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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22/12/2021

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.26120 OF 2017

AND

CRL.M.P.NOS.15015 AND 15016 OF 2017

Jayanthilal Surana

... Petitioner/Accused

.Vs.

The State,
Rep. By S.K.Arumugam, B.Pharm,
Senior Drugs Inspector i/c,
O/O. The Assistant Director of Drugs Control,
Salem Zone,
No.5, Thiruvalluvar Street,
Subramania Nagar,
Salem - 5.

... Respondent/Complainant

PRAYER:-

Criminal Original Petition filed under Section 482 Cr.P.C.,
to call for the records in C.C.No.178 of 2015 pending on the
file of the Judicial Magistrate No.II, Hosur and quash the same.

For Petitioner : Mr.P.S.Raman
Senior Counsel
For M/s.T.D.Selvan Babu

For Respondent : Mr.S.Vinoth Kumar
Government Advocate
(Criminal Side)

O R D E R

This Criminal Original Petition has been filed to quash
C.C.No.178 of 2015, pending on the file of the Judicial
Magistrate No.II, Hosur.

2. The crux of the complaint is that M/s.USV Limited has
been manufacturing and marketing a number of formulations for



which the maximum retail price/ceiling price has also been fixed/notified by the NPPA from time to time. During examinations, it has been observed that the Government of India fixed the MRP for some brands of M/s.USV Ltd., under DPCO. Instead of implementing the prices fixed by the NPPA/Government, the USV Limited has chose to transfer these brands to some small scale companies for manufacturing the same. Thereafter, sold and marketed in their name.

3. It is the contention of the learned Senior counsel appearing for the petitioner that Small Scale Industries should have filed Declaration within sixty days for manufacturing any drugs whereas the respondent herein has not filed a Declaration, which is against the Drugs Price Control Order as well as the offence punishable under Sections 8, 10 & 11 of the Essential Commodities Act, 1955.

4. The learned Senior Counsel further submitted that the sanction was originally granted in the year 2004 and the alleged violation took place in the year 2011. The sanction order indicate that only USV and SSI Units and Associates sought to be prosecuted whereas this complaint has been filed against the petitioner in an individual name only for abatement.

5. Further, the offence punishable for such Declaration is maximum one year and with fine. Though the complaint was said to have been filed in the year 2008, the same was taken cognisance only in the year 2015, which is barred by limitation. Hence sought to quash the proceedings.

6. The learned Government Advocate (Criminal Side) submitted that based on the the sanction order, dated 5/5/2004 of the National Pharmaceutical Pricing Authority (NPPA), New Delhi, prosecution has been launched.

7. The petitioner was prosecuted on the basis of the private complaint for the alleged offence punishable under Section 3 (1) of the Essential Commodities Act. The only allegation against the petitioner is that the petitioner was SSI who was manufacturing drugs which was originally to be manufactured by USV and such a declaration ought to have filed within six months. The petitioner has not filed any such declaration.

8. It is to be noted that the very sanction order was issued on 5/5/2004 but whereas the draft complaint was filed before the Magistrate on 8/12/2018 which was returned by the learned Magistrate as date of offence has not been mentioned. Thereafter, the complaint was filed, represented on 3/2/2009 and cognisance was taken in the year 2015.



9. As per Section 7 of the Essential Commodities Act, if any person contravenes any order he will be punished with imprisonment for a term which may extend to one year and shall also be liable to fine. In such a case, the cognisance ought to have been taken within a period of three years, but not exceeding three years. The offence alleged against the petitioner is non filing of the Declaration. The fact that they are SSV Units whereas the offence was said to have committed in the year 2015 which was also beyond the period of limitation. Therefore, the petitioner cannot be prosecuted for alleged violation under Section 8 of the Essential Commodities Act, 1955, as no principal offender is made a party to the proceedings and no evidence is gathered and filed to show that any order made under Section 3 (2) (c) of the Act has been violated by the petitioner.

10. In such a view of the matter, this Court is of the view that as the complaint has been filed only for abatement and the sanction was granted only against the Companies, the petitioner since being an individual cannot be prosecuted.

11. Accordingly, this Criminal Original Petition is allowed. Proceedings in C.C.No.178 of 2015 pending on the file of the Judicial Magistrate No.II, Hosur, is quashed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mvs

To

1. The Judicial Magistrate No.II,
Hosur.
2. The Public Prosecutor,
High Court, Madras.

+2ccs to M/s.T.D.Selvan Babu, Advocate, S.R.No.68915

CRL.O.P.NO.26120 OF 2017

SSD(CO)
PBS/21/01/2022