

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP No.22948 of 2017

and

Crl.M.P.No.13376 of 2017

D.Suraj Srinivasan

...Petitioner

.vs.

The Drug Inspector,
Ashok Nagar Range, Zone-III,
Chennai-600 006.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the case in C.C.No.4180 of 2002 on the file of the IV Metropolitan Magistrate, Saidapet and quash the same.

For Petitioner : Mr.M.S.Krishnan, Sr.counsel
for M/s.Sarvabhauman Associates

For Respondent : Mr.Mohamed Riyaz, APP

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.4180 of 2002, on the file of the IV Metropolitan Magistrate Court, Saidapet.

2. The respondent initiated proceedings against a Partnership Firm named as Subiksha Pharmacy and its director for the following offences ;

[a] Section 18(c) of the Drugs and Cosmetics Act, 1940 read with Rule 65(9) of Drugs and Cosmetics Rules, 1945 for not having not sold drugs in accordance with the prescription of the Doctor punishable U/s.27(d) of the Drugs and Cosmetics Act, 1940;

[b] Section 18(c) of the Drugs and Cosmetics Act, 1940 read with Rule 65(17) of Drugs and Cosmetics Rules, 1945 for having sold a date expired drug punishable U/s.27(d) of the Drugs and Cosmetics Act, 1940;

[c] Section 18(c) of the Drugs and Cosmetics Rules, 1940 read with Rule 65(3)(1) of Drugs and Cosmetics Rules, 1945 for having not maintained the prescription register as per the provision of the Act, punishable U/s.27(d) of the Drugs and Cosmetics Act, 1940;

[d] Section 18B of the Drugs and Cosmetics Act, 1940 read with Rule 65(17) of Drugs and Cosmetics Rules, 1945 for having not furnished the documents and information for carrying out the purpose of this Act, U/s.28A of the Drugs and Cosmetics Act, 1940;

3.This petitioner was arrayed as A-4 in the complaint. It is seen from records that the case was split up and proceedings continued as against the Firm and three other Directors in C.C.No.7531 of 2001. The learned IV Metropolitan Magistrate, Saidapet, by a judgment dated 27.03.2007, convicted the other accused persons for an offence under Section 18(c) of the Drugs and Cosmetics Act, 1940 r/w. Rule 65(17), 65(3)(1) of the Drugs and Cosmetics Rules, 1945, r/w, u/s.27(d) of the Drugs and Cosmetics Act, 1940 and Section 18-B r/w. 28-A of the Drugs and Cosmetics Act, 1940 and sentenced them with the appropriate punishment.

4.The accused persons filed an appeal against the judgment of the trial Court in CrI.A.Nos.89, 90 & 91 of 2007. The learned V Additional Sessions Judge, after considering the entire facts and circumstances of the case and after dealing with the various provisions of law, by a judgment dated 20.12.2007, allowed all the appeals and set aside the judgment of the trial Court. Thereby all the other accused persons were acquitted of all charges and this judgment has also become final. Insofar as the present petitioner is concerned, the case was split up and it was kept pending in C.C.No.4180 of 2002.

5.Mr.M.S.Krishnan, learned Senior counsel appearing on behalf of the petitioner submitted that the present petitioner had resigned from his post as Director on 07.07.1999 itself, and the entire cause of action for the filing of the criminal complaint arose only in the year 2001, and therefore this petitioner cannot be prosecuted for the alleged offence said to have been committed after the resignation of the petitioner. In order to substantiate his arguments, the learned Senior counsel relied upon Form 32 filed before the Registrar of the Companies, which shows that the petitioner had resigned from the post of Director on 07.07.1999.

6. The learned Senior counsel further submitted that from the entire reading of the complaint, it is clear that no specific allegation has been made as against this petitioner

with regard to how and in what manner this petitioner was in charge of and responsible for the running of the day to day affairs of the Company, and therefore the complaint itself does not satisfy the requirements of Section 34 of the Drugs and Cosmetics Act, 1940.

7. The learned Senior counsel would further contend that in the appeal filed by the other accused persons, they have all been acquitted of all the charges, and therefore the benefit of the judgment in the appeal must enure to the benefit of the petitioner also since the grounds on which the appeal was allowed will equally apply to the petitioner also.

8. The learned Additional Public Prosecutor representing the respondent submitted that this petitioner was treated as an absconding accused, and the case was split up and therefore the petitioner cannot take advantage of the acquittal of the other accused persons and the petitioner has to necessarily face the trial before the Court below. The learned Additional Public Prosecutor would further contend that the other issues raised by the petitioner are all factual in nature, and the same can be agitated only before the Court below during the course of the proceedings.

9. This Court has carefully considered the submissions made on either side and the materials placed on record. This Court need not venture to give its findings on all the issues raised by the learned Senior Counsel representing the petitioner, and this Court is of the considered view that this criminal original petition can be allowed on the sole ground that the judgment of acquittal passed in favour of the other accused persons will also enure to the benefit of this petitioner.

10. It will be useful to extract the findings of the Appellate Court, while acquitting the other accused persons.

"25. In the intrinsic circumstances of the case, viewed in any angle, there is not a shred of admissible evidence in the case so as to establish the alleged crime or implicate the appellants/accused herein with the alleged crime. The prosecution has failed to prove its case beyond reasonable doubt and in such circumstances the benefit of doubt ought to be extended to the appellants herein.

11. These findings were given by the Appellate Court after appreciating the entire evidence available on record. The petitioner in this criminal original petition also stands on the very same footing to that of the other accused persons. The

case cannot be prosecuted against this petitioner on any other independent ground except the grounds that were taken against the other accused persons. Therefore, the natural corollary must be that the benefit of acquittal must also enure to the present petitioner.

12. Useful reference can be made to the judgment of this Court in 2008 2 CTC 153 and in 2015 (1) MWN (crl) 259. This Court in the judgments referred supra, has categorically held that no useful purpose will be served by putting the co accused [absconding accused] to undergo a trial, if the evidence against all the accused persons is inseparable and indivisible. These judgments will squarely apply to the facts of the present case.

In the result, the proceedings in C.C.No.4180 of 2002, on the file of the IV Metropolitan Magistrate, Saidapet is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

KP
To

- 1.The IV Metropolitan Magistrate,
Saidapet.
- 2.-Do- Thro' The Chief Metropolitan Magistrate,
Chennai.
- 3.The Drug Inspector,
Ashok Nagar Range, Zone-III, Chennai-600 006.
- 4.The Public Prosecutor,
High Court of Madras, Madras.

+1cc to M/S.Sarvabhauman, Advocate sr.4246

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srg 08/02/2019