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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRM-M-39328-2015
Date of decision : March 06,2019.

Soex India Pvt Ltd. and others Petitioners.

Versus

State of Haryana ...Respondent

2. CRM-M-18462-2014

G. Devdas and others Petitioners.

Versus

State of Haryana ...Respondent.

3. CRM-M-36863-2013

SOEX India Pvt. Ltd. and others Petitioners.

Versus

State of Haryana ...Respondent.

4. CRM-M-41812-2015

SOEX India Pvt. Ltd. and others Petitioners.

Versus

State of Haryana ...Respondent.

5. CRM-M-41915-2015

SOEX India Pvt. Ltd. and others Petitioners.

CRM-M-39328-2015 + 16 connected cases

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Versus

State of Haryana ...Respondent.

6. **CRM-M-41916-2015**

SOEX India Pvt. Ltd. and othersPetitioners.

Versus

State of Haryana ...Respondent.

7. **CRM-M-41917-2015**

SOEX India Pvt. Ltd. and othersPetitioners.

Versus

State of Haryana ...Respondent.

8. **CRM-M-39194-2015**

SOEX India Pvt. Ltd. and othersPetitioners.

Versus

State of Haryana ...Respondent.

9. **CRM-M-39329-2015**

SOEX India Pvt. Ltd. and othersPetitioners.

Versus

State of Haryana ...Respondent.

10. **CRM-M-39330-2015**

SOEX India Pvt. Ltd. and othersPetitioners.

CRM-M-39328-2015 + 16 connected cases

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Versus

State of Haryana ...Respondent.

11. **CRM-M-39389-2015**

SOEX India Pvt. Ltd. and othersPetitioners.

Versus

State of Haryana ...Respondent.

12. **CRM-M-25524-2015**

Ms. Vinita Mehta and anotherPetitioners.

Versus

State of Haryana ...Respondent.

13. **CRM-M-12168-2017**

Mohd. Murad Shaer Zadeh and anotherPetitioners.

Versus

State of Haryana ...Respondent.

14. **CRM-M-32410-2017**

Mohd. Murad Shaer Zadeh and anotherPetitioners.

Versus

State of Haryana ...Respondent.

15. **CRM-M-47204-2017**

Mohd. Murad Shaer Zadeh and anotherPetitioners.

CRM-M-39328-2015 + 16 connected cases

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Versus

State of Haryana

...Respondent.

16. **CRM-M-47225-2018**

Mohd. Murad Shaer Zadeh and another

....Petitioners.

Versus

State of Haryana

...Respondent.

17. **CRM-M-36527-2013**

Soex India Pvt. Ltd. and others

....Petitioners.

Versus

State of Haryana

...Respondent.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. T.S. Sangha, Sr. Advocate with
Mr. Gaurav Gurcharan Singh Rai, Advocate
for the petitioners.

Mr. Sandeep Verma, Advocate,
for the petitioner in CRM-M-25524-2015.

Mr. Gautam Dutt, Advocate and
Mr. Karan Pathak, Advocate
for the petitioners (in CRM-M-47225-2018,
12168, 47204, 32410-2017).

Mr. Ashish Sanghi, DAG, Haryana.

Mr. Deepak Sabharwal, Addl. A.G., Haryana.

SHEKHER DHAWAN, J.

As common questions of law and facts are involved in these
above titled petitions, therefore, with the consent of learned counsel for the
parties, all these petitions are taken up together for disposal.

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2. Petitioners have approached this Court for quashing of Criminal Complaints and summoning orders emanating therefrom in different districts of Haryana. For facility of reference, facts relevant for the purpose of decision of the present cases, are being taken from **CRM-M-39328-2015, titled Soex India Pvt Ltd. and others Vs. State of Haryana.**

3. As per the petitioners, Soex India Private Limited is a company registered under the Companies Act, 1956 and petitioners No.1 and 2 are the authorized signatory and Directors of the said company. They have been arrayed as accused Nos. 6, 7 and 8 in Criminal Complaint No. 11735/2013 filed before learned Chief Judicial Magistrate, Faridabad under the provisions of Section 18-C read with Section 27(b)(ii) of the Drugs and Cosmetics Act, 1940 (for short, “**the Drugs Act**”).

4. The petitioners have come with the plea that they are residents of Mumbai and as such are residing outside the jurisdiction of the Courts at Faridabad and learned Magistrate has no jurisdiction to entertain such a complaint. The petitioner company has obtained all the required licenses for dealing with *tabacco* products and the licenses/certificates from Government of India for carrying out any manufacturing and export activities in Maharashtra. It is a Government recognized export house.

