

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.30268 of 2010

and

M.P.Nos.1&2 of 2010

[Orders Reserved on 26.10.2018]

1.Dr.Ansari Hospital

15826, Neela West Street,

Nagapattinam - 623 001

Rep.by its Managing Director,

Dr.A.Ansari, M.D.,

2.Dr.A.Ansari, M.D.,

Managing Director of Dr.Ansari

Hospital Pvt.Ltd.,

Nagapattinam.

3.A.R.Sekar

Administrator of Pharmacy

Dr.Ansari Hospital Pvt.Ltd.,

Nagapattinam.

4.M.Sumathi

Person incharge of Pharmacy

Dr.Ansari Hospital Pvt.Ltd.,

Nagapattinam.

Vs.

State Represented by its

Inspector of Drugs,

Nagapattinam Range,

Nagapattinam.

... Petitioners / A1 to A4

... Respondent / Complainant

PRAYER: Petition is filed under Section 482 of Criminal Procedure Code, praying to quash the complaint made in C.C.No.73 of 2010, on the file of the Chief Judicial Magistrate Court, Nagapattinam.

For Petitioner : Mr.S.Ashok Kumar, S.C.  
For M/s.Kaviyarasi

For Respondent : Ms.V.Saratha Devi  
Govt.Advocate (crl.side)

## ORDER

This Criminal Original Petition has been filed praying to quash the proceedings in C.C.No.73 of 2010, on the file of the learned Chief Judicial Magistrate, Nagapattinam.

### 2. The short facts of the case are as follows:-

A complaint was received by one S.Rengaiyan of Radhamangalam, on 18.03.2008, alleging that he had purchased expired drug under Bill.No.34547, on 09.03.2008. On 07.07.2008, the respondent inspected the Petitioner's Hospital and found no stock of Rabbitone DSR B.No.6001 available with the Hospital Pharmacy, but the particulars of Rabbitone DSR, N.No.6001 made under bill No.34547, dated 09.03.2008, not entered in the prescription register. The carbon copy of the sale Bill No.34547, dated 09.03.2008, was not tallying with the original Bill, handed over by the complainant. Further, there are discrepancies in maintaining the records.

3. The learned counsel appearing for the petitioners would submit that the 2<sup>nd</sup> petitioner is a reputed Doctor by profession. He has established a Medical Clinic and Pharmacy by name and style of Dr. Ansari Hospital (P) Ltd., at Nagapattinam. Based on the complaint of one S.Rengaiyan of Radhamangalam, alleging that he had purchased expired drug under Bill.No.34547, on 09.03.2008. On 07.07.2008, the respondent inspected the Petitioner's Hospital. But he found no stock of Rabbitone DSR B.No.6001 available with the Hospital Pharmacy. According to the complainant, he had purchased the expired drug under Bill No.34547, dated 09.03.2008. On that date, the Bill No.34547, exhibited that the above said drugs did not figure and instead of that Rabbitone drugs some drugs by name 'Urislseratonic' and 'Norflox' - 400 Tablets figured. In order to defame and tarnish the image of the Hospital, this incident had been meticulously planned and executed by way of filing the private complaint to the Chief Judicial Magistrate's Court by the respondent.

4. The learned Government Advocate (crl.side) appearing for the respondent would submit that based on the complaint, dated 07.07.2008 of the defacto complainant, the respondent inspected the Petitioner's Hospital. The particulars of expired drug of Rabbitone DSR, N.No.6001 made under bill No.34547, dated 09.03.2008, not entered in the prescription register and the carbon copy of the sale Bill No.34547, dated 09.03.2008, was not tallying with the original Bill, handed over by the complainant, which is punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940. For having not maintained the carbon copy of the Bill No.34547, dated 09.03.2008, is punishable under Section 27(d) of the said Act. Further, there are discrepancies

in maintaining the records.

