



CrI.O.P.No.21592 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2022

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.O.P.No.21592 of 2019

and

CrI.M.P.No.11183 of 2019

A.M. Manikandan

... Petitioner

Vs.

The Intelligence Officer,
Directorate of Revenue Intelligence,
27 GN Chetty Road, T.Nagar,
Chennai - 600 017.

... Respondent

Prayer: Criminal Original Petition is filed under section 482 of Cr.P.C., to call for the records and quash the complaint dated 31.08.2018 of the Principal Special Court (EC & NDPS) Act cases at Chennai.

For Petitioner : Mr. R. Subramanian
for Mr. T. Sugirtha

For Respondent : Mr. N.P. Kumar,
Special Public Prosecutor



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ORDER

Heard, the learned counsel for the petitioner and the learned Special Public Prosecutor for the respondent.

2. This petition is filed to quash the complaint dated 31.08.2018, taken cognizance by the Special Court for NDPS Act cases at Chennai.

3. The complaint in short is that the petitioner herein Manikandan, a licensee under Drugs and Cosmetics Act and Proprietor of M/S.AMM Exports and Imports under, Shipping Bill No.5693056 dated 02.07.2018 attempted to export drugs which includes preparation of Codeine, which is a Psychotropic substance as per the Schedule under the NDPS Act. However, any medical preparation with Codeine, classified as 'H' Schedule drug under the Drugs and Cosmetics Act, are exempted from the purview of NDPS Act, provided the preparation contains less than 2.5% of undivided preparations and which have been established in the



therapeutic practice. This exemption was granted by the Union of India under Notification No.SO826E dated 14.11.1985. Further, same has been clarified by a Drug Control of General of India vide its communication dated 26.10.2005, to all the state drugs controller that by virtue of the due, a Notification No.SO826E dated 14.11.1985. The preparation contain Codeine and Salt do not fall under the provision of NDPS Act but they fall under Schedule 'H' of Drugs and Cosmetics Rule and governed by the said Rules.

4. In this context, the DRI intercepted the goods covered under shipping bill and found that the subject goods were attempted to be exported to a consignee, at Malaysia, under the guise of Ayurdhic Drugs. The respondent has found the following medicine which is prohibited for export by this petitioner/accused, which reads as below:-

“35.Methy morphine (commonly known as 'Codeine') and Ethyl morphine and their salts (including Dionine), all dilutions and preparations except those which are compounded with one or more other ingredients and containing not more than 100 milligrammes of the



drug per dosage unit and with a concentration of not more than 2.5% in undivided preparations and which have been established in Therapeutic practice.”

5. The contention of the petitioner herein is that he is duly licensed drug dealer and the consignment were examined by the drug Inspector and no objection to explore was obtained. While so a drug which, specifically exempted under the notification of the Government and permitted to be stocked and sold cannot be considered as a prohibited drug for sale. Therefore, the very prosecution under NDPS Act is *per se* illegal, perverse and without jurisdiction. The petitioner herein, no doubt a licensee under the Drugs and Cosmetics Act. The Form 21(b) with reference to Rule 61(2) of the Drugs and Cosmetics Act, which deals about licence to the wholesaler annexed along with typed set indicates that the petitioner be given licence to sell, stock, exhibit or offer for sale or distribute by wholesale drugs specified in Schedule C and C(1) excluding those specified in Schedule X and he is entitle to sell or distribute by wholesale, on the premises situated at No.17A, Ground Floor, Lakshmi Narayanan 3rd Street, Anna Nagar, Pammal, Chennai-75. This is specific prohibition imposed in



the licence condition that no sale or any drug has been established made to a person not holding requisite licence to sell, stock or exhibit for sale or distribute the drug.

6. In the said circumstances, the invoice shipping bill which was intercepted by DRI, indicates that the consignee is one CASS traders of Malaysia and further, when there is prohibition for the petitioner herein to sell H schedule drugs across the border, he has attempted to sell the drug, by way of mis-declaring the drug. Then, again, yet another point raised by the learned counsel for the petitioner is that if at all any violation committed by the petitioner, he can be liable for violation of his licence under Drugs and Cosmetics Act and DRI has no jurisdiction to register a case.

7. This Court unable to countenance such submission in the light of Section 80 of NDPS Act which reads as below:-

"80. Application of the Drugs and Cosmetics Act, 1940 not barred.-The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of the Drugs and Cosmetics Act, 1940 (23 of



1940) or the rules made thereunder."

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8. Furthermore, NDPS Act which has been enacted for specific purpose to control the menace of drug trafficking globally had specifically restricts export of any manufactured drug without following the procedures contemplated under the law. Here is a case where the petitioner herein found to have attempted to export preparation of drug containing prohibited psychotropic drug but exempted only for the purpose of thyrotropic use within the country following the conditions imposed under the Drugs and Cosmetics Act. *Prima facie*, there is a case made out by the respondent that the licensee, who is entitled to sell drug to another licence holder within India had attempted to export drug which contains no psychotropic substance. The culpable mental state would be legally inferred from the conduct to export the drug under the guise of Ayurvedic medicine. The drug which is now attempted to be exported, contravening the Drugs and Cosmetics Act as well as NDPS Act, is liable to be prosecuted and there is no material to quash the same.



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9. The view of this Court regarding the Drug Syrup and the action under NDPS Act is well fortified by the judgment of the Supreme Court rendered in *State of Punjab Vs. Rakesh Kumar* reported in **2018 0 Supreme (SC) 1202**. The contention of the learned counsel appearing for the petitioner that the alleged violation of the petitioner will not fall under purview of the provisions under NDPS Act is ill founded, as clarified by the Hon'ble Supreme Court in the judgment.

10. For the said reason, this Court finds no merit in the petition. This petition is dismissed. Consequently, connected miscellaneous petition is closed.

30.06.2022

AT
Internet : Yes
Index : Yes/No
Speaking / Non-speaking



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To

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Dr.G.JAYACHANDRAN,J.

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