

HON'BLE SRI JUSTICE N.BALAYOGI

CRIMINAL PETITION No.2219 of 2013

ORDER:

This Criminal Petition, under Section 482 Cr.P.C, is filed seeking to quash the proceedings in C.C.No.591 of 2003 on the file of IV Additional Munsif Magistrate, Guntur.

The contention of the petitioner – A.8 is that he purchased drugs under original invoice No.1113 dated 20.01.2001 from M/s.Maheswari Medical Corporation, Narasaraopet – A.2 and A.3 under valid bill; and, as such, he cannot be prosecuted as the offence does not attract the ingredients of Section 19(3) of the Drugs and Cosmetics Act, 1940 (for short 'the Act').

Per contra, learned Public Prosecutor contended that the drug is spurious as it was alleged to be manufactured by M/s.Torrent Pharmaceuticals limited.

Now the point that arises for determination is whether there is *prima facie* material against the petitioner – A.8 for prosecution.

The material on record goes to show that, on credible information about movement of ALPRAZOLAM TABLETS I.P. – 0.5 of Ms/s.Torrent Pharmaceuticals Ltd, Indrad, the Drug Inspector while making market survey on 07.03.2001 found drug of batch No.1010040 in M/s. Murali Krishna Medical Agencies, Ongole – A.8; on enquiry, A.8 revealed that he purchased 800 tablets from M/s.Maheswari Medical Corporation, Narasaraopet – A.2 under Bill No.1113 dated

20.01.2001 and all the stock were unsold; and perused the blister strips manufactured in October, 2000 with expiry September, 2003 and found varied in many aspects like placement of (R) Mark, size of yellow bands, number of cutting edges etc.

It is a fact that petitioner – A.8 reported the Drug Inspector that he purchased the said drugs from A.2 and A.3 under valid bills; and, suspecting the drug as spurious, sent for analysis. The charge sheet specifically and clearly alleges that the drug was manufactured by M/s.Torrent Pharmaceuticals Limited, Indrad.

Section 19(3) of the Act contemplates that a person, who is not manufacturer of a drug or cosmetic or his agent for distribution thereof, shall not liable for contravention of Section 18 if he proves that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof; and that he did not know with reasonable diligence have ascertained that the drug or cosmetic in any way contravened the provisions of Section 19 of the Act.

The supplier of the drugs was also shown as A.2 and A.3. Specific overt act is attributed to A.2 and A.3 in the charge sheet and they were also charge sheeted. A.2, who was present at the time of inspection, reported that A.8 purchased ALPRAX – 0.5 tablets of batch 1010040 from Peda Tilakalu alias Desu Nageswara Rao - A.1 of Tenali without procuring bill and sold the entire stock to various parties by issuing sale bills,

including the petitioner – A.8. It also came to light that A.1 did not possess licence and sold the above drugs to two other parties and even did not produce purchase and sale bills for the drugs purported to be manufactured by M/s.Torrent Pharmaceuticals Ltd. Indrad. The learned Magistrate, after filing charge sheet, took cognizance of the case and framed the charges. After appearance of the parties, all copies of documents were furnished and were examined under Section 313 Cr.P.C. in respect of the charges framed.

In view of the facts discussed above, I am of the considered view that there is *prima facie* material to prosecute the petitioners and there is no abuse of process of Court causing prejudice to the petitioners.

The Criminal Petition is, accordingly, dismissed. Miscellaneous petitions, if any, pending, shall stand closed.

N.BALAYOGI,J

Dt:25.10.2018
usd