

THE HONOURABLE SRI JUSTICE N. TUKARAMJI

CRIMINAL PETITION No.14798 OF 2014

ORDER:

This petition, under Section 482 of the Code of Criminal Procedure (for short the '*Cr.P.C.*'), has been filed by the petitioner/7th accused with a prayer to quash the P.R.CNo.32 of 2013 on the file of the IX Metropolitan Magistrate, Cyberabad at Miyapur for the offence punishable under Section 32(1) of the Drugs and Cosmetics Act, 1940(for short 'the Act').

2. Heard Sri R.N. Hemendranath Reddy, learned Senior Counsel and Sri Arun Siwach, Advocate, for the petitioner/7th accused and the learned Additional Public Prosecutor.

3. Learned Senior Counsel would submit that earlier, basing on the complaint lodged by the Drugs Inspector, the Court had taken cognizance against the petitioner under Sections 17B r/w Section 27(c), 18(c) r/w Section 27(b)(ii) of the Act. Howsoever, while conducting proceedings and at the stage of P.R.C., on the petition of the prosecution, the learned Magistrate passed orders dated 31.10.2022 modifying the accusations to Section 27 (b) of the Act as

remaining sections of imputation are withdrawn. Thereupon, the P.R.C. has been converted as Calendar Case and numbered as CC No. 8222 of 2022. Thus, the allegation remains that the petitioner had manufactured the drug /Alclav-625 mg without license. Further, the 8th and 9th accused who were similarly placed to that of petitioner had filed Criminal Petitions similarly vide CrI.P.Nos.1377 and 9767 of 2017 seeking quashment of P.R.C. and this Court after considering the merits even before revising the sections of the charged offences vide order dated 29.03.2019, quashed the proceedings against them. Howsoever, the petitioner herein was given license to manufacture and for sale of drug for the period from 17.03.2009 to 16.03.2014. Therefore, by the date of complaint i.e., 03.04.2013, the petitioner has been with valid license to manufacture drugs. The other accused, who are recipients of the manufactured drugs from the petitioner had tampered with the labels and as such, they stand in different footing and the case against them was ended on their admission. The petitioner was only manufacturer and delivered the drug to the company as directed by the procuring company, hence his role is

limited to the extent of manufacturing. Thus, the accusation under Section 27(b) is only relevant and as there is valid license for manufacturing and sale, the imputation is ex facie, unsustainable and liable to be quashed.

4. Learned Assistant Public Prosecutor opposed the petition, however admitted that the allegation against the petitioner is only to the extent of manufacturing the drugs without license. Nonetheless admitted that, the photocopy of the license supplied is indicating that the petitioner is having valid license to manufacture the drugs. Further, the PRC proceedings against 8th and 9th accused were quashed by this Court.

5. Perused the material on record. The specific allegation against the petitioner is that he manufactured Alclave-625 mg, without license.

6. The imputed section 27(b) of the Act reads as follows:

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

(b) Any drug-

- i. *deemed to be adulterated under Section 17-A, but not being a drug referred to in clause (a), or*
- ii. *without a valid licence as required under clause (c) of Section 18, shall be punishable with imprisonment for a term which shall ¹⁸⁶ [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]:*

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of ¹⁸⁷ [less than three years and of fine of less than one lakh rupees]:

- (c) *any drug deemed to be spurious under Section 17-B, but not being a drug referred to in clause (a) shall be punishable with imprisonment for a term which shall ¹⁸⁸ [not less than seven years but which may extend to imprisonment for life and with fine which shall not be (sic less than) three lakh rupees or three times the value of the drugs confiscated, whichever is more]:*

Provided that the Court may, for any adequate and special reasons, to be recorded in the judgment, impose a sentence of imprisonment for a term of ¹⁸⁹ [less than seven years but not less than three years and of fine of less than one lakh rupees]:

- (d) *any drug, other than a drug referred to in clause (a) or clause (b) or clause (c), in contravention of any other provision of this Chapter or may rule made thereunder, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to two years ¹⁹⁰ [and with fine which shall not be less than twenty thousand rupees]:*

Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year.]

7. The petitioner/7th accused had filed the copy of the license in the name of the petitioner's company i.e. M/s. Alkem Laboratories Pvt. Ltd., Andheri, Mumbai to manufacture drugs by Drug License Authority, Union Territory Administration of Daman and Diu covering the period of the complaint. Further, the license put-forth by the petitioner is not disputed by the respondent/State.. It is not the prosecution case that under the license, petitioner cannot manufacture the alleged drug or the ALCLAVE-625 is Schedule-X drug. In the absence of such averment in the complaint and as the petitioner/7th accused has demonstrated that he was granted due licence to manufacture and sale of the drug, the factual assertions in the complaint are being overruled. Thus, proceeding with trial would result in abuse of process of Court and would not sub-serve the ends of justice. That apart, this Court has already considered the case of the 8th and 9th accused, who had faced similar accusations and quashed the proceedings. In these circumstances, the prayer of the

petitioner for quashment of the proceedings against him deserves positive consideration.

8. Accordingly, this petition is allowed and the proceedings against the petitioner in C.C.No.8222 of 2022 on the file of the VIII Additional Metropolitan Magistrate, Kukatpally, Cyberabad are hereby quashed.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

N. TUKARAMJI, J

Date: 23.11.2022

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