



CRL. O.P. Nos. 27093/2010, etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
25.01.2023	13.02.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL . O.P. NOS.27093, 27699 & 28263 OF 2010

CRL. O.P. NOS. 9361, 21241 & 21242 OF 2011

W.P. NO. 10959 OF 2011

CRL. O.P. NO. 26314 OF 2012

AND

M.P. NO. 1 OF 2011

CRL. O.P. NO. 26314 OF 2012

1. M/s. Procter & Gamble Hygiene
And Health Care Limited
Village Katha, Baddi 173 205
Solan (HP), rep. by its
Authorized Representative
Mr. K.Chandra Shekar

2. Smt. Geetha Narayanan
Operation Manager/Site Leader
M/s. Procter & Gamble
Hygiene & Health Care Ltd.
Village Katha, Baddi 173 205
Solan (HP).

.. Petitioners

- Vs -



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The State of Tamil Nadu
Rep. by Drugs Inspector
George Town II Range

.. Respondent

Crl. O.P. No.26314 of 2012 filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C. No.1614/2011 on the file of the XV Metropolitan Magistrate, George Town, Chennai and quash the same.

For Petitioners : Mr. B.Kumar, SC, for
Mr. R.Anish Kumar

For Respondents : Mr. L.Baskaran, GA (Crl. Side) for
R-1 in Crl. O.P. No.27699 & 27093/10,
For RR-1 to 8 in Crl. O.P. No.10959/11

COMMON ORDER

As the issue raised in all the petitions is one and the same, they were heard together and disposed of by this common order.

2. The present petitions have been filed to quash the complaint, which has been taken cognizance of in response to the complaint filed by the respondent alleging breach of Rule 96 (1) (v) of the Drugs & Cosmetics Rules, 1945 (for short 'the Rules'). In addition thereto, Crl. O.P. No.10959 of 2011 has been filed to forbear the 1st respondent from indiscriminately according sanction for



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prosecution to the respondents to proceed against the petitioners for the aforesaid violation u/r 96 (1).

3. The gist of the case of the petitioner is that it is a manufacturer of pharmaceutical products, viz., medicines and the medicines in the present case pertain to Vicks Action 500 Extra/Plus, which is manufactured at its Hyderabad Plant. It is the case of the petitioners that though the batch number, manufacturing date and expiry date has been printed on the strips, which carry the tablet and strips of 15 or 12 are housed in a container, however, on the said container which houses the strips, the details of batch number, manufacturing date and expiry date are not marked, but reference is sought to be made to the individual strip.

4. It is the further case of the petitioners that the respondent have initiated action against the petitioner, by drawing samples from M/s.Sree Mahendra Pharmaceuticals at Chennai on 14.10.2008 and forwarding the same to the Government Drug Analyst alleging violation of Rule 96 (1) (v) of the Rules. It is the further case of the petitioners that the respondent has failed to submit



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Form 17-A as proof of purchase of the drug sample, which is in violation of the procedure stipulated u/s 23 (1) of the Drugs & Cosmetics Act.

5. It is the further averment of the petitioners that the Chemical Analyst, upon analysis, has submitted his report stating that there is misbranding of the product, as the batch number, manufacturing date and expiry date of the sample are not printed on the carton box, but only stated on the carton that individual strips have to be seen to know the batch number, manufacturing date and expiry date and that the edge of the strip contains the said information.

6. It is the further averment of the petitioners that Rule 96 (1) (v) only mandates that a distinctive batch number shall also be printed on the label of the innermost container of any drug and on every other covering in which the container is packed. It is case of the petitioner that the mandate is very clear that it only applies to drugs, which are encased in containers, such as bottles and tubes or tablets in strips, which are in turn packed in an outer cover, which is sold in the retail market through the shops. Such being the position, there is no requirement for the declaration to be made on label affixed on the container and



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on every other covering in which the container is packed and it does not apply to drugs packed in strips and blister packs.

