IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.10.2021
PRONOUNCED ON : 22.10.2021

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

Crl.O.P.Nos.4419, 4420 & 4595 of 2017
and
Crl.M.Ps.No.3300, 3302, 3303, 3469 & 3470 of 2017

1.Y.K.Hamied
The Chairman & Managing Director
M/s.Cipla Ltd. ...Petitioner / A2
(in Crl.O.P.No.4419 of 2017)

2.M/s.Cipla Ltd,
S-103 to S-105, S-107 to S-112 & L-147 to 4-147-1,
Verna Industrial Estate, Verna, Salcette, Goa – 403 722,
Represented by its Authorized Signatory,
M.Satyasheel Desai ...1st Petitioner / A1
(in Crl.O.P.No.4420 of 2017)

3.M.Satyasheel Desai,
Authorized Signatory at Unit VII of M/s.Cipla Ltd.
S-103 to S-105, S-107 to S-112 & L-147 to 4-147-1,
Verna Industrial Estate, Verna, Salcette, Goa – 403 722.
...2nd Petitioner / A3
(in Crl.O.P.No.4420 of 2017)

4.M/s.Cipla Ltd.
Gala No. 1 to 10, building No.D-3, Kalher Village,
Shree Arihant Compound, Bhiwandi Dist. Thane,
Maharashtra.
Represented by Santhosh Naik,
Authorized Signatory of the depot
...1st Petitioner / A4
(in Crl.O.P.No.4595 of 2017)

5.Santosh Naik,
Authorized Signatory of the depot of M/s.Cipla Ltd.
Gala No. 1 to 10, building No.D-3, Kalher Village,
Shree Arihant Compound, Bhiwandi Dist. Thane, Maharashtra.
...2nd Petitioner / A5
(in Crl.O.P.No.4595 of 2017)

Vs.

State Represented by
T.S.Thamilchelvi, B.Pharm
Senior Drugs Inspector & Mylapore i/c,
George Town – I Range,
O/o Asst. Director of Drugs Control, Zone – III,
DMS Campus, No.359, Anna Salai,
Chennai – 600 006. ...Respondent
(in all Crl.O.Ps)

Prayer : Criminal Original Petitions filed under Section 482 Cr.P.C., to call for the records in C.C.No.9161 of 2010 pending on the file of the IV Metropolitan Magistrate, Saidapet, Chennai and quash the same as against the petitioners herein.

For Petitioner	:	Mr.P.S.Raman, Senior Counsel, For Mr.Roshan Balasubramanian (in Crl.O.P.No.4419 of 2017)
For Petitioners	:	Mr.J.Sivanandaraj For Mr.V.Sankaranarayanan (in Crl.O.P.No.4420 of 2017)
For Petitioners	:	Mr.J.Sivanandaraj For Ms.Ridhima Sharma (in Crl.O.P.No.4595 of 2017)
For Respondent	:	Mr.E.Raj Thilak, Addl. Public Prosecutor (in all Crl.O.Ps)

COMMON ORDER

These Criminal Original Petitions had been filed by A2 (Crl.O.P.No.4419 of 2017), A1 and A3 (Crl.O.P.No.4420 of 2017) and A4 and A5 (Crl.O.P.No.4595 of 2017) under Section 482 Cr.P.C seeking to interfere with further proceedings and to quash C.C.No.9161 of 2010 pending on the file of the IV Metropolitan Magistrate, Saidapet, Chennai, insofar as the said petitioners / accused are concerned.

2.A1 and A4 are M/s.Cipla Ltd., at Goa & Maharastra, A3 and A5 are the Authorized Signatory of M/s.Cipla Ltd., and A2 is a Chairman and Managing Director of the said Company.

3.M/s.Cipla Ltd., was founded in the year 1935 by the father of A2 and is claimed to be one of the largest Pharmaceutical company in India. They had received approval / permission dated 10.02.2006 to manufacture Oseltamavir Capsules 75 mgs (ANTIFLU) tablet for domestic use and also for export purposes. The labels of the drugs which are meant for domestic use and which are meant for export purposes would vary though the tablets would be the same.

