



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.04.2022
Delivered on : 17.06.2022

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CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P.No.6687 of 2019
and
Crl.M.P.No.3694 of 2019

1. Aditya Balasaria
S/o. Madhusudan Balasaria
Director of M/s. Visa Drugs &
Pharmaceuticals Pvt, Ltd
 2. Madhusudan Balasaria
S/o. Brijskla Balasaria
Director of M/s. Visa Drugs &
Pharmaceuticals Pvt, Ltd
- ... Petitioners

Vs.

State of Tamil Nadu
Rep. By Drugs Inspector,
Tiruppur Range,
Office of the Assistant Director of
Drugs Control,
219, Race Course Road,
Coimbatore - 18.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code to call for the records in C.C.No.2 of 2018 on the file of the learned Chief Judicial Magistrate, Tiruppur and quash the same.

For Petitioners : Mr.P.Ranganatha Reddy
for M/s. King and Partridge

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

O R D E R

This Petition had been filed to quash the case in C.C.No.2 of 2018 on the file of the learned Chief Judicial Magistrate, Tiruppur.



2. The learned Counsel for the Petitioners advanced his arguments and he invited the attention of this Court to grounds in the Criminal Original Petition. The learned Counsel for the Petitioners also invited the attention of this Court to the Rulings of the Hon'ble Supreme Court regarding the offences under Section 35 of the Drugs and Cosmetics Act, which are reported in 2018(15)SCC page 93:2017 SCC OnLine SC 932 (Laborate Pharmaceuticals India Limited and Others Vs. State of Tamilnadu) and 2013(2) MWN (Criminal) page.608 (Tidal Laboratories Pvt. Ltd Vs. State of Tamil Nadu), particularly, paragraph nos.12 to 20 were relied on by the learned Counsel for the Petitioners. He has also invited the attention of this Court to the original typed set of papers and also referred to Rule 94(IV) of the Drugs and Cosmetics Act. He also invited the attention of this Court to the ingredients of Section 34 of the Drugs and Cosmetics Act. He further submits that after seizure of the drugs from the Primary Health Centre, the Drug Inspector sample seized from the Primary Health Centre was subjected to Laboratory Test. It is indicated that drugs was not of standard quality. When that be so, the report of the Laboratory also should have been shared with the Petitioners and consider the valuable defence of the Petitioners. The Drugs Inspector had sent show cause notices only to the factory at Himachal Pradesh and not to the registered Office at Kolkotta. Therefore, the Petitioners had no occasion to avail valuable defence by the time when the Drug Inspector obtained details from the Laboratory and the shelf life of the drug had expired. Therefore, on that score, the Petitioners seek to quash the criminal complaint preferred by the Drug Inspector in CC No.2 of 18 on the file of the learned Chief Judicial Magistrate, Tiruppur, stating that the Drug Inspector had not complied with mandatory provisions since show cause notice had not been sent at the earliest.

3. The learned Government Advocate (Crl. Side) invited the attention of this Court to show cause memo dated 10.10.2017 along with a copy of form 13 as per Section 25(2) of the Drugs and Cosmetics Act 1940 sent to M/s. Visa Drugs & Pharmaceuticals Pvt Ltd, (A cGMP Certified Company), Village, Gullerwala, Near Sai Road, Baddi, Distt-Solan-173 205 (H.P) (Page No:47 - 51). Particularly Document Nos.1 to 26 annexed to the Complaint filed by the Drug Inspector, which itself shows that primarily, the Drug Inspector had followed the procedure in respect of acts alleged to have been committed by the Petitioners. The Directors of the Company had refused to receive the notice. Therefore, repeatedly notice was sent to them. What are all argued by the learned Counsel for the Petitioners before this Court cannot be considered under Section 482 of Cr.P.C., whereby the High Court exercising extraordinary powers under the Code of



Criminal Procedure cannot quash the criminal complaint, based on the statement canvased by the learned Counsel for the Petitioners.