7. It is the further averment of the petitioner that no opportunity of hearing was given to the petitioners before proceeding with the complaint, which is a clear violation of principles of natural justice and the multifarious proceedings, which has been initiated is nothing but an attempt to cause grave and severe prejudice to the petitioners.

8. It is the further case of the petitioner that the duty of the Drug Analyst is only to test the samples sent to him for analysis and the analyst has no part to find out if the labels on the strips are in accordance with the Act or not. In this backdrop, it is the further averment of the petitioners that the analysis report having not found any deficiency in the composition of the drug, the report of the Analyst that the sample is misbranded and is considered as substandard merely because the product has not been properly labeled is wholly unsustainable.



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9. It is the further case of the petitioner that the tablet, which is the subject matter in issue is sold in strips and not in containers and, therefore, the alleged violation that the container does not contain the requisite information as mandated for u/r 96 (1) (v) is wholly erroneous. It is the further case of the petitioners that merely because the information relating to manufacturing date, batch number and expiry date is not printed on the container, the same cannot be said to be misbranding as there was no intention to mislead the consumers.

10. Though there is due compliance of all the provisions of the Rules, however, the learned Judicial Magistrate has not properly examined the provisions before issuing the summons and the complaint ought to have been dismissed *in limine* as abusive, vexations and frivolous and is liable to be quashed.

11. Insofar as the 2nd petitioner is concerned, it is the further averment of the petitioners that the 2nd petitioner, at the material point of time, was not an employee of the 1st petitioner and, therefore, fastening any liability on the 2nd petitioner is wholly illegal. Therefore, the present petitions have been filed to quash the complaints, which have been taken cognizance of by the court.



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12. Learned senior counsel appearing for the petitioners, at the very outset, placed much emphasis on Rule 96 (3) (i) to address the Court that what is mandated under the said rule is that the particulars prescribed in sub-rule (1) are to be printed in indelible ink either on the label borne by a container or wrapper affixed to any package in which the container is issued for sale. Further, sub-rule (ii) mandates that no labeling is required on any transparent cover or any wrapper or other covering used sole for the purpose of packing, transport or delivery and sub-rule (iii) provides that unless the consumer is misled by the misbranding, complaint cannot be initiated.

13. In this backdrop, it is the submission of the learned senior counsel that the tablets, which comes in strips are not sold in the container, but sold only in strips and the strips, which carry the tablet is printed with all the information as is prescribed u/r 96 (1) (v). It is the further submission of the learned senior counsel that not only the strips holding the tablets are printed with the details prescribed u/r 96 (1) (v), but even the carton, which holds the strips also denote where the said information could be looked at by the intending buyer, meaning



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thereby that the carton is printed with the information that the intending buyer could know the details as printed in the strips, which holds the tablet.

14. It is the further submission of the learned senior counsel that Rule 96 (3) (i) that the tablet, being packed in the strips and the particulars prescribed having been printed on the said strips, it fully satisfies the condition prescribed u/r 96 (1) (v). There is no necessity for the carton to be printed with the details of the information, as the carton is not the container, which houses the tablet, but it is the strips which holds the tablet and, therefore, there is full compliance of Rule 96 (1) (v). In the alternative, it is the submission of the learned senior counsel that the carton also is provided with information to the buyer as to where the buyer needs to look for the said details prescribed u/r 96 (1) (v).

15. It is the further submission of the learned senior counsel that there is no violation of Section 17 of the Drugs & Cosmetics Act (for short 'the Act'), as there is no misbranding of drugs. Merely because there is an allegation of Rule 96 (1) (v), it would not be taken to mean that the drugs have been misbranded. It is the further submission of the learned senior counsel that the opinion of the



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chemical analyst that there is misbranding of drugs, as the prescription of Rule 96 (1) (v) has not been complied with clearly shows non-application of mind on the part of the chemical analyst. It is the further submission of the learned senior counsel that the duty of the chemical analyst is only to analyse the composition of the drug to come to a conclusion that what is sought to be sold is what is shown in the container. Merely because the container has not carried certain details as to the liking of the respondent cannot be taken to mean that there is misbranding of drugs.

