.

11. Section 228 Cr.P.C. confers power on the Sessions Court for consideration and hearing of the parties before it, if the Court is of the opinion that there is no ground for assuming that the accused has committed the offences which are exclusively triable by the Court of Sessions, the Court may frame charge against the accused and by order transfer the case for trial to the Judicial Magistrate of First Class or any other judicial Magistrate. He can direct the accused to appear before the Chief Judicial Magistrate or as the case may be, to the Judicial Magistrate of First Class, as it deems fit. Thereupon, the Magistrate shall try the offence in accordance with the procedure for trial of warrant cases instituted in the police report. Section 228 Cr.P.C. is amended with effect from 23.06.2006, incorporating the words, ***“or any other Judicial Magistrate of First Class and direct the accused to appear before the Chief Judicial Magistrate of First Class, as the case may be, Judicial Magistrate of First Class, on such date, as he deems fit and thereupon such Magistrate...”*** is incorporated by way of amendment of the Act of 2005. Therefore, the Sessions Judge, if he finds that the case is not triable by the Court of Sessions, the Sessions Judge duty is to frame charges and transfer the case to any

Chief Judicial Magistrate or Judicial Magistrate of First Class for trial in accordance with law, direct the accused to appear before the Court on a specified date. Instead of following such procedure contemplated under Section 228 Cr.P.C., the Court below resorted to framing charges and try the case, though no power is conferred on the Court to try such offences punishable under Sections 27(b)(ii) and (d) of the Act.

12. This Court in M/s.Gaba Pharmaceuticals case (supra) had an occasion to consider an identical issue and concluded that the offences punishable under Sections 27(b) and (d) of the Act are triable by the Magistrate and the same is adverted to by this Court in Criminal Petition No.5641 of 2017, filed by these petitioners, wherein this Court directed the Sessions Judge to hear both the accused and the complainant and determine the competency of the Court to try the offences punishable under Sections 27(b) and (d) of the Act and if the Court comes to a conclusion that the alleged offences are triable by the Judicial Magistrate of First Class, appropriate orders may be passed in this regard and if the Sessions Judge comes to a conclusion that the alleged offences are triable by the Court of Sessions, then it can frame charges and proceed in accordance with law. But the Court assumed jurisdiction, though such power is not conferred on the Sessions Judge to try the offences punishable under Sections 27(b) and (d) of the

Act. This Court in M/s.Gaba Pharmaceuticals (supra) in Criminal Petition No.2178 of 2015 adverted to law laid down by various High Courts and concluded in paragraph Nos.13, 14 and 15 that powers were conferred on the Special Sessions Judges to try the offences punishable under Sections 27(a) and (c) and in that view, designated the Court exercising power under Sections 36 AB of the Act and the offences punishable under Sections 27(b) and (d) are triable by the Judicial Magistrate having jurisdiction. Therefore, in the absence of vesting any jurisdiction to try such offences, the Sessions Judge is incompetent placing reliance on judgment of Kerala High Court in **Nandani Medical Laboratories Private Limited, Indore and another v. Drug Inspector, Officer of the Assistant Drug Controller, Thrissur and another (in Criminal Petition No.1477 of 2013, dated 30.08.2013)**. Finally, the Court is of the view that the Judicial Magistrate of I Class alone is competent to try the offences punishable under Sections 27(b) and 27(d) of the Act. Similar view is expressed by the Kerala High Court in **Zest Pharma and three others v. Drug Inspector, Thrissur**(supra) and also in **M/s.Cooper Pharma and two others v. Drug Inspector, Bellary (in Criminal Petition No.11364 of 2012)** and **C.P.Udayadivakaran v. State of Kerala (supra)**. The consistent view expressed by the Courts

is that unless the Special Courts are designated in exercising power under Section 36 AB of the Act, vested with powers to try specific offence or classes of offences, the Court cannot try the offences which are triable by the Magistrate. The Division Bench at Aurangabad, in **Mr.Rajendra v. The State of Maharashtra and the Drug Inspector, Jalgon (supra)**, also approved the view.

13. Therefore, persuaded by various judgments of other High Courts, followed by the judgment of this Court in M/s.Gaba Pharmaceuticals case (supra), I am of the considered view that G.O.Ms.No.98, dated 06.09.2011, does not confer any jurisdiction on the Special Sessions Judge to try the offences punishable under Sections 27 (b) and 27 (d) of the Act and the Special Judge erroneously assumed jurisdiction though the alleged violation of Section 18 (a)(vi), 18 (c) and 18 (b) are under the offences punishable under Sections 27 (b) and (d) and on the other hand, the G.O., conferred power on the Special Sessions Judge to try certain offences referred in the G.O., but not the offences punishable under Sections 27 (b) and (d) and consequently, the First Additional District and Sessions Judge cum Special Sessions Judge lacks jurisdiction to try the offences by virtue of G.O.Ms.No.98, dated 06.09.2011. In such case, the course open to the Special Sessions Judge is to frame charge and transfer the case to

any Chief Judicial Magistrate or Judicial Magistrate of First Class, asking the parties to appear on a specified date before such Court for trial and dispose of the case, in accordance with law. The Sessions Judge instead of following the procedure under Section 228 of Cr.P.C., erroneously assumed jurisdiction and consequently, the First Additional District and Sessions Judge-cum-Special Sessions Judge for Trial of Cases is directed to frame charge strictly adhering to Sections 228 and 229 of Cr.P.C. and transfer the case to Additional Judicial Magistrate of First Class, Jaggaiahpet, directing the parties to appear on a specified date, before the Magistrate concerned, with a direction to the Magistrate to try and dispose of the case, in accordance with law.

14. In the result, the Criminal Petition is allowed, with the above said direction.

M. SATYANARAYANA MURTHY, J

Dt.01.11.2018

Note:

L.R. Copy to be marked.
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