



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl.O.P.No.17107 of 2017

and

Crl.M.P.Nos.10507 &10508 of 2017

- 1.Mr.Bharat Chabildas shah
- 2.Mr.Rajesh Sumanlal Shah
- 3.Mr.Vijay Chhabildas Shah
- 4.Mr.Suresh Chhabildas Shah
- 5.Mr.Prakash Navin chandra Shah

...Petitioners

Vs.

1. Union of India
Represented by Drug Inspector
Office of the Deputy Drugs Controller (India)
Central drugs Standard Control Organization,
South Zone, 2nd floor,
Shastri Bhawan Annex
Chennai-600 006.
2. M/s.Mepro Pharmaceuticals Private Limited
Represented by Chairman and others,
Unit II, Q Road, Phase IV, GIDC Wadhwan 363 035
District:Surendranagar, Gujarat

..Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.3647 of 2017 pending on the file of the Hon'ble X Metropolitan Magistrate, Egmore, Chennai, and quash the same against the petitioners herein.

For Petitioners	:	Mr.K.M.Aasin Shehzad
For Respondents	:	Mr.B.Sudhirkumar for R1 Senior Panel Counsel Mr.R.Palaniandavan for R2



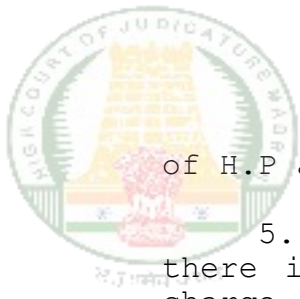
O R D E R

This Criminal Original Petition has been filed to call for the records in C.C.No.3647 of 2017 pending on the file of the X Metropolitan Magistrate, Egmore, Chennai, and quash the same against the petitioners herein.

2. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

3. Learned counsel for the petitioners submitted that the petitioners have been arrayed as A2 to A6 in C.C.No.3647 of 2017 preferred by the 1st respondent herein for the offence punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940 purportedly committed by 2nd respondent/1st accused. There was no averment made in the complaint that the petitioners herein were incharge and responsible for day to day affairs of the company. He further submitted that they cannot be prosecuted without any specific averments made in the complaint and there is no whisper made with regard to the role of these petitioners in conduct of the company affairs and business. The private complaint has been filed by the Drug Inspector for the offence under Section 18(a)(i) of Drugs and Cosmetics Act, 1940 (hereinafter referred as Act). The specific allegation made in the complaint is that the first accused is a company manufacturing Aspirin. The Drug Inspector who had drawn the sample (under Section 23 of the Drugs and Cosmetics Act) of Clopidogrel and Aspirin Capsules, the same was analysed by the Government Analyst, Central Drugs Testing Laboratory, Mumbai and declared that the sample is not of standard quality as defined in Drugs and cosmetics Act, 1940. Since the subject drugs do not conform to the I.P(Indian Pharmacopeia) 2014 with respect to the test for Salicylic Acid in Aspirin Gastro-Resistant Tablet, he has given a private complaint stating that the accused committed serious offences relating to Drugs affecting the health and life of numerous citizens being patients and the penal provisions of the special statutes have to be applied strictly. He further contented that as per Section 34 of the Drugs and Cosmetics Act, 1940, in the absence of any evidence to show that these petitioners are incharge of the day to day affairs of the company, the complaint cannot be maintained against the persons. Hence, he prayed to quash the proceedings.

4. In support of his submission, he relied upon the judgment of this Court reported in 2020 SCC Online Mad 14274 in the case of Medplus Pharmacy, Rep. by its Director, K.S.Murali Krishna and another Vs Paramesham Kasthuri in CrI.O.P.No.3906 of 2020 and also the judgment of Himachal Pradesh High Court in Cr.MMO.No.29 of 2014 in the case of Ashok Kumar Tyagi vs. State



of H.P and others.

5. From the above judgments, it is made clear that when there is no averment made in the complaint as to who was in charge of and responsible for conduct of business, the prosecution is not maintainable.

6. Per contra, learned counsel for the respondents submitted that the offence is serious and therefore, whether the persons were incharge of the company at the time of occurrence is a matter of evidence and the same cannot be gone into in this petition. At the outset, as indicated, the offence charged against the company appears to be seriously affecting the human life. Now, the private complaint has been lodged against the company and its Directors.

7. It is relevant to extract Section 34(1) of the Drugs and Cosmetics Act, 1940, which read as follows:

34. Offences by companies:

(1). "Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly."

8. This Court in one of the judgment in the case of Medplus Pharmacy, Rep. by its Director, K.S.Murali Krishna and another Vs Paramesham Kasthuri relying upon the above provision has held that there was no averment made in the complaint as against the other person as to their role and affairs of the company and they cannot be prosecuted. The similar view is also taken by the Himachal Pradesh High Court. Of course, normally when the company is prosecuted, the person who was incharge of the affairs of the company alone has to be prosecuted and there must be a specific averment to be made in the complaint.

9. It is also relevant to note that Section 34(2) of the of the Drugs and Cosmetics Act, 1940 is a non-obstante provision which makes it clear that where an offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that



offence and shall be liable to be proceeded against and punished accordingly.

10. Section 34(2) of the of the Drugs and Cosmetics Act, 1940 is a non-obstante clause and whether the Director has committed the offence with consent or with knowledge is a matter of evidence and it can be seen only at the time of trial.

11. In view of the above, this Court is of the view that merely because there is no specific averment made in the complaint as against the individual directors, it cannot be said that they are not liable for prosecution. At this stage, it is premature to end the prosecution.

12. Having regard to the specific provision, the non-obstante clause whether or not, there was consent or negligence on the part of the Directors has to be tested only at the time of trial after appreciation of evidence by the Trial Court. Therefore, this Court is of the view that merely applying Section 34(1) of the Drugs and Cosmetics Act, 1940, the prosecution cannot be quashed at this stage. Accordingly, this criminal original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

13. The learned counsel for the petitioners requested this Court to dispense with the presence of the petitioners. Taking into consideration, the facts and circumstances of the case, the presence of the petitioners are dispensed with except for receipt of copies, answering the charges, questioning under Section 313 Cr.P.C., or on any other date as may be required by the trial Court. They shall be represented by a counsel, who shall cross examine the witnesses on the same day, when they are examined in Chief.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

msv



To

1. The Xth Metropolitan Magistrate,
Egmore, Chennai - 8.
2. Do Through,
The Chief Metropolitan Magistrate,
Egmore, Chennai - 8.
3. The Drug Inspector,
Union of India,
Office of the Deputy Drugs Controller (India),
Central drugs Standard Control Organization,
South Zone, 2nd floor,
Shastri Bhawan Annex,
Chennai-600 006.

+1cc to M/s.BFS Legal, Advocate, S.R.No.59366

+1cc to Mr.B.Sudhir Kumar, Advocate, S.R.No.59312

Crl.O.P.No.17107 of 2017
and
Crl.M.P.Nos.10507 &10508 of 2017

PM(CO)
SU(09/12/2021)