16. It is the further submission of the learned senior counsel that as prescribed u/s 32 of the Act, no court inferior to the Sessions Court can try an offence relating to the Drugs and Cosmetic Act confers, but cognizance of the complaint has been taken by the Magistrate, who is below the Court of Session and, therefore, the authority, who has taken cognizance, not vested with jurisdiction, the cognizance taken thereof is wholly illegal.

17. In support of his submissions, learned senior counsel appearing for the petitioners placed reliance on the following decisions :-



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“i) A.Ramachindir Nominee, MTR Foods & Anr. – Vs – State (CDJ 2017 MHC 8016);

ii) S.Shanmugavelan & Ors. – Vs – Food Inspector, Tirunelveli (CDJ 2013 MHC 1377);

iii) A.Ahamed Salaluden – Vs – R.Kannan (CDJ 2019 MHC 1364);

iv) M.N.Katharmytheen & Anr. – Vs – State (CDJ 2010 MHC 5498); and

v) M/s.Venkateshware Hatcheries Pvt. Ltd. & Ors. – Vs – State (Crl. O.P. (MD) No.14745/2014 – Dated 28.09.2018)”

18. Per contra, learned Government Advocate appearing for the respondent submits that Rule 96 (1) clearly prescribes that the particulars as spoken to in sub-clause (v) of Rule 96 (1) should be conspicuously written in indelible ink on the label of the innermost container of any drug and on every other covering in which the container is packed. It is therefore the submission of the learned Government Advocate that the strip in which the tablets are packed is not a container and a handful of strips, viz., 10 strips goes into a carton, which alone could be said to be a container holding the tablet. Therefore, necessarily to fulfil Section 96 (1) (v), the carton in which the strips are placed should contain in a conspicuous manner, the details and merely because the strips are sold in retail



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and the carton, which contains the strips has made a mention that for the requisite details noted in sub-clause (v), the same is provided in the strips, would not satisfy the aforesaid prescription. Any violation of the prescription provided u/r 96 (1) (v) would attract consequences and rightly to enforce the same, the respondent has acted, which cannot be said to be erroneous or illegal.

19. It is the further submission of the learned Government Advocate that Section 36A provides for certain offence to be tried summarily by the Magistrate, where the term of imprisonment does not exceed one year. The offences for which the petitioners have been implicated are summarily triable and imprisonment does not exceed one year and that being the case, the cognizance taken by the Magistrate cannot be said to be bad and there is no necessity for the Court of Session to take cognizance of the issue. In the case on hand, the submission of the learned senior counsel that cognizance has been taken by a court, which is inferior to the Court of Session and, therefore, the same is wholly without jurisdiction cannot be countenanced for the simple reason that Section 36-A vests jurisdiction with the Magistrate to take cognizance of the issue, where



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the period of imprisonment is less than one year. Accordingly, he prays for dismissal of the present petitions.

20. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record and also the provisions of law, which were placed for the consideration of this Court.

21. The first and foremost contention of the learned senior counsel for the petitioner is that there is no violation of Rule 96 (1) (v) as alleged by the respondent. In this regard, attention of this Court is drawn to Rule 96 (3) (i) and for better clarity, both Rules 96 (1) (v) and 96 (3) (i) are quoted hereunder :-

"Rule 96 (1) (v)

96. Manner of labeling – (1) Subject to the other provisions of these rules, the following particulars shall be either printed or written in indelible ink and shall appear in a conspicuous manner on the label of the innermost container of any drug and on every other covering in which the container is packed, namely :-

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(v) A distinctive batch number, that is to say, the number by reference to which details of manufacture of the particular batch from which the substance in the container is taken are recorded and are available for inspection, the figure representing the batch number being preceded by the words “Batch No.” or “B. No.”, or “Batch”, or “Lot No.” or “Lot”.”

