

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2021

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH
Crl.OP.No.13029 of 2020
and
Crl.MP.No.5096 of 2020

Dr.Regina Jaya Shalini

... Petitioner/Accused

.Vs.

State Rep.by
Drug Inspector,
Perambur Range,
O/o.The Assistant Director of Drugs
Control,
Zone-I, DMS Campus,
Chennai-6.

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash all the proceedings in C.C.No.9325 of 2019, on the file of the learned Xth Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.P.Kumaresan

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This criminal original petition has been filed seeking to quash the proceedings in C.C.No.9325 of 2019, on the file of X Metropolitan Magistrate, Egmore, Chennai.

2.The respondent has filed a complaint against the petitioner for the contravention of Section 18(c) of drugs and Cosmetics Act 1940, punishable under Section 27(b)(ii) of Drugs and Cosmetics Act 1940 and Section 18-A of Drugs and Cosmetics Rules 1945, Punishable under Section 28 of the said Act.

3.The allegations in the complaint is to the effect that the petitioner who is a practising doctor is said to have purchased certain drugs and stocked the same for sale without obtaining any license. On secret information, an inspection was made in the dispensary of the petitioner and drugs were seized and the same was produced before the concerned Court on 21.07.2017.

4.A Show Cause Memo dt.7.12.2018, was issued to the petitioner calling upon her to explain regarding the drugs that were stocked for sale without any license. The petitioner gave a reply dt.14.12.2018, stating that the drugs are not meant for sale and it was only to dispense to the patients who are treated by the petitioner. The petitioner further took a stand that these drugs were never sold across the counter and the petitioner also provided the names of the distributors who supplied the drugs to the petitioner.

5.The respondent was not satisfied with the reply given by the petitioner and therefore proceeded to file a complaint against the petitioner for an offence under the Drugs and Cosmetics Act, 1940 (hereinafter referred to as "the Act"). Aggrieved by the same, the present criminal original petition has been filed before this Court.

6.Heard Mr.P.Kumaresan, learned counsel for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing on behalf of the respondent.

7.The main grounds that were raised by the learned counsel for the petitioner is that there was no contravention of Section 18(c) of the Act since the drug was not meant for sale and there were absolutely no materials for the respondent to file a complaint against the petitioner.

8.In order to constitute an offence under Section 18 (c) of the Act, the prosecution must come up with some affirmative materials that there was manufacturing of drugs for sale or selling of drugs or stocking the drugs for sale. The possession of drugs simpliciter is not punishable under the Act.

9.In the present case, the petitioner is a doctor and she was in possession of drugs inside the dispensary. She had taken a specific stand that these drugs are dispensed to patients who come to the dispensary for treatment. The petitioner has also given the particulars of the distributors who had supplied the drugs. There is only one document that is relied upon by the respondent to substantiate the charges. The same is a receipt that was given to a patient by the petitioner. For proper appreciation, the particulars in the receipt is extracted hereunder:

J.M.HOSPITAL

123, Ragavan Street, Perambur, Chennai-11

Tel.No.25590101, 9176551043

Mrs.Saraswathi 57/F

CBG Test	:	60.00
Doctor Fees	:	100.00
Glittar 2. 20 Tab	:	192.00
Volip . 2 10 Tab	:	59.00
Mecofol plus 10 Tab	:	144.00
Cash Received	:	555.00

10. Apart from the above material, all the other bills pertain to the purchase of drugs made by the hospital.

11. There is a specific exemption given from the operation of Chapter IV of the Act. Those are cases where the drugs are supplied by a registered practitioner to his or her own patient which is for the use of the individual patient. The same is specified in schedule K. Clause 5 of the said Schedule specifically deals with this exemption.

12. In the present case, the petitioner had given certain drugs to the patient in the course of treating the concerned patient. That by itself will not constitute an offence under Section 18(c) of the Act, since it will not amount to selling the drugs without license. That apart, the person to whom it was prescribed was not even examined in the present case.

13. The offence under Section 18 A of the Act, has also not been made out against the petitioner since the petitioner has provided / disclosed the names of the distributors who had supplied the drugs.

14. In view of the above discussion, the continuation of the criminal proceedings as against the petitioner will amount to an abuse of process of Court which requires the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

15. In the result, the proceedings in C.C.No.9325 of 2019, on the file of the X Metropolitan Magistrate, Egmore, Chennai, is hereby quashed and this criminal original petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

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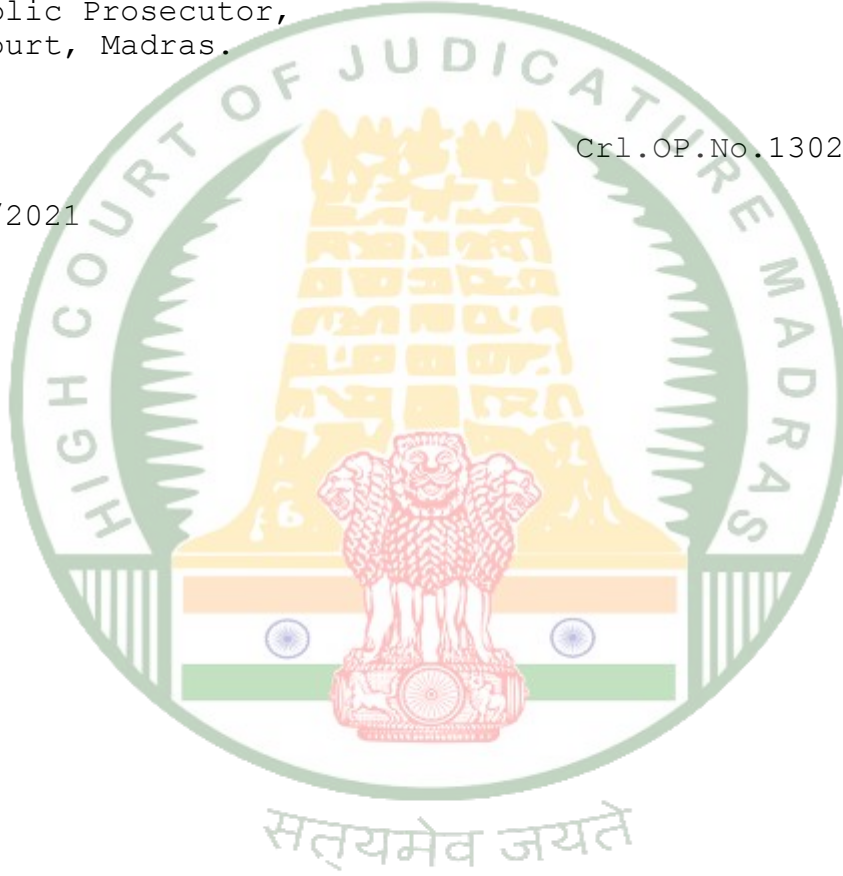
Sub Assistant Registrar

To

1. The Xth Metropolitan Magistrate,
Egmore, Chennai.
2. The Drug Inspector,
Perambur Range,
O/o.The Assistant Director of Drugs
Control,
Zone-I, DMS Campus,
Chennai-6.
2. The Public Prosecutor,
High Court, Madras.

GPL (CO)
CSR 31/03/2021

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