

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Criminal Petition No.5641 of 2017

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed by the petitioners/A.1 and A.2 to quash the order, dated 15.03.2017, passed in CrI.R.P.No.8 of 2017, by the XVI Additional District and Sessions Judge, Nandigama, Krishna District, whereby and whereunder, the order, dated 22.12.2016, passed in CrI.M.P.No.4441 of 2016 in C.F.No.6522 of 2016 in P.R.C.No.12 of 2016 by the Additional Judicial Magistrate of First Class, Jaggayyapeta, Krishna District, has been confirmed.

2. Heard Smt. K.Sesharajyam, learned senior counsel appearing for Smt.Deepika Gadde, learned counsel for petitioners/A.1 and A.2, Sri Posani Venkateswarlu, learned Public Prosecutor for the State of Andhra Pradesh appearing on behalf of the respondent and perused the record.

3. The learned senior counsel appearing for the petitioners/A.1 and A.2 would submit that the alleged offences under Sections 27(b)(ii) and 27(d) of the Drugs and Cosmetics Act, 1940, are triable by the Judicial Magistrate of First Class. The learned Magistrate ought not have made it a P.R.C. and commit the same to the Court of Sessions. The charges are yet to be framed in the instant case.

4. The learned Public Prosecutor, in the course of submissions, has brought to the notice of this Court that certain offences under the Drugs and Cosmetics Act, 1940, were amended and made triable by the Court of Sessions.

5. In view of the submissions made by both the learned counsel and since it is submitted that charges are not yet framed by the Court of Session and in the light of the fact that a hearing is contemplated before the charges are framed, the learned Sessions Judge, on such hearing as contemplated, may take into consideration the offences alleged and determine the competence of the Court to try those offences. If the Court of Session comes to the conclusion that the alleged offences are triable by the a Judicial Magistrate of First Class, appropriate orders may be passed in that regard and if the learned Session Judge comes to the conclusion that the alleged offences are triable by the Court of Session, then it can frame charges and proceed in accordance with law. It is apt to mention here that this Court, in Gaba Pharmaceuticals (P) Ltd., Hyderabad and others Vs. Union of India and another¹, held that the offences under Sections 27(b) and 27(d) of the Drugs and Cosmetics Act, 1940, are triable by a Magistrate. While framing the charges, the Court of Sessions may also take this aspect into consideration.

6. With the above directions, this Criminal Petition is disposed of.

Miscellaneous petitions, if any, pending in this Criminal Petition, shall stand closed.

Dr. SHAMEEM AKTHER, J

02nd February, 2018
Bvv

¹ 2016 (1) ALD (CrL.) 980