5. I have heard the learned counsels appearing on either side and perused the materials available on record.

6. On perusal of the materials produced it is seen that the Drugs viz., Rabbitone DSR Capsules B.No.6001 with expiry month of November 2007 had been supplied to the petitioner hospital on 31.10.2006. On 21.03.2008, they were left with over 32 capsules, which have been cut in pieces, sent with Expiry Claim Form No.7497. The Distributor had categorically stated that due to oversight, the return date has been mentioned as 01.03.2008 instead of 21.03.2008. To substantiate the same, notice of the previous Form No.7496, which is dated 20.03.2008, is produced. Hence, this oversight error, is not sustainable for the petitioners' claim that they have returned the drugs to the supplier on 01.03.2008 itself and that the expired drug under Bill No.34547, dated 09.03.2008 is not genuine and cannot be countenanced.

7. Further, the other contention is that for the offence punishable under Sections 18(c) and 27(d) is to be tried as per Section 32(2) of the said Act, that 'Save as otherwise provided in this Act, no court inferior to that of a Court of Session shall try an offence punishable under this Chapter', is not sustainable. In view of the Notification issued on 16.10.2010, in concurrence with the High Court, wherein the learned Chief Judicial Magistrate, Nagapattinam, have been given powers under the Code to try all cases instituted by the Drug Inspector. The contention is also not sustainable.

8. In view of the forgoing reasons, this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petitions are also dismissed.

सत्यमेव जयते  
Sd/-

Assistant Registrar

//True Copy//

WEB COPY

Sub Assistant Registrar

MPK

To

1.The Chief Judicial Magistrate Court,  
Nagapattinam.

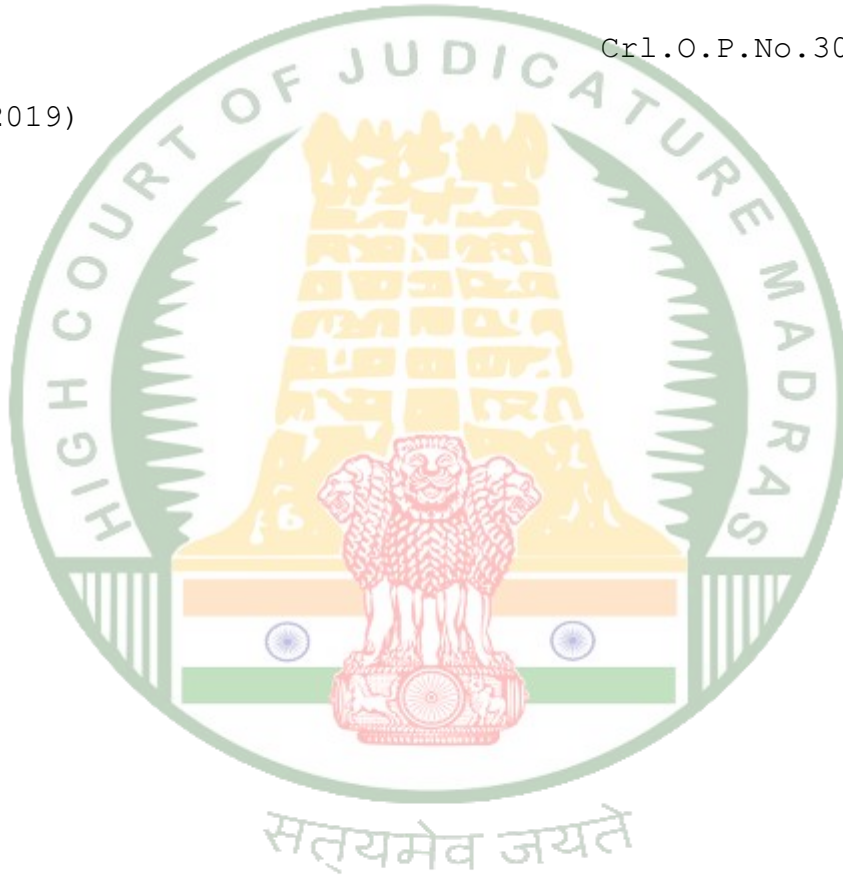
2.The Inspector of Drugs,  
Nagapattinam Range,  
Nagapattinam. x,  
Chennai - 600 006

3.Public Prosecutor,  
Madras High Court,  
Madras

+lcc to Mr.K.Kaviyarasi, Advocate, S.R.No. 6387

Cr1.O.P.No.30268 of 2010

KAN(CO)  
GN(18/02/2019)



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