

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.06.2022

Date of Verdict : 21.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.5579 of 2020
and
Crl.M.P.Nos.3139 & 3141 of 2020

Dr.S.Athilakshmi

... Petitioner/Accused

Vs.

The State Rep by
The Drugs Inspector,
Villivakkam Range Zone II,
Chennai - 600 006.

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the entire records pertaining to the case in C.C.No.7135 of 2018 on the file of the learned X Metropolitan Magistrate, Egmore, Chennai and quash the same as against the petitioner.

For Petitioner : Mr.R.Anand

For Respondents : Mr.A.Gopinath
Government Advocate (Crl. Side)

ORDER

This petition has been filed to quash the proceedings in C.C.No.7135 of 2018 on the file of the learned X Metropolitan Magistrate, Egmore, Chennai, thereby taken cognizance for the offences under Sections 27(b)(ii) of the Drugs and Cosmetics Act, 1940 (herein after called as "the Act") as against the petitioner.

2. The respondent filed complaint as against the petitioner for the contravention of Section 18(c) of the Act, punishable for the offences under Section 22(b)(ii) of the Act. On receipt of the complaint forwarded by the Director of Drugs Control, Chennai-6, the respondent inspected the premises of

Skin and Bones Clinic and situated at No.87, Red Hills Road (North), Villivakkam, Chennai-49, in the presence of the petitioner and noticed that the certain facts and deviations. The petitioner was found stocked the drugs for sale without holding any drugs licence. The petitioner had also stocked the drugs for sale without holding drugs licence. The petitioner had also sold drugs without holding drugs licence under sales bills. Therefore, the petitioner is contravened under Section 18(c) of the Act for having stoked for sale and sold drugs without holding drugs licence.

3. The learned counsel appearing for the petitioner would submit that the petitioner was issued with show cause notice dated 05.07.2016 and submitted her detailed explanation. However, it was found unsatisfactory and filed the present impugned complaint. The petitioner is working as an Assistant Professor and Civil Surgeon at Royapettah Medical College, Chennai and she can do her practice in medicine and she is entitled to dispense with medicine to her patient and as such, she cannot be prosecuted under Section 21(b)(ii) of the Act. The Rule No.6.3 of the Medical Council of India Rules enable the doctor to cause dispense of medicine to their own patients. Mere possession of bills does not mean that the petitioner is selling the medicines in the open separate counter. In fact, the respondent failed to examine any private witnesses to prove that the petitioner is selling medicines to general public. Therefore, mere possession of drugs cannot mulct criminal liability upon the petitioner.

3.1. He further submitted that at the time of inspection, the respondent failed to follow any mandatory provisions with the preparation of Form 17, while making search. Further while according sanction, the sanctioning authority failed to apply its mind and without considering the explanation submitted by the petitioner accorded sanction to prosecute the petitioner.

3.3. He also submitted that the drugs specified in Schedule "K" shall be exempted from the provisions of the Chapter IV of the Act and the Rules made thereunder in that Schedule. The offence as alleged by the respondent fell under the Chapter IV of the Act. He also pointed out that under Schedule "K" Item 5 provides that the drugs supplied by a registered medical practitioner to his own patient or any other drug specified in Schedule "C" supplied by a registered medical practitioner at the request of another such practitioner if it is specially prepared with reference to the condition and for the use of an individual patient provided the registered medical practitioner is not (a) keeping an open shop or (b) selling across the counter or (c) engaged in the importation, manufacture, distribution or sale of drugs in India to a degree which render him liable to the provisions of Chapter IV of the Act and the

Rules thereunder. Hence he prayed for quashment of the proceedings.

4. Per contra, the learned Government Advocate (Crl. Side) filed counter and submitted that the petitioner was in possession of drugs and bills as such she contravened Section 18 (c) of the Act which is punishable under Section 27(b)(ii) of the Act. Hence, he vehemently opposed for allowing this petition.

5. Heard Mr.R.Anand, learned counsel appearing for the petitioner and Mr.A.Gopinath, learned Government Advocate (Crl. Side) appearing for the respondent police.

6. Admittedly, the following items of drugs were found stocked for sale without holding any drug licences by the petitioner.