4.The Company / A1 manufactured the said drug, ANTIFLU tablets in Batch No.X90430 for export purposes. The 6th accused who is not a party before this Court, Navkar Agencies had ordered the said batch of ANTIFLU tablets for export to Mexico, USA and Singapore. A1 therefore supplied the said tablets for export purposes to A6, Navkar Agencies. However, instead of directly exporting the drugs, A6 had supplied the said drugs to A8 company / Euphoria Healthcare Pvt. Ltd., who again supplied them for export to A10 company / TDP Technologies Pvt. Ltd.

5.The respondent, Senior Drugs Inspector, in the office of the Assistant Director of Drugs Control, Chennai, inspected TDP Technologies Pvt. Ltd., / A10 and found the said ANTIFLU tablets meant for export, stored in that place. They seized the said tablets. They then issued show cause notices to all the accused claiming violation of Section 18(a) r/w Section 17(b) of the Drugs and Cosmetics Act, 1940 r/w Rules 94(b) and 96(iv) of the Drugs and Cosmetics Rules 1945, punishable under Section 27(d) of the said Act for selling Batch No.X90430, which was meant for export alone.

6.It must be pointed out that replies had also been given to the said show cause notices by the petitioners / A1 to A5. However, sanction to launch prosecution was granted on 14.07.2010 by the office of the Director of Drug Controller Tamil Nadu Chennai and subsequently, a complaint had also been lodged for contravention of aforesaid provision and which complaint had been taken cognizance as C.C.No.9161 of 2010 by the IV Metropolitan Magistrate, Saidapet, Chennai. Seeking to quash the said Calendar Case insofar as the present petitioners / A1 to A5 are concerned the present Criminal Original Petitions had been filed.

7.Heard arguments advanced by Mr.P.S.Raman, learned Senior Counsel and also by Mr.Sivanantharaj learned counsel for the petitioners and Mr.E.Raj Thilak, learned Additional Public Prosecutor for the respondent.

8.Mr.P.S.Raman, learned Senior Counsel focused his arguments on two points namely, that both the Sanction Authority and also the Magistrate while taking cognizance had not considered the fact that comprehensive and detailed replies had been given by the present petitioners herein to the show cause notice issued. The learned Senior Counsel lamented that there was only a cursory reference in the sanction order and in the complaint to the said replies and pointed out that had the replies been considered in their true spirit, it could have been evident that the drugs had actually been supplied for export purposes to Navkar Agencies / A6 and thereafter, the petitioners / A1 to A5 had no further control over the movement of the said drugs. It was not to their knowledge that A6 had further supplied it to A8 who had further supplied it to A10 who had stored it in their premises only for export purposes and not for wholesale or retail sales.

9.The learned Senior Counsel also pointed out that the Central Drugs Standard Control Organization had issued detailed guidelines in December 2008 prior to the filing of the complaint, with respect to prosecution of offences under the Act. He pointed out that the guidelines stipulated that labelling errors are minor defects and should not normally form the basis of launching prosecution. Further, he also stated that it was mandated that the State Drugs Control Department should constitute Screening Committees to examine investigation reports where prosecutions are proposed to be launched. This Committee should submit a written opinion on the investigation reports, regarding the feasibility of taking legal action. It had been provided that the Controlling Authority should consider the recommendations of the Screening Committee, while taking a final decision in the matter.

10.It was therefore urged by the learned Senior Counsel that there has been complete violation of procedure as enunciated by law in lodging of the complaint. It was reiterated by the learned Senior Counsel that the Sanctioning Authority had failed to consider the replies to the show cause notice in their proper perspective and further the matter was also not placed before the Screening Committee, prior to the launch of prosecution. It was therefore urged that taking cognizance of the complaint should be interfered with and the matter must be placed before the Screening Committee to re-examine the feasibility of launching prosecution considering the tenor of the replies to the show cause notice.