3.1. Further the learned Government Advocate (Crl. Side) pointed out that the Petitioners cannot take undue advantage of their own fault for delaying the summons from the Drug Inspector to wriggle out of this case. By relying on the Ruling of the Hon'ble Supreme Court that had been ported by the learned Counsel for the Petitioners instead acting individually by accepting the summons and answering the same. They had wantonly protracted to cause delay for receiving summons. If the summons had been sent to their Office, it is for them to re-address, re-direct the same through the Postman or Post Office concerned in the working place to the Registered Office at Kolkotta. Instead, they had refused to receive and return the summons to the Drug Inspector, thereby causing delay. The wrong committed by the Company in its work place address, in its manufacturer address had been refused as though it was a wrong address, they could have redirected it to the Registered Office at Kolkotta. They had not done so. Therefore, repeatedly summon was returned as "refused". That wrong committed by the Company Officials as though it was a wrong address cannot be taken advantage cited in the ruling of the Hon'ble Supreme Court. As though valuable defence to the Petitioners regarding the testing of samples within the time, was lost cannot at all be entertained. The documents relied on by the Drug Inspector was considered at the time of recording of statement of Drug Inspector and perusal of the document filed by the Drug Inspector, by filing Private Complaint in C.C.No.2 of 2018 before the learned Chief Judicial Magistrate, Tiruppur.

3.2. Under those circumstances, the valuable defence of the Accused was lost and therefore, the complaint has to be quashed. Based on the reported ruling cited by the learned Counsel for the Petitioners, cannot at all be considered by this Court while exercising an extraordinary powers under Section 482 of Cr.P.C., Because based on the ruling only, the Petitioners/Officials had wantonly delayed the due process. When summon was sent by the Drug Inspector to its Office at Himachal Pradesh, the Officials themselves could have re-directed or informed the Postal Authority to re-direct it to the Registered Office at Kolkotta, but they refused, knowing fully well that when the delay is caused their valuable defence will be affected with the full knowledge of the conduct that by delaying the summons, the samples could not be sent to the Laboratory by the Petitioners to obtain a Lab test and that cannot at all be accepted. If at all, the points raised by the learned Counsel for the Petitioners has to be appreciated only on the basis of evidence



and the document annexed with the Complaint by the Drug Inspector. The learned Chief Judicial Magistrate had perused all the relevant documents and the complaint of the Drug Inspector and had taken cognisance of the offences under Drugs and Cosmetics Act. Therefore, this Court exercising extraordinary powers under Section 482 of Cr.P.C. cannot quash the criminal complaint. With an ulterior motive, the Officials of the Company had delayed the due process unfairly, even though the Drug Inspector had addressed the summons to the manufacturing Office, they themselves could have forwarded it to its Registered Office. Being Officials, they are aware of the summons and its importance regarding the Drugs manufactured by them and its consequences. Therefore, knowing fully well that the delay was wantonly committed by the act of the Officials of the Petitioners' Company, it cannot be taken undue advantage as though their valuable defence was lost. Therefore, the learned Government Advocate (Crl. Side) vehemently objected to quash the criminal complaint stating that by exercising extraordinary powers of the High Court, if this criminal complaint quashed, it will result in playing with the life of the citizens of this Country to depend upon these drugs for their health. Considering the safety of the common man in the general public of the Country, the argument of the learned Counsel for the Petitioners had to be rejected and this Petition is to be dismissed with a direction to the learned Chief Judicial Magistrate, Tiruppur to proceed with the trial and dispose of the same.

4. Considering the submission of the learned Government Advocate (Crl.Side) for the Prosecution and on perusal of the documents annexed in the complaint, it is found that what had been pointed out by the learned Government Advocate (Crl. Side) is true and acceptable. The summon was sent by the Drug Inspector to its manufacturing Factory address at Himachal Pradesh. Therefore, the Officials of the Company are aware what is the summons, where from it had come, what is the consequences of the refusal and acceptance of the summons. If it is manufacturing Office address, nothing prevented the Officials of the Company to forward the same to its Registered Office by requesting the Postal Authorities in its factory address to re-direct the same to the Company address at Kolkotta. Without doing so, repeatedly they had returned the summons to the Drug Inspector with an endorsement refused to receive. Therefore, after repeated refusal and also the endorsement on the Registered Postal covers was in Hindi, it is not a part of the Country where the local language is Tamil and correspondence are generally in English. Therefore, wantonly refusing to accept as though it was sent to the wrong address by the Officials' Company and taking undue advantage of the same by the



