

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 01.07.2019

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.OP.No.16904/2019 & Crl.MP.Nos.8509 & 8510/2019

S.Sivakumar

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Petitioner/Accused IV

Vs

State rep.by

The Inspector of Police

SPE:CBI:ACB

Shastri Bhawan, Haddows Road

Chennai 600 006.

..

Respondent/Complainant

Prayer:- Petition filed under section 482 Cr.P.C., to call for the records in Spl.CC.No.8/2015 in RC.MAI.2014.A.0002 pending on the file of the learned Principal Special Judge for CBI Cases, Puducherry and quash the Final Report as against the petitioner.

For Petitioner : Mr.G.L.Ramshankar

For Respondent : Mr.K.Srinivasan, Spl.PP [CBI]

ORDER

The present petition is filed by the petitioner seeking to quash the Final Report as against him in Spl.CC.No.8/2014 [RC.MAI.2014.A.0002] on the file of the learned Principal Special Judge for CBI Cases, Puducherry.

2 The case of the prosecution is that the petitioner who is arrayed as A-4 out of 4 accused and who is representing A-3/Company in the capacity of Managing Partner, has been charge sheeted for the alleged offences under sections 120B read with 420 IPC and 13[2] read with 13[1][d] of the Prevention of Corruption Act, in Spl.CC.No.8/2015 and he along with the other accused and in connivance with A-1, being the Licensing Authority, Department of Drugs Control, Ministry of Health, Puducherry, had fraudulently and illegally obtained licence for manufacturing 160 FDC Drugs without prior approval from the Drug Control General [INDIA], New Delhi, by paying a fee of Rs.15,000/- per FDC and thereby, caused wrongful loss to the Government of India to the tune of Rs.24,00,000/-. Thus, it was found that the manufacturing license for the above 160 FDC Drugs were issued by A-1 without subjecting the products to the safety, efficacy test and clinical tests as stipulated in the

Drugs and Cosmetic Act / Rules providing for safeguarding the health of the consumers/patients. Therefore, finding that the life and health of the consumers/patients are put to risk by manufacture of these unapproved drugs, the Drugs Controller General of India [DCGI], New Delhi, vide his letter F.No.4-01/2013-DC/Misc13-PSC dated 15.01.2013 had confirmed that the said 160 Drugs were unapproved and the petitioner/A-4 who was the authorised person for M/s.Evershine Formulations, had not obtained/applied for the approval from DCGI and not paid the requisite fee for such approval of safety and efficacy whereas managed to get license from A-1. The further allegation is that A-1, knowing fully well that the approval of DCGI, New Delhi, is mandatory and he, as a state of Licensing Authority, without authorisation, had issued additional endorsements for the manufacture of FDC/new drugs as aforesaid in pursuance of criminal conspiracy and in abuse of his official position, had cheated the Government of India to the tune of Rs.24,00,000/- which is corresponding wrongful gain/pecuniary advantage for the petitioner/A-4 and thereby, the petitioner along with the other accused have been charge-sheeted for the above said offences.

3 The learned counsel for the petitioner would fairly submit that similar cases have been filed against manufacturers like that of the petitioner and various other accused in the similar cases had approached this Court by filing quash petitions and this Court, had earlier dismissed the petitions stating that the matters agitated in the quash petitions can be tried only during the time of trial by letting in evidence and had thereby, dismissed the applications. He would also submit that he understands that some of the accused have gone on SLP and some of them have been admitted also. He would further submit that he is not pressing the above petition for the present.

4 The learned Special Public Prosecutor [CBI] appearing for the respondent would submit that in cases pending against drug manufacturers like that of the petitioner, with the similar set of facts, the matters have been dealt with by this Court and this Court had dismissed the petitions on merits.

5 Having gone through the materials, this Court is of the opinion that the grounds raised by the petitioner can very well be agitated at the time of trial by letting in evidence with regard to the drugs whether they are new drugs or that the drugs were already licensed and available in the market and whether the combination of drugs were licensed earlier itself. This is not a fit case for quashing the proceedings.

6 In view of the above, the Criminal Original Petition stands dismissed.

7 At this juncture, the learned counsel for the petitioner would submit that the issues in the complaint relate to scientific details and licensing procedure and the personal appearance of the petitioner may not be required for all hearings and would pray for dispensing with the personal appearance of the petitioner during trial and the petitioner may be directed to appear as and when necessarily required by the Trial Court during the hearing.

8 Taking into consideration the submissions made by the learned counsels, the personal appearance of the petitioner before the Trial Court is dispensed with on condition that the petitioner shall make himself available during the initial questioning and during the time of questioning u/s.313 Cr.P.C and at the time of judgment. The petitioner shall also engage a counsel and cooperate with the day-to-day progress of the trial. The petitioner shall be duly represented by a counsel on all hearing dates and the petitioner shall file an affidavit of undertaking agreeing to appear before the Court as and when his appearance is wanted by the Court and that his counsel will cross examine the witness on the date of their examination in chief. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

1.The Principal Special Judge for CBI Cases, Puducherry.

2.The Inspector of Police
SPE:CBI:ACB
Shastri Bhawan, Haddows Road
Chennai 600 006.

3.The Special Public Prosecutor
CBI Cases, Chennai.

+1cc to Mr.G.L.Ram Shankar, Advocate, S.R.No.54193

Cr1.OP.No.16904/2019

RSI (CO)
GN(24/07/2019)