5. As per the complaint, the officers of Food and Drugs Administration, Haryana (FDA) raided and collected samples from a retailer in Faridabad who had purchased the products from the petitioners from Mumbai. The petitioners were shocked to receive copy of the complaint from FDA officials, Faridabad wherein they are categorizing the product as “drug” with the contention that the said Hookah Molasses

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should be manufactured, sold and distributed under the manufacturing license to be obtained from Licensing Authority under the Drugs Act and Drugs and Cosmetic Rules, 1945 (for short, "the Rules of 1945"). The petitioners are manufacturers and distributors of Hookah Molasses in Maharashtra for which all the necessary approvals have been taken.

6. As per the petitioners, Hookah Molasses does not fall under Section 3(b) of the Drugs Act. However, the product of petitioner No.1 Afzal (Hookah Molasses) is not covered under Section 3(b) of the Drugs Act and 1945 Rules.

7. The petitioners have also come with the plea that the said product has been labeled as Nicotine, equal to 0.5% and therefore, it appears that the Drug Control Officers infer the said product as drug. Plea was also taken that Nicotine chewing gum, adhesive patched, lozenges, sublingual tablets, nasal spray or inhalers are used as aids to giving up smoking. However, in the instant case, the product in question does not contain any added nicotine. The product mainly contains *tabacco* in leaves form and no Nicotine is added. More so, this issue was decided by Hon`ble Bombay High Court in **State of Maharashtra Vs. Ramesh Ramnath Rastogi, 1972 MH.L.J. 14.**

8. The petitioners have also come with the plea that they cannot be held responsible for the product unless it has been sold to any customer in bulk and prayed that the product namely, Afzal (Hookah Molasses) manufactured by petitioner No.1 does not fall under the purview of the Drugs Act and the Complaint is not maintainable at all.

9. The respondents have come with the plea that the present

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petition is not maintainable as the petitioners have not come to the Court with clean hands and have not disclosed correct facts before this Court. Present complaint was filed by competent authority in accordance with powers conferred under Section 32 of the Drugs Act and as per Section 200(a) of the Code of Criminal Procedure, 1973. The prosecution was launched to highlight the illegal/unethical sale of flavored *tabacco* Molasses containing the nicotine as active ingredient which is a drug under the meaning of Section 3(b) of the Drugs Act. As per the respondents, the petitioner is involved in manufacturing of flavored Tobacco Molasses containing the nicotine as an active ingredient and specifically mentioned nicotine 0.5% as composition of Tobacco Molasses on the label of product itself. However, the nicotine contents of the tobacco leaves vary depending upon the cultivation, collection and climatic condition etc. It is not possible to manufacture the tobacco molasses of similar concentration in different situations. However, 0.5% nicotine renders the product to be covered under the chapter IV of the Drugs Act. The petitioner has not denied that the drugs in question were not manufactured by their company, which amounts to admission of the case of the respondent, on the part of the petitioner.

10. While replying on merits, the respondents have come with the plea that as per directions issued by Hon`ble Division Bench of this Court in CWP No.14597 of 2007, the Government of Haryana constituted District level Task forces for monitoring of abuse of Nicotine and Drugs Control Officer of the District was made a member of said District Task force.

11. On 31.10.2011, the District Task Force searched the premises and recovered different types of Flavored Tobacco Molasses containing the

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nicotine (0.5% w/w & 0.05% w/w) in their possession for sale and distribution (inhalation) to the customers for smoking with the help of *Hookah*. The product was labeled to contain 0.5% & 0.05% of Nicotine [i.e. 250 mg and 25 mg of Nicotine in 50 gms]. Products in context were not articles of food because use of Nicotine in Foods is prohibited and the manner of labeling & the form in which the product was being presented rendered the product to be covered under a licence which was mandatory for sale and manufacture of drugs. More so, Mr. Nitish Taneja and Mr. Mukhvinder were asked to produce any drug sale licence issued under the provisions of the Drugs Act on that premises or any other document by virtue of which they were authorized under the provisions of the Act but they failed to produce any such document/proof. More so, no sale/purchase or distribution records of the above mentioned drugs were produced and there was no way to tally as to how much quantities of the drugs were purchased and how much have been sold. The products in question were labeled as Molasses Tabacoo containing Nicotine and the same were being manufactured and sold for inhalation by using Hookahs. The use of Nicotine in food is prohibited.

12. As regard to the jurisdiction of the Court, plea was taken that question of jurisdiction does not fall under Section 177 Cr.P.C., rather Section 179 Cr.P.C. applies to the present case which provides for jurisdiction of the Court to try the case where act is done or consequences ensues.

13. Plea was also taken that the petitioner had remedy to challenge the summoning order by invoking revisional jurisdiction before

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the Court of Sessions at Faridabad and as such, the present petition under Section 482 Cr.P.C. shall not be maintainable and the same be dismissed.