11.Mr.Sivanandaraj, learned counsel also urged that this Court should quash the Calendar Case and also stated that when fatal irregularity is attached at the initial stage, further proceedings cannot be permitted to continue.

12.Mr.E.Raj Thilak, learned Additional Public Prosecutor for the respondent, however stated that the contention that the drugs were meant for export purposes and not meant for sale and that the drugs meant for export purposes could not be possibly be used for local sale, are issues which can be determined only during the course of trial. He stated that there has been consideration of the reply to the show cause notice and the entire file had been placed before the Sanction Authority. He also pointed out that the replies had been produced as document and therefore stated that the learned IV Metropolitan Magistrate should be given an opportunity of examining the case of the prosecution and reiterated that the petitioners / A1 to A5 should face trial and therefore urged that this Court should dismiss the petitions.

13.I have carefully considered the arguments advanced and perused the materials on record.

14.The facts are not in dispute, A1 had manufactured Oseltamavir Capsules 75 mgs (ANTIFLU) tablets bearing Batch No.X90430 for export purposes. There is no complaint that the tablets were not of standard quality. The prosecution was launched owing to the label or branding of the tablets. The drugs were admittedly for export purposes. They were however found in the premises of A10. It is the case of the petitioners / A1 – A5, that A6 / Navkar Agencies had ordered the said batch for export purposes. A1 had supplied the drugs through its depot at Bhiwandi / A4 to Navkar Agencies / A6. However, A6 did not directly export the drugs. They inturn forwarded them to A8 who inturn forwarded them to A10 for actual export. The drugs were seized in the premises of A10. It was found that they were meant for export, but stored in the premises of A10. The respondent therefore came to a conclusion that they have meant for wholesale or retail sales. It is under those circumstances that show cause notice alleging violation of Section 18(a) r/w Section 17(b) of the Drugs and Cosmetics Act, 1940 r/w Rules 94(b) and 96(iv) of the Drugs and Cosmetics Rules 1945 was issued to the petitioners herein.

15.It is on record and it is not disputed that replies had been sent to the show cause notice. The question now is whether those replies were considered in their proper light by the Sanctioning Authority. It is also seen that subsequent to the amendment of the Act 2008, the State Drug Control Organizations were placed under obligation to constitute Screening Committees. Guidelines had been issued by the Central Drugs Standard Control Organization in December 2008. According to the guidelines,

> “(d).In particular the Guidelines mandate that “The State Drug Control Departments shall constitute screening committees comprising of at least three senior officers not below the level of Assistant Drugs Controllers or equivalent to examine the investigation reports of the cases where prosecutions are proposed to be launched. The committee may submit written opinion on the investigation reports regarding their feasibility of taking legal action. The criminal intent or gross negligence should be taken into consideration while recommending actions like prosecution etc. Care should be taken that charges framed are not based on inappropriate provisions which may be difficult to prove in the

court of law in the absence of proper justification or evidence. Cases of failing in assay, brand name disputes and non-renewal of manufacturing licence in time should be examined on their merits before recommending prosecution in such cases." and further that "Prosecutions by the Inspectors shall be launched on the basis of written permissions of the controlling authority and this authority in turn shall consider the recommendations of the screening committee while taking final decision in the matter."

(emphasis supplied)

16.There is no record to show that the show cause notice and the replies thereto were placed before the Screening Committee. There is no such reference in the sanction order also. The learned Magistrate had also not examined whether, the mandatory procedure had been adhered to the respondent / complainant. There is also no record to show that the replies to the show cause notice were examined in their proper perspective. Since there is a violation of these mandatory requirements, it is only just that cognizance which had been taken by the learned Magistrate of the complaint filed by the respondent is quashed.

