

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Criminal Original Petition Nos.10669 and 11015 of 2013
and M.P.Nos.1 and 1 of 2013

- 1.M/s.Sontex Rolled Bandage Works,
15-C, Sector-B, Sanwer Road, Indore (M.P)
Rep. by Basant Kumar Soni, (died)
now rep. by Prahlad Kumar Soni,
Partner Responsible for Business of
Sontex Rolled Bandage Works,
Indore.
- 2.Basan Kumar Soni, (Died)
(2nd petitioner has died and amendment is made
as per order of this Hon'ble Court dated 31.10.2018
made in Crl.O.P.No.10669 & 11015 of 2013 by memo filed)
- 3.Prahlad Kumar Soni,
S/o.B.L.Soni,
3rd respondent is representing for the first
petitioner as Managing Partner. Amended as
per order in Crl.O.P.Nos.10699 and 11015 of 2013
dated 18.12.2018.
- 4.Bharat Soni,
S/o.B.L.Soni. ... Petitioners
in both Crl.O.Ps.

State of Tamilnadu,
Rep. by Drug Inspector,
Ayanavaram Range,
Villivakkam Range i/c, Zone II,
Chennai-600 006. ...Respondent
in both Crl.O.Ps.

Common Prayer: Criminal Original Petitions filed under Section 482 Cr.P.C., to quash the impugned proceedings of the respondent, bearing PRC.Nos.345 and 346 of 2012 instituted against the petitioners before the Court of the X Metropolitan Magistrate, Egmore, Chennai 600 008.

(in both Crl.O.Ps.)
For Petitioners: (No Appearance)

<https://hcservices.ecourts.gov.in/hcservices/> For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.side)

COMMON ORDER

The respondent filed a complaint before the X Metropolitan Magistrate, Egmore, Chennai, for the offence under Section 17B (e), 18(a)(i), 21, 32, 27(d) of the Drugs and Cosmetics Act 1940 against the petitioners herein and three others in P.R.C.Nos.345 and 346 of 2012. Aggrieved by the same, the petitioners have filed the present petition seeking to quash the complaints in P.R.C.Nos.345 and 346 of 2012.

2. According to the respondent/complainant, one P.Sekar, Pharmacist, Chathirpati, made a complaint on 17.02.2010 to the Director of Drugs Control, Tamilnadu, alleging that M/s.Seetharam Surgical, Samusigapuram, who is the manufacturer of bleached bandage cloth and gauze had indulged in the name of manufacturing bleached bandage cloth and gauze in the name of M/s.Sontex Rolled Bandage Works, Indore and supplying to hospitals through their associate concern M/s.Muthu Enterprises, Samusigapuram. The complainant has also produced some invoice bills raised by M/s.Muthu Enterprises to that effect. On receipt of the complaint, a team of Drug Inspectors, inspected the records and found that 49 bundles of cotton woven fabrics were booked by M/s.Muthu Enterprises, Samusingapuram and the consignee's address was self. It is alleged that the booking and delivery were done by the same person, who is the agent of M/s.Sontex Rolled Bandage Works, the 1st petitioner herein. On inspection at the NMSC warehouse of the 1st petitioner, they found a stock of bleached gauze cloth batch Nos.224 and 225 said to have been manufactured by the 1st petitioner and samples were taken from the warehouse on 20.01.2020 and sent for Drugs Testing Laboratory. On analysis, it was found that both the samples are "Not of Standard Quality". The inspection team also visited and inspected M/s.Sontex Rolled Bandage Works, and found irregularities in keeping records of manufacturing. Therefore, the inspection team seized relevant documents like invoices, transport receipts, acknowledgement, drug license and partnership deed documents. It is alleged that M/s.Muthu Enterprises is having regular business deal with 1st petitioner firm viz. M/s.Sontex Rolled Bandage Works and M/s.Seetharam Surgical is the sister concern of M/s.Muthu Enterprises. It is alleged that M/s.Seetharam Surgical is manufacturing bleached cloth gauze and it is labelled in the name of M/s.Sontex Rolled Bandage Works and supplying to TNMSC warehouses and hospitals. On completion of the investigation, the Drug Inspector filed the present complaint before the learned X Metropolitan Magistrate, Egmore, Chennai, for the offence under Sections 17B(e), 18(a)(1), 21, 32, 27(d) of the Drugs and Cosmetics Act 1940 in PRC.Nos.345 and 346 of 2012 and summons were served to the petitioners. Aggrieved by the same, the petitioners have filed the present petitions with the aforesaid prayer.

3. The learned counsel for the petitioners submitted that the complaint has been filed on 04.12.2012 before the X Metropolitan Magistrate, Egmore. The Drugs pertaining to Batch No.224 and 225 was manufactured on 20.01.2010 and the expiry of the said

products was three years from the date of manufacturing. The sample collected expires on 20.01.2013 and the complaint has been filed just 46 days before the date of expiry. The copy of the charge sheet was handed over to the petitioners by the Court only after the expiry date of the drugs, which clearly is in violation of provisions of Section 25(3), since the petitioners have been deprived of their valuable rights to defend themselves on the analysis report. The learned counsel further submitted that the first petitioner is a Partnership firm, the second petitioner is the managing partner, who died pending this complaint and the 3rd and 4th petitioners have not participated in the day to day affairs of the firm. The persons who are not participating in the day-to-day affairs of the company are not liable for any offence. He further submitted that even in the complaint, the respondent has not stated that as to how these petitioners 3 and 4 are liable for the offence. The learned counsel also relied upon the judgement reported in 2006(2)M.P.L.J in the case of S.K.B.Asia Pvt. Ltd., Vs. State of M.P and in the case of State of Karnataka Vs. Pratap Chand and others reported in A.I.R.1981 S.C.872.