S. No	Name of the Drug	Batch No.	Qty. Seized	M.R.P. (Rs.)
1	Denidol lotion 50 ml	E1852	1 No.	198.50
2	Salico lotion 30 ml	805	4 Nos	75/30ml
3	A-CN Gel 20 gms	36	1 No.	98/20 gms
4	Tebif Gel 10 gms	017	9 Nos	47.90/10 gms
5	Soltop-S 6% lotion (30 ml)	SN501	4 Nos.	125/30 ml
6	Mycolin cream 15 gms	5400	3 Nos.	115/15 gms
7	Mopry 2% ointment	021	4 Nos.	75.60/5 gms.
8	Momtop-S ointment (10 gms)	MM401	1 No.	145/10 gms
9	ESM Cream (10 gms)	11	4 Nos.	76/10 gms.
10	Nu-Whitfield Ointment (20 gms)	EP531	7 Nos.	40/20 gms.
11	Momesone Cream (15 gms.)	S011	3 Nos.	82/15 gms
12	Sudif Cream (10 gms)	026	4 Nos.	99/10 gms
13	CAP Gel (15 gms)	4500	1 No.	156/15 gms.
14	Kenazole Cream (30 gms.)	KN504	2 Nos.	125/30 gms
15	Soltop-S 3% ointment	S0502	1 No.	125/30 gms.

S. No	Name of the Drug	Batch No.	Qty. Seized	M.R.P. (Rs.)
16	Zylo AC gel 2.5% (20 gms)	3747	1 No.	93/20 gms.
17	Ketzi cream (30 gms)	3987	1 No.	99.74/30 gms.
18	Ketoof lotion (60 ml)	222	2 Nos.	150/60 ml.

Further the petitioner sold drugs without holding drug licence under sales bills as follows :-

S.No.	Bill No & Date
1	409 dated 24.02.2022
2	423dated 09.03.2016
3	426 dated 11.03.2016
4	424 dated 09.03.2016
5	428 dated 11.03.2016

Further the petitioner had no drugs licence to stock or sell the drugs.

7. Though the petitioner is a practicing doctor, the registered medical practitioner can keep medicines under Item 5 of Schedule "K" of the Act subject to certain conditions. The provision is very clear that the medical practitioner should not keep an open shop, selling across the counter and engaged in the importation, manufacture, distribution or sale of drugs. Whereas the petitioner had sold the drugs under various sales bills as she was engaged in sales where no exemption was provided under Schedule K of the Drugs and Cosmetics Rules. It is relevant to extract the provision under Section 18(c) of the Act as follows :-

"18. Prohibition of manufacture and sale of certain drugs and cosmetics:-

(c) manufacture for sale or for distribution or sell or stock or exhibit or offer for sale or distribute any drug or cosmetic except under and in accordance with the conditions of a licence issued for such purpose under this Chapter."

Therefore, the petitioner contravened Section 18(c) of the Act and she sold the medicines vide sales bills in the name of Skin and Bone Clinic. The said clinic is not a licenced premises. Section 27(b) (ii) of the Act reads as follows :-

" 27. Penalty for manufacture, sale etc., of drugs in contravention of this Chapter :-

(b)(ii) without a valid licence as required under Clause (c) of Section 18 shall be punishable

with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more."

8. That apart, the respondent confers with power to inspect and to take samples of any drugs or cosmetics, which is being manufactured or being sold or is stocked or exhibited or offered for sale or is being distributed and from any person who is in the course of conveying, delivering or preparing to deliver such drug or cosmetic to a purchaser or a consignee. Thus, the respondent has complied with the mandatory provisions which deal with taking sample for analysis by preparing Form-17 which is an intimation to person from whom sample is taken. That apart, as per Section 22(1)(cc) of the Act, the Drugs Inspector can examine any record, register, document or any other material object found and seize the same if he has reason to believe that it may furnish evidence of the commission of an offence punishable under the Act or Rules made thereunder.

9. Further the other grounds raised by the learned counsel appearing for the petitioner are mixed question of facts and it has to be gone into full-fledged trial before the trial Court. In this regard it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., as follows:-

"12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law."

10. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in CrI.A.No.1572 of 2019 dated 17.10.2019 in the case of Central Bureau of Investigation Vs.

Arvind Khanna, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

11. Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in CrI.A.No.1817 of 2019 in the case of M.Jayanthi Vs. K.R.Meenakshi & anr, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as

such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C. However, considering the facts and circumstances, the personal appearance of the petitioner is dispensed with and she shall be represented by a counsel after filing appropriate application. The petitioner shall be present before the trial Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

12. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

rts

To

1. The X Metropolitan Magistrate,
Egmore, Chennai.
2. The The Drugs Inspector,
Villivakkam Range Zone II,
Chennai - 600 006.
3. The Public Prosecutor
Madras High Court,
Chennai.

+1cc to Mr.R.Anand, Advocate, S.R.No.37762

CRL.O.P.No.5579 of 2020
and
Crl.M.P.Nos.3139 & 3141 of 2020

EV(CO)
UMA(12/07/2022)