14. Learned Senior counsel representing the petitioners contended that the law on the point is settled that any commodity which is to fall under Section 3(b) of the the Drugs Act, there must be some notification. More so, any nicotine product cannot be taken to be drug and if that be so, the Cigaretts, Cigar etc. shall also be drugs. As regard to *tabacco* products, there is separate Tabacco Act. The petitioners have valid tabacoo license.

15. Learned senior counsel for the petitioners further contended that Nicotine in its small form is not harmful to human life and essentially a medicine and different from *tabacc*. Plea was also taken that it is matter of common knowledge that if alcohol or morphine is used in small quantity, it does not become drug. The petitioners had valid license for *tabacco*, but they were not required to have manufacturing license from Haryana Government.

16. While arguing on these points, learned State counsel contended that Nicotine is a drug and as per report of Government Analyst (Annexure R/1), Nicotine was found in the sample to be 0.48% w/w against 0.5% claimed. He further contended that the sale, supply, import, manufacturing and trade of Nicotine can be done through a proper licence obtained under the Drugs Act and other laws in force and the only exemption for sale of Nicotine without license is provided in "Schedule K" of Rules of 1945 as item No. 33 wherein the extent of exemption is to the limits of 2 mg of Nicotine and the exemption is only applicable to Nicotine

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Chewing Gums meant for de-addiction of tobacco addicts. The exemption is subject to the provisions of Chapter IV of the Drugs Act and is applicable only if the Nicotine offered for sale is actually manufactured under a license. Moreover, the Insecticides Act, 1968 lists "Nicotine" as 'Nicotine Sulphate' as an insecticide in the Schedule made under Section 3(e) under the heading 'List of Insecticides'

17. Learned State counsel also contended that as the report of Chemical Analyst is available on the file, which proves that sample was positive in so far as Nicotine is concerned, and on that basis, it is established that Hukkah bars are serving *tabacco* molasses, which is clearly illegal and entails penal consequences.

18. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case, this Court is of the considered view that as per directions having been issued by Hon`ble Division Bench of this Court vide orders dated 5.11.2012 passed in CWP No.14597 of 2007, **Burning Brain Society Vs. Union of India**, the Government of Haryana constituted District level Task forces for monitoring of abuse of Nicotine in the interest of health of citizens. In compliance with the said directions of this Court raid in this case was conducted at Faridabad. Samples Molasses *tabacco* containing Nicotine were taken, which was being sold for inhalation by using Hukahs. There was no warning at the label indicating harmful effects of *tabacco* use. As per the Haryana Government Analyst report, the sample contained Nicotine 0.48% (Claimed 0.5%).

19. The definition of 'Drug' as per Section 3(b) of the Drugs Acts is

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extracted below :-

(b) “drug” includes—

(i) all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes;

(ii) such substances (other than food) intended to affect the structure or any function of the human body or intended to be used for the destruction of vermin or insects which cause disease in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette;

(iii) all substances intended for use as components of a drug including empty gelatin capsules; and

(iv) such devices intended for internal or external use in the diagnosis, treatment, mitigation or prevention of disease or disorder in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette, after consultation with the Board”

20. Nicotine is *Psycho-active* chemical substance and a drug that affects major organs, such as the heart and brain. Drug Nicotine is also mentioned at Sr. No. 33 in the table of Schedule K Exemptions and according to which only 2 mg is exempted from the requirement of Chapter IV of the Drugs Act i.e., Drug License. Schedule K of the Drugs Act is extracted below:-

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Sr. No	Class of Drugs	Extent and condition of Exemption
33	Nicotine gum & Lozenges containing upto 2 mg. Of Nicotine	The provisions of Chapter IV of the Act and rules made there under which require them to be covered by a sale license, subject to the condition that such a product has been manufactured under a valid drug manufacturing license.

21. Further the standards for quality of drugs as per Section 16 of Chapter IV of the Drugs Act are given as follows :-

“16. **Standards of quality** - (1) For the purpose of this Chapter, the expression – standard quality means -
(a). in relation to a drug, that the drug complies with the standard set out in the Second Schedule.”

22. It is not disputed that the product was actually manufactured by the present petitioners and they were asked to show the drug manufacturing license, but no such license was produced nor any such license has been produced before this Court.

23 At this stage, there is no such ground to come to the conclusion that no offence is made out and there is nothing on the file to come to the conclusion that the complaint in question is abuse of process of law and it requires quashing of the complaint itself.

24. In view of the above, finding no merit in the present petitions, the same stand dismissed in the above terms.

(SHEKHER DHAWAN)
JUDGE

March 06, 2019
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Whether speaking/reasoned? : Yes
Whether reportable? : Yes