4.Per contra, the learned Government Advocate (Crl.side) submitted that the first petitioner has admitted that they were involved in the manufacturing of the alleged medicament gauze. The investigation report also reveal that the petitioners have manufactured the medicament guaze for sale and sold by the first petitioner's firm, which has been declared as "not of standard quality" by the Government Analyst, Chennai for the reasons that the sample does not confirm to schedule F(II) specification for Absorbent Gauze with respect to description (Defects and Fabrics), width and fluorescence. Therefore, a show cause notice was also issued to the petitioners and they sent a false reply. The inspection team also sent the samples to the Government Analyst, which also reveals that the drugs are Not of Standard Quality. Therefore, the Drug Inspector, filed a complaint before the X Metropolitan Magistrate, Egmore, Chennai, under Section 17B(e), 18(a)(i), 21, 32 and 27(d) of Drugs and Cosmetics Act 1940. The first petitioner firm has stated no opportunity was been given for them for sending the samples to the lab for second opinion. Whereas the respondent himself soon after seizure of the goods, have sent the samples for the chemical analysis and also received the reports which reveals that itself not considered as Standard Quality. Further the petitioners have actively participated in the day to day affairs of the company or not, has to be decided only after the trial and not before this Court at this stage. Therefore, the petition is liable to be dismissed.

5.Heard the learned counsel on either side and perused the records.

6.It is not in dispute that the respondent received the complaint. Based on the complaint, they investigated the matter and also seized the products from their warehouses. The investigation reveals that the first petitioner's firm has manufactured the disputed drugs and the samples were also sent

to the Government Laboratory for analysis. The government analysis report reveals that it is not of Standard quality. The only contention raised by the petitioners are that they have not been given any opportunity to send the samples to the chemical analysis for second opinion. Since an opportunity has not been afforded, the petition is liable to be quashed. Further, the 3rd and 4th petitioners have not participated in the day-to-day affairs of the business activities of the firm and therefore, the petition has to be quashed.

7. On perusal of the records, even before the expiry of the date, the products were seized and sent for chemical analysis and the report also reveals that it is not of a Standard quality. The citations referred supra by the learned counsel for the petitioners are not applicable to the facts of the present case. In that case, the Inspector of Drugs has not sent the samples for analysis to the Government Analyst by following due procedure prescribed under Section 23 of Drugs and Cosmetics Act. Whereas, in the present case on hand, the respondent/complainant had already sent the sample to the Government Analyst for opinion before the expiry of the drugs and got an opinion and also issued show cause notice even prior to filing of the complaint. The petitioners have also sent a reply to the show cause notice in which they have not exercised the right to send the sample for a second opinion. Therefore, the contention raised by the learned counsel for the petitioner in this regard is not acceptable. The citations referred supra by the learned counsel for the petitioner in this regard is not applicable since the facts and circumstances of the case are not applicable to that of the present case on hand. Further the citations are not applicable for the reason that in that case, the case is in the trial stage, and therefore sufficient opportunity was not given may arise, whereas in the present case on hand it is in the PRC stage and as already stated, the samples were also sent to the laboratory for chemical analysis and report also received and the report revealed that the samples are not of standard quality. Therefore, the contentions regarding opportunity has not been given for sending the samples for a second opinion since on the date of the serving of the charge sheet to the petitioners, date of the drugs has got expired, is not acceptable one. The next contention is that the 3rd and 4th petitioners have not participated in the day-to-day business affairs, therefore, they were not criminally liable and also the vicarious liability cannot be foisted on the 3rd and 4th petitioners. In this regard, the first petitioner is a partnership firm, which was shown as first accused in the complaint and the second petitioner was shown as Managing Partner. Though, he died during pendency of these petitions, the partnership firm should have been represented by the other partners. Further in a partnership concern, all the partners will be taking part in the day-to-day affairs of the firm. Whether the petitioners have actively participated in the day-to-day affairs or not will be decided only after recording evidence.

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8. Considering all the above facts and circumstances of the

case, this Court is not inclined to invoke its power under Section 482 Cr.P.C., to quash the complaint. Therefore, these Criminal Original Petitions are liable to be dismissed, accordingly, dismissed. However, the petitioners can raise all their defence before the trial Court. Connected miscellaneous petitions are closed.

9.Since the matters are pending from the year 2013, the learned X Metropolitan Magistrate, Egmore, Chennai, is directed to complete the trial and dispose of the same on merits and in accordance with law, within a period of three months from the date of receipt of copy of this order.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Rm

To

1. The X Metropolitan Magistrate,
Egmore,
Chennai-600 008.
2. The Public Prosecutor,
High Court, Madras.
- 3.The Drug Inspector,
Ayanavaram Range,
Villivakkam Range i/e, Zone-II,
Chennai-600 006.

+2cc to Mr.S.Ayyathurai, Advocate, S.R.No. 3774 & 3775

Cr1. O.P.Nos.10669 and 11015 of 2013

SSV(CO)
GN(03/03/2020)

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