

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Criminal Original Petition No.11100 of 2013
and
M.P.No.1 of 2013

Mantena Surendranath ... Petitioner/Accused

-vs-

Drug Inspector,
Purasawakkam Range,
O/o.the Assistant Director of Drugs Control,
Zone-II, 259-261, Annasalai, D.M.S.Campus,
Teynampet,
Chennai - 600 006. ...Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.6482 of 2012 on the file of the X Metropolitan Magistrate, Egmore and quash the same insofar as the petitioner herein as accused No.3 in the said C.C.No.6482 of 2012.

For Petitioners: Mr.N.S.Nanda Kumar

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

O R D E R

The respondent herein filed a private complaint against the petitioner and three others for the offence under Section 18 (c) of the Drugs and Cosmetics Act 1940, Rules read with Rules 65(2), 65(3) (1) and 65(9) (a) punishable under Section 27(d) of the Act, before the learned X Metropolitan Magistrate, Egmore, Chennai. The petitioner is arrayed as A3 in the complaint. The learned Magistrate took cognizance of the complaint in C.C.No.6482 of 2012 and issued summons to the petitioner and other accused persons. Aggrieved by the same, the petitioner has filed the present petition to quash the complaint as against him.

2.The learned counsel for the petitioner submitted that the petitioner is arrayed as A3 in the complaint. The petitioner is one of the Directors of the A1 company and he has not actively participated in the day-to-day affairs of the company and is not aware of the day-to-day affairs of the company. He further submitted that it is only A4, who is the Manager-Operations, is looking after the day-to-day affairs of the company and he has

also admitted the guilt of offence. Since the petitioner has not actively participated in the day to day affairs of the company, he is not vicariously liable for the offence committed by the company. The learned counsel also relied upon the judgments reported in AIR 1983 SC 67 in the case of Municipal Corporation of Delhi Vs. Ramkishan Rohtagi and others, 1985(Law Weekly-Criminal)45 in D.K.Javer and others Vs.State rep. by Drug Inspector, Madras City, 1998(5)SCC 343 in State of Haryana Vs.Brij Lal Mittal and others, 2004(7)SCC 15 in Monaben Ketenbhai Shah and another Vs.State of Gujarat and others, 2005 (8)SCC 89 in S.M.S.Pharmaceuticals Ltd., Vs.Neeta Bhalla and another, 2006(10)SCC 581 in Sabitha Ramamurthy and another Vs.R.B.S.Channabasavardhya, 2009(1)MWN(Cr)DCC 108 in Ronaldo Colaco Vs.Nelsun Papers Mills Ltd., rep. by Accounts Officer, 2010(11)SCC 469 in State of NCT of Delhi through prosecuting Officer Insecticides Vs.Rajiv Khurana and 2011(1)SCC 176 in Pepsi Co.India Holding Pvt. Ltd., Vs.Food Inspector and another.

3.The learned Government Advocate (Crl.side) would submit that though the petitioner herein is one of the Directors of the company, he is enjoying the fruits of the company and he is aware of the entire transactions of the petitioner- Company. Therefore, he is aware of the day-to-day affairs of the company. Whether, the petitioner being one of the Director of the Company is vicariously liable or not will be decided only after the trial and not at this stage. The citations referred to by the learned counsel for the petitioner will not be applicable to the present facts and circumstances of the case on hand. Hence, the petition is liable to be dismissed.

4.Heard both sides and perused the records.

5.It is not in dispute that the respondent had filed a private complaint as against the petitioner and others for the offence under Section 18(c) of the Drugs and Cosmetics Act 1940, Rules read with Rules 65(2), 65(3)(1) and 65(9)(a) punishable under Section 27(d) of the Act. In the said complaint, the petitioner was shown as A3. Considering the facts and circumstances, nature of offence and the nature of the transaction involved in this case, it is for the petitioner to prove as to whether he has actively participated in the company affairs or not. It is a matter of fact, which has to be decided only after the trial. The submission of the learned counsel for the petitioner that no Managing Director or Directors of the company are personally liable and according to the petitioner, only A4, who is the Manager Operations is held liable for the day-to-day affairs of the company is not acceptable. Since without the knowledge of the Managing Director or the Directors of the company, no decision is taken on the day-to-day affairs or on the transactions made by the company. However, all these facts are to be decided only after the trial and not at this stage.

6.There is no quarrel with the settled preposition of law that the Managing Director or Directors of the company are not vicariously liable and the person, who actively participates in

the day-to-day affairs is only liable. But, in this case, the petitioner has not stated that which of the Director is personally liable and who is looking after the company affairs. The citations referred to by the learned counsel for the petitioner will not be helpful to decide this petition. It is for the petitioner to establish himself before the trial that he has not actively participated in the day-to-day affairs of the company and he is not aware of the averments made in the complaint. Therefore, this Court feels that it is not a fit case to exercise its power under Section 482 Cr.P.C. Accordingly, this Criminal Original Petition is dismissed. However, the petitioner is at liberty to raise all his defence before the trial Court. Connected miscellaneous petition is also closed.

7. Since, the complaint in C.C.No.6482 of 2012 is pending from the year 2012 onwards, the learned X Metropolitan Magistrate, Egmore, Chennai, is directed to dispose of the case in accordance with law within a period of four months from the date of receipt of copy of this order.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The X Metropolitan Magistrate,
Egmore, Chennai.
2. The Public Prosecutor,
High Court, Madras.
3. The Drug Inspector,
Purasawakkam Range,
O/o. the Assistant Director of Drugs Control,
Zone-II, 259-261, Annasalai, D.M.S. Campus,
Teynampet, Chennai - 600 006.

+1cc to Mr.N.S.Nanda Kumar, Advocate, S.R.No. 5567

CrI.O.P. No.11100 of 2013

AP(CO)
GN(31/01/2020)