



Crl.O.P.No.17879 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2022

CORAM

THE HON'BLE Dr.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.17879 of 2019

and

Crl.M.P.No.9001 of 2019

1.M/s.Medplus Pharmacy,
Unit of Ritemed Pharma Pvt. Ltd.,
Ground Floor, No.1A, Maragatham Street,
Dr.Ambedkar Nagar, Thirumullaivoyil, Chennai 62,
Represented by its Director cum Authorised Signatory,
Thiru P.Srinivas.

2.Thiru P.Srinivas,
Director cum Authorised Signatory of
Medplus Pharmacy,
Unit of Ritemed Pharma Pvt. Ltd.,
Ground Floor, No.1A, Maragatham Street,
Dr.Ambedkar Nagar, Thirumullaivoyil, Chennai 62

... Petitioners

-Vs.-

The Tamil Nadu State represented by
The Drugs Inspector, Avadi Range,
Office of the Assistant Director of Drugs Control,
Thiruvallur Zone, No.201, J.N.Road,
1st Floor, Vishnu Complex, Thiruvallur 602 001.

.. Respondent



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Criminal Original Petition filed under Section 482 of Code of Criminal Procedure to call for the records in C.C.No.156 of 2019 on the file of the learned Chief Judicial Magistrate, Thiruvallur, pending disposal of the above quash petition.

For Petitioners	:Mr.Mohammed Rafi M
For Respondents	:Mr.N.S.Suganthan, Government Advocate (Criminal side)

ORDER

This Criminal Original Petition has been filed to quash the private complaint lodged by the Drug Inspector against the petitioner alleging that he has violated the provisions of the Essential Commodities Act and the Drugs (Price Control) Order, 2013.

2. The sum and substance of the private complaint is that a pharmacy unit by name Medplus Pharmacy, an Unit of Ritemed Pharma Private Limited, represented by its Director-cum-Authorised Signatory, had sold Metapro XL 50 mg tablet, for price over and above the price



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mentioned in the price list. Based on the complaint received from a consumer, the test purchase was conducted by the Department on 07.03.2017 and found that the petitioner company sold the subject drug as below:

<i>S. No</i>	<i>Details of Drugs</i>	<i>MRP printed on the label per 15 tabs in Rs.</i>	<i>MRP price to consumer per 15 tabs in Rs.</i>	<i>Price to consumer after discount in Rs.</i>
<i>1</i>	<i>Metapro XL 50 mg MXFY0174</i>	<i>114.50</i>	<i>114.50</i>	<i>103.00</i>
<i>2</i>	<i>Metapro XL 50 mg MXFY0210</i>	<i>84.26</i>	<i>84.26</i>	<i>71.62</i>

3. According to the complaint, for the very same drug, two different prices have been fixed and collected. Though it is in consonance with the MRP printed on the label but contrary to the price list fixed by the Manufacturer and in spite of receiving communication from the Manufacturer to sell the new batch of the drug manufactured immediately after the date of notification for the reduced MRP, the subject drug has been sold by the petitioner for higher price. After causing notice, an explanation has been received from the petitioner. However, not being satisfied with the said explanation, the present complaint has been filed



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narrating the facts.

4. The learned counsel for the petitioner would submitted that the communication from the Manufacturer was received much after the test sale. Even otherwise Form V, which contains the revised price list and communication from the Manufacturer, has made clear that they need not return the batches manufactured prior to the notification and continue selling the same. The explanation was given to the complainant in this regard and ignoring the same, the complaint has been filed.

5. This Court, on perusing the complaint and the provisions of law, which is alleged to have been violated, finds that the notification and the revised price list in Form V has been forwarded by the Manufacturer to the petitioner vide letter dated 20.04.2016. The test purchase has been conducted by the Drug Inspector on 07.03.2017. The petitioner had sold two strips of 15 tablets of Metapro XL, each 50 mg. One strip is of Batch No.MXFY0174, which has been sold for the price of Rs.103/- after giving 5% discount, whereas the MRP printed on the label is Rs.114.50 and



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another strip is of Batch No.MXFY0210, which has been sold for Rs.71.62 after giving 5% discount whereas, the MRP printed on the label is Rs.84.26. The paragraph No.26 of the Drug (Price Control) Order, 2013 mandates not to sell over and above the current price list and the MRP printed on the label of the pack of the formulations. On the face of the record and facts narrated in the impugned complaint, there is no violation of paragraph No.26 of the Drug (Price Control) Order, 2013. The paragraph No.26 of the Drug (Price Control Order), 2013, reads as follows:

“26. Control of sale prices of formulations:- No person shall sell any formulation to any consumer at a price exceeding the price specified in the current price list or price indicated on the label of the container or pack thereof, whichever is less.”

6. The defence of the petitioner is that the Manufacturer has communicated as early as 20.04.2016 to sell the products with the current price of reduced MRP. However, the Manufacturer has also permitted the petitioner to continue to sell the stock manufactured prior to the date of



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notification at the price mentioned on the label.

7. In such circumstances, the complaint does not whisper about the date of manufacturing of the tablets, bearing Batch No.MXFY0174, which has been sold at the rate of Rs.103/- per strip, which is patently 5% less than the MRP printed on the label. Therefore, without the foundational fact that the petitioner has violated paragraph No.26 of the Drug (Price Control Order), 2013, the prosecution has been laid and taken cognizance, which is *per se* without any legs to stand.

8. In view of the above, this Criminal Original Petition is allowed. Accordingly, C.C.No.156 of 2019 on the file of the learned Chief Judicial Magistrate, Thiruvallur, is quashed. Consequently, the connected miscellaneous petition is also closed.

09.11.2022

Speaking/Non-speaking order

Index: Yes/No

Internet : Yes/No



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To

- 1.The Chief Judicial Magistrate,
Thiruvallur.
- 2.The Drugs Inspector,
Avadi Range,
Office of the Assistant Director of Drugs Control,
Thiruvallur Zone,
No.201, J.N.Road,
1st Floor, Vishnu Complex,
Thiruvallur 602 001.
- 3.The Public Prosecutor,
High Court, Madras.



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Dr.G.JAYACHANDRAN.J.,

nsa

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