17.The matter is directed back to the respondent for placing the entire file before the Screening Committee and thereafter, place the remarks of the Screening Committee before the Sanctioning Authority and a direction is given that the Sanctioning Authority should apply his / her mind and then come to a subjective satisfaction on the basis of not only the recommendations of the Screening Committee, but also on the basis of the replies to the show cause notice. If the replies to the show cause notice are rejected, then reasons must be given for the same. If necessary, further opportunity may also be granted to the petitioners. After following this particular procedure, if it is still deemed to be a case for launching of prosecution, then the respondent may proceed in manner known to law. However, violation of all these procedure renders the cognizance taken invalid.

18.The Hon'ble Supreme Court has held in Chandra Deo Singh V. Prakash Chandra Bose reported in AIR 1963 SC 1430, as follows:

"7. …No doubt, one of the objects behind the provisions of Section 202 CrPC is to enable the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind this provision and it is to find out what material there is to support the allegations made in the complaint. It is the bounden duty of the Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has, at that stage, necessarily to be determined on the basis of the material placed before him by the complainant.”

(emphasis supplied)

19.The Magistrate must scrutinize the complaint and examine in detail all materials. If that step had been taken by the Magistrate in the instant case, then the respondent would have been called to explain whether the matter was initially placed before the Screening Committee.

20.In Pepsi Foods Ltd. V. Special Judicial Magistrate reported in (1998) 5 SCC 749, the Hon'ble Supreme Court had held as follows:

“28.Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

(emphasis supplied)

21.In State of Orissa and Another V. Mamata Mohanty reported in (2011) 3 SCC 436, the Hon'ble Supreme Court had held as follows:

> “37.It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin.”

22.Even though the above principle was enunciated with respect to service matters, it can be applied to the facts of the present case, since taking of cognizance by the Magistrate without examining the mandatory aspects strikes at the very root of the launch of prosecution.

23.In State of Punjab v. Davinder Pal Singh Bhullar reported in (2011) 14 SCC 770, the Hon'ble Supreme Court had held as follows:

> 107.It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact situation, the legal maxim sublato fundamento cadit opus meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.
>
> (emphasis supplied)

24.In view of the above dictum laid down by the Hon'ble Supreme Court and more particularly, in view of the fact that the reply to the show cause notice had not been considered or placed before the Screening Committee and there is no record to show that the Screening Committee had examined the entire file and there is also no record to show that the Sanctioning Authority had applied their mind, I hold that the cognizance taken will necessarily have to be interfered with and further proceedings in C.C.No.9161 of 2010 is quashed. The matter is remitted back to the file of the respondent herein, with a direction to place the entire file including the replies to the show cause notice before the Screening Committee and a direction is given to the Screening Committee to examine the entire issue and thereafter pass necessary recommendations. Thereafter, the entire file should be placed before the Sanctioning Authority. This process has to be gone through. If further materials are required by the Screening Committee from the petitioners, they may be called upon to provide them and if it is required, they may also be granted an opportunity of personal hearing.

25.With the above observations, the present Criminal Original Petitions are allowed and the calendar case in C.C.No.9161 of 2010 now pending on the file of the IV Metropolitan Magistrate, Saidapet, Chennai is quashed insofar as the petitioners / A1 to A5 are concerned. The respondent is directed to follow the mandatory provisions stated above. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

smv

To

1.The Senior Drugs Inspector & Mylapore i/c,
George Town – I Range,
O/o. Asst. Director of Drugs Control,
Zone – III,
DMS Campus, No.359, Anna Salai,
Chennai – 600 006.

2.The Public Prosecutor
High Court of Madras.

3.The IV Metropolitan Magistrate,
Saidpet, Chennai.

4.(do through) The Chief Metropolitan Magistrate,
Chennai

+2ccs to Mr.Roshan Balasubramanian, Advocate SR.No.54180

Crl.O.P.Nos.4419, 4420 & 4595 of 2017

KV(CO)
RVM(02/11/2021)