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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.OP.No.18848 of 2021
and Crl.M.P.Nos.10349 & 10350 of 2021

1. M/s. Areete Life Science Pvt. Ltd.,
Plot No.5, Sree Sapthagiri Gardens,
Kayarambedu, Guduvancherry,
Tamilnadu - 603 202.
rep by Thiru. K. Senthil Kumar,
Managing Director of the Company.

2.K. Senthil Kumar

... Petitioners

Versus

State represented by
The Drug Inspector,
Valasaravakkam Range,
O/o. The Assistant Director of Drug Control,
Zone - IV, Chennai - 600 006
(9894262200).

... 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.204 of 2021 on the file of the Chief Judicial Magistrate Court, Thiruvallur and quash the complaint filed by the Respondent and consequential all further proceedings against the Petitioners.

For Petitioners: Mr.R.Sasikumar

For Respondent : Mr.A.Damodaran.
Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed to call for the records relating to the case in C.C.No.204 of 2021 on the file of the Chief Judicial Magistrate Court, Thiruvallur and quash the complaint filed by the Respondent and consequential all further proceedings against the Petitioners.

2.The petitioners are A1 and A2 facing trial for the contravention of Section 18(a)(i) of the Drugs and cosmetics



Act, punishable under Section 27 (d) of the said Act have filed this petition.

3.The contention of the petitioner is that though the drugs were seized from the wholesaler from M/s.Sai Surya Pharma, 2/63, Ground Floor, South facing, Front Portion, Kambar street, Dhanalakshmi Nagar, Alapakkam, Porur, Chennai - 600 116. The drugs viz., MECOBEN-B capsules had to be stored in a proper place with a controlled temperature, for which the wholesaler might not have proper storage, that may be the reason for not measuring to the standard level. The Inspection and the seizure conducted by the Drug Inspector have not taken these factors in account.

4.On receipt of the show cause notice, the petitioners have immediately given a detailed reply and further from the standard samples retained by the petitioners, they have verified and found that the standard samples taken during the manufacture are answering all the standards and quality of the drugs. He further submitted that in the show cause notice, the petitioners were not given any right to forward the retained samples to the Central Laboratory, due to which, the petitioners valuable rights denied and extinguished. Hence prayed for quashing of this Criminal Original Petition.

5.The learned Additional Public Prosecutor on instruction of the Drug Inspector submitted that in this case on 22.04.2019, M/s.Sai Surya Pharma was inspected by the Drug Inspector, the sample of MECOBEN-B was drawn. Thereafter, the sample portion was assigned with number ATS/29/VLS/19 dated 22.04.2019 and the said sample was forwarded to the Government under Form 18 to the Government Analyst, Drugs Testing Laboratory, Teynampet, D.M.S.Campus, Chennai on the same day i.e. on 22.04.2019. On 14.06.2019, the Government Analyst report received with the reason that the sample does not conform the label claim. Thereafter, on 18.06.2019, show cause notice was issued to M/s.Sai Surya Pharma, Alappakam for having stocked the said drug, as per Section 18(a) (i) of the Act.

6.The Proprietor cum competent person of M/s Sai Surya pharma, Alapakkam, Porur sent the details of the purchase of the drug with a copy of the invoice. Thereafter, the show cause notice was sent to the petitioners herein on 21.06.2019, with the analytical report in Form 13 with protocol of analysis as per Section 25(2) of the said Act. The second petitioner had submitted a reply on 24.06.2019, which was received on 04.07.2019, since the reply was not satisfactory, a complaint was lodged on 28.07.2021, after getting sanction. The complaint is filed after the shelf life of the Drug. Therefore, the valuable right of the petitioner under Sections 25(3) and 25(4)



of the Act deprived.

7. Considering the submissions and on perusal of the materials, this Court finds that according to the prosecution, all statutory provisions followed and the complaint filed within the period. In the reply to the show cause notice in paragraph No.6 it is stated that

"6. We would like to state that the finished product might have stored in improper storage conditional that might have resulted in content failure of 'Alpha Liopic Acid'."

The reply to the show cause notice has to be clarified to find out with regard to the denial of rights under Sections 25(3) and 25(4) of the Act. This has to be done during Trial. The points raised by the petitioners are factual in nature, which are to be decided during trial and not in a quash petition. In view of the same, this Court is not inclined to entertain this Criminal Original Petition.

8. The counsel for the petitioners seeks exemption of the petitioners appearance before the lower Court.

9. This Court directs the lower court to consider the petition filed by the petitioners under Sections 317 or 205 Cr.P.C., after obtaining affidavit from the petitioners that they shall cooperate with the trial and shall not be a reason for any delay of the trial, shall not dispute the evidence recorded in their absence and not dispute their identity and shall appear before the trial Court as and when directed when the presence of the petitioners are indispensable.

10. Accordingly, this Criminal Original Petition stands dismissed with the above directions. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ah/skr

To

1. The Chief Judicial Magistrate,
Chief Judicial Magistrate Court,
Thiruvallur.



2.The Drug Inspector,
Valasaravakkam Range,
O/o. The Assistant Director of Drug Control,
Zone - IV, Chennai - 600 006

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3.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.V.R.Appaswamee, Advocate, S.R.No.56273

Crl.OP.No.18848 of 2021

RSI (CO)
SB(29/11/2021)