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Petitioners which is also a Company, based on the ruling cited by the learned Counsel for the Petitioners, is found that with an ulterior motive to cause delay in sending the sample that is returned by the Drugs Inspector for the bona-fide of the Petitioners for sending it to Lab and the Petitioners' choice to obtain a report. The delay caused by the Officials of the Company in the Factory at Himachal Pradesh is found wanton refusal and wanton negligence to escape from criminal liability from this complaint and to take advantage of the fact that the valuable defence of the Petitioners' company is lost that cannot be accepted by any Court. The Court can draw adverse inference from the documents annexed to the complaint in the list of documents 1 to 26 relied on by the Prosecution. Therefore, the learned Chief Judicial Magistrate had taken cognisance of the offences alleged by the Drugs Inspector against the Petitioners' Company cannot be quashed by this Court exercising extraordinary powers under Section 482 of Cr.P.C., as though the Drug Inspector had caused the delay. When the delay had occurred as per the ruling of the Hon'ble Supreme Court relied on by the learned Counsel for the Petitioners, then this complaint could be quashed. But here in this case, where the delay was caused by the Petitioners/ Officials themselves when the summon was sent to the Office at Himachal Pradesh. The Officials of the factory premises had the opportunity to request the Postal Authorities to re-direct it to the Companies/ Registered Office at Kolkotta or they could have received in Factory address and seek time for sending the sample to the Laboratory to obtain the report. They had not done so. Because they are aware of the outcome only to cause delay, they had with an ulterior motive returned the summons refusing to receive and returned the summons to the Drugs Inspector repeatedly. Thereby, losing valuable time available to the Petitioners to send the sample that was seized by the Drugs Inspector from the Primary Health Centre in Tirupur District within a territorial limits of Tiruppur to enable the Officials of the Petitioners' Company to send second sample seized by the Drugs Inspector to get second opinion. They themselves had caused delay in sending sample to Laboratory knowing the consequence to the summons sent by the Drugs Inspector to the Factory address and they are aware that when a summon sent by the Drugs Inspector, Tiruppur and its contents and that is why, they refused to receive. This is only a presumption available to the Court in the facts and circumstances of the case as gathered from the documents enclosed under list of documents 1 to 26 along with the complaint. Therefore, the claim of the learned Counsel for the Petitioners is that the valuable defence lost as per the reported ruling of the Hon'ble Supreme Court, cannot be considered, which amounts to playing with the lives and health of the general population in this Country.



4.1. In the light of the above, the reliance placed on by the learned Counsel for the Petitioners is rejected as action of the Company Officials refusing to receive the show cause memo from the Drugs Inspector repeatedly and losing valuable time, to wriggle out of the complaint by the Drugs Inspector, Tiruppur. Therefore, the reliance placed by the learned Counsel for the Petitioners eventhough is applicable to the facts of this case squarely accepting, is not applicable because based on the ruling only, the Officials of the Company wantonly refused to receive show cause notice. Therefore, the learned Counsel for the Petitioners seeks to quash the complaint is rejected.

4.2. The Court can draw adverse interference based on the conduct of the Company Officials in repeatedly refusing to receive show cause memo from the Drugs Inspector and sending it back to the Drugs Inspector, Tiruppur, knowing fully well that show cause memo contains the same fault on the product of the Company. The Company Officials are aware of the consequence of the Drugs being inspected subjected to Lab test by the Drug Inspector. Therefore, bona-fidely they should have received it and replied or sent it to the Registered Office themselves, it is not a wrong address, its a manufacturing address. They should have re-directed the Postal Authority to forward to the Registered Office at Kolkotta. It is not their case that its not manufactured in the address stated. They had wantonly caused loss of time to escape from the valuable time available to them to subject the samples seized by the Drugs Inspector to send it to the Laboratory of their choice, which is a valuable defence. Therefore, the valuable defence was lost by themselves only and that cannot be allowed by this Court exercising an extraordinary powers under Section 482 of Cr.P.C., which amounts to playing with the lives and safety of the common man, common public who are believing on their drugs for their health benefits. Therefore, the objection of the learned Government Advocate (Crl. Side) is accepted and the reliance placed on by the learned Counsel for the Petitioners that valuable defence of the Petitioners has been lost cannot be accepted and the ruling of the Hon'ble Supreme Court is not at all applicable when the Petitioners had placed reliance on the ruling with an ulterior motive caused delay to receive the show cause memo repeatedly. Therefore, the rulings relied on by the learned Counsel for the Petitioners are rejected.

In the result, this Criminal Original Petition is dismissed.

The learned Chief Judicial Magistrate, Tiruppur is directed to proceed with the trial of the criminal complaint and dispose



of the case within a reasonable period of three months from the date of receipt of a copy of this order or from the date of uploading of the order in the website of this Court. Consequently, connected Miscellaneous Petition is closed.

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s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

- 1.The Chief Judicial Magistrate,
Tiruppur.
- 2.The Drugs Inspector,
Tiruppur Range,
Office of the Assistant Director of
Drugs Control,
219, Race Course Road,
Coimbatore - 18.
- 3.The Public Prosecutor
High Court of Madras
Chennai 600 104.

+1cc to M/s.King & Partridge, Advocate Sr.36660

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srg 08/07/2022