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Crl. O.P. No.8042 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 6/7/2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.8042 of 2022
a n d
Crl.M.P.Nos.4057 and 4058 of 2022

K.Raveendran

...

Petitioner

Vs

The State
rep. By Drugs Inspector
Mylapore Range
O/o The Assistant Director of Drugs Control
Zone III
Chennai 600 006.

...

Respondent

PRAYER : Criminal Original Petitions filed under Section 482 of Cr.P.C. to C.C.No.2571 of 2021 on the file of IV Metropolitan Magistrate, Saidapet, and quash the same.

For Petitioner

...

Mr.V.Karthick
Senior Counsel
for Mr.P.Vinod Kumar

For Respondent

...

Mr.A.Gokulakrishnan
Additional Public Prosecutor



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ORDER

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This Criminal Original Petition has been filed to quash C.C.No.2571 of 2021, pending on the file of IV Metropolitan Magistrate, Saidapet, for the offences punishable under Section 27 (1) of the Drugs and Cosmetics Act, 1940.

2. The case of the prosecution is that the petitioner is working in M/s. Oxaid (India) Gases (P) Ltd. A.3 is a manufacturer of Oxygen, who was not holding any valid license to produce, sold Oxygen to the Company. The petitioner herein is working as a Plant Manager. After issuing the show cause notice, the petitioner is also prosecuted for the violation.

3. Heard Mr.V. Karthick, learned Senior Counsel for Mr.P.Vinod Kumar, learned counsel for the petitioner and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor for the respondent.

4. It is the contention of the learned Senior Counsel appearing for the petitioner that the manufacturing license was given in the name of Company and the petitioner being the employee was shown as competent technical staff.



The role of the petitioner is only with regard to supervise the manufacture.

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5. A bare reading of Form 20 B makes it clear that sale shall be made under the personal supervision of the competent persons. Accordingly, for the sale of oxygen, the competent persons viz., M. Rajaram and K. Janarthanan are nominated and their names were also found place in the Certificate of renewal of licence to sell, stock or exhibit for sale or distribute drugs.

6. The petitioner was merely appointed as a competent person to supervise the manufacture and his name was not shown as a competent person in the certificate of renewal of licence to sell, stock or exhibit (or offer) for sale or distribute drugs in Form 21 C. Hence seeks for quashment of C.C.No.2571 of 2021 pending on the file of the learned IV Metropolitan Magistrate Saidapet, Chennai.

7. The learned Additional Public Prosecutor appearing for the respondent submitted that M/s. LINDE India Limited, Kanchipuram, is a manufacturing Unit having requisite licence in Form 25 for manufacture and for sale of oxygen IP, provided they have to follow the conditions of licence for



distributions, as per Rule 65 of Drugs and Cosmetic Rules, 1945. The licence in Form 20 B, Form 21 B are obtained by them as additional licence for their business reasons.

8. He further submitted that memo has been sent to the manufacturer, viz., LINDE India Limited, Kanchipuram, for which the petitioner has replied. Since the petitioner is a competent technical staff, whose name has been endorsed in licence Form 25, it is clear that the petitioner was not only involved in maintenance of equipments, as stated in the petition, but also in manufacture and sale of drug.

9. Perused the entire materials available on record.

10. As rightly contended by the learned Senior Counsel that licence to manufacture of oxygen was given to LINDE India Limited, Kanchipuram. The petitioner is only an employee of that Company. In the manufacturing license, his name was shown as a competent person in respect of manufacturing alone. Therefore, his responsibility is restricted to manufacture alone.



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11. In respect of selling and stocking, the responsibility lies on the Company. The license issued under Form 20 B makes it clear that two other persons were nominated as competent person to supervise the sale of the products. In such a view of the matter, when separate roles have been assigned to each individuals merely because the sale has been made to the person who had no valid license by the Company and which has also not been properly verified by the competent persons, who has been nominated in respect of the sale, petitioner cannot be prosecuted for such violation. Hence, this Court is of the view that fastening the criminal liability on the petitioner for the violation committed by the Company is nothing but an abuse of process of law.

12. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.2571 of 2021, pending on the file of the learned IV Metropolitan Magistrate, Saidapet, is quashed, as far as the petitioner/A.5 alone. The trial Court shall proceed with other accused, as per law. Consequently, the connected Criminal Miscellaneous Petitions are closed.

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N. SATHISH KUMAR, J
mvs.

To

1. IV Metropolitan Magistrate, Saidapet,
2. The Drugs Inspector
Mylapore Range
O/o The Assistant Director of Drugs Control
Zone III
Chennai 600 006.
3. The Public Prosecutor
High Court
Madras.

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