Rule 96 (3) (i)

(3) (i) The particulars prescribed in sub-rule (1) shall be printed or written in indelible ink either on the label borne by a container or vaccine lymph or on a label or wrapper affixed to any package in which the container is issued for sale. The said particulars shall be indelibly marked on the sealed container of surgical ligature or suture or printed or written in indelible ink on a label enclosed therein.

(ii) Nothing in these rules shall be deemed to require the labeling of any transparent cover or of any wrapper, case or other covering used solely for the purpose of packing, transport or delivery.”

22. Bearing the above prescriptions provided by the abovesaid rules in mind, this Court would now proceed to analyse the case of the petitioners vis-à-vis the materials which forms the basis of imputations by the respondent.



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23. It is the admitted case of the petitioners that the tablets in issue comes in a strip which contains about 12 to 15 tablets and is packed in a container normally containing about ten strips and that each strip is printed with an indelible ink showing the prescribed details as provided for in Rule 96 (1). It is the further stand of the petitioners that even the container, which houses the strips contain the inscriptions “Date of Manufacture”, “Date of Expiry” and “Batch Number” inscribed and the place where the particulars with regard to the above can be found is also mentioned there, specifically to mention that it is printed in each of the strips. It is the stand of the petitioners that the tablets being sold in strips, which alone could be said to be the pack containing the tablets, rightly the petitioners have printed the particulars as prescribed under sub-rule (1) of Rule 96 on the strip in indelible ink and, therefore, it could not be said that there is violation of the said rules. It is the further stand of the petitioners that even if the container/carton in which the strips containing the tablets are packed, the tablets, which are the subject matter of issue, not being sold in the container/carton, but sold in strips, printing of the particulars on the strips would show clear adherence to the Rules and the non-printing of the particulars in detail on the containers, which stores the strips cannot be said to be violation of



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Rule 96 (1). Further, the container contains the place where the aforesaid details prescribed u/r 96 (1) could be found and, therefore, it cannot be said that there is non-compliance of Rule 96 (1).

24. A careful perusal of sub-rule (1) of Rule 96 shows that the said rule prescribes that the particulars should be either printed or written in indelible ink and shall appear in a conspicuous manner *on the label of the innermost container* of any drug and on every other covering in which the container is packed.

25. The term used in Rule 96 (1) as well as 96 (3) is “*container*”. The definition of container has not been provided for in the Act or the Rules. Necessarily, this Court has to advert to the meaning of the word container appearing in Rule 96 (1) to address the issue.

26. The meaning of the word ‘*container*’ as per Concise Oxford English Dictionary – 12th Edn., is -

“container – an object for holding or transporting something – a large standard-sized metal box for the transport of goods by road, rail, sea or air.”



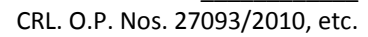
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27. It is therefore clear that container is a box or a carton which is used to hold an object or something and is used for the purpose of transportation of goods by road, rail, sea or air. Therefore, any box used for the purpose of transportation of the materials would fall within the definition of container.

28. Though it is the specific case of the petitioners that the tablets are not sold loosely, but sold in strips in retail outlets and that the strips contain the details, yet it is to be pointed out that a strip can, by no stretch of imagination, be taken to mean a container. It is even the admitted case of the petitioners that about 10 strips of tablets are packed in each container/carton and that on the carton, the particulars as prescribed u/r 96 (1) are printed with the details of the particulars to be looked from the strips, which carry the tablets.

29. In the case on hand, the carton holds the strips in which the tablets are held. Therefore, the strips could merely be said to be a wrapper, which is wrapped around the tablets so as to protect the tablets. The said wrapper, could by no means, be termed to be a container, coming within the meaning of the



30. It can be stated without demur that a strip, which holds the tablets cannot be said to be a container, within the meaning of container as provided under Rule 96 (3) (i). From a careful perusal of Rule 96 (3) (i), it is evident that while the container, which contains the tablets, shall carry the particulars as provided for under Rule 96 (1), if the container is wrapped with a wrapper, the said wrapper, which is affixed to any package in which the container is packed shall be affixed with a label providing the particulars detailed under Rule 96 (1). To put it in a nutshell, barring the transparent covers, which are used to wrap the containers for the purpose of transportation, the containers, which holds the materials and which are not transparent, the said containers should contain the particulars as prescribed u/r 96 (1).



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31. From the above, it is amply evident that the tablets, which are sold by the petitioners not only come in strips, but the said strips are packed in cartons and the said cartons alone could be deemed to be a container and the strips, which hold the tablets cannot be said to be a container within the meaning of '*container*' as found in Rule 96 (1) and 96 (3) and any such construction would defeat the intent and purpose of the said rule.

32. It is further to be pointed out that Rule 96 (1) clearly mandates that the particulars shall be either printed or written in indelible ink and shall appear in a conspicuous manner on the label of the innermost container of any drug and on every other covering in which the container is packed, meaning thereby that the carton, which holds the strips of tablets, would fall within the meaning of '*container*' as found in Rule 96 (1) and not only the said carton should contain the particulars printed or written in indelible ink, but the cartons, which are packed further in other cartons, baring transparent covering, the said cartons should also carry the particulars prescribed u/r 96 (1). The mandate prescribed under Rule 96 (1) ought to be complied in letter and spirit u/r 96 (3) and in that backdrop, the carton, which really is the container, which holds the strips of tablets should



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definitely contain the particulars. The manner in which the strips are sold is of no consequence in complying with the provisions of Rules 96 (1) and 96 (3) as the manner of labeling alone is of concern with regard to compliance of Rule 96.

33. The intention of the law makers is writ large on the word used in Rule 96 (1) and 96 (3) and that all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision make a consistent enactment of the whole statute and when there is no ambiguity with a particular provision the provision should be read as it is and nothing should be added or subtracted. In ***Padma Sundara Rao – Vs – State of T.N. (2002 (3) SCC 533)***, wherein, the Hon'ble Apex Court has held as under :-

“The rival pleas regarding re-writing of statute and casus omissus need careful consideration. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the Legislation must be



found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage 218 FR 547). The view was re-iterated in Union of India and Ors. V. Filip Tiago De Gama of Vedem Vasco De Gama (AIR 1990 SC 981).

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14. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. [See Rishabh Agro Industries Ltd. Vs. P.N.B. Capital Services Ltd. (2000 (5) SCC 515)]. The legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6 (1) is plain and unambiguous. There is no scope for reading something into it, as was done in Narasimhaiah's case (supra). In Nanjudaiah's case (supra), the period was further stretched to have the time period run from date of service of High Court's order. Such a view cannot be reconciled with the language of Section 6 (1). If the view is accepted it would mean that a case can be covered by not only clauses (i) and/or (ii) of the proviso to Section 6 (1), but also by a non-prescribed period. Same can never be the legislative intent.

15. Two principles of construction one relating to casus omissus and the other in regard to reading the statute as a whole



appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in Artemiou v. Procopiou (1966 1 QB 878), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in Luke v. I.R.C. (1966 AC 557) where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".]

(Emphasis Supplied)

34. In the case on hand, it is manifestly clear that the container, which holds the tablets, be it in strips or even in loopse form or in any other manner,



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the said container/carton should contain the particulars as prescribed u/r 96 (1).

The dilution of the prescription by directing the consumer to look at the strips to ascertain the particulars is not what is mandated u/r 96 (1).

35. For the sake of argument, if a retailer is not selling the strips singly and that it is sold only in the carton in which it is supplied, the precarious condition in which a consumer would be put into, as the consumer would not be aware of the details from a perusal of the carton, which is sealed and without opening the carton, the petitioner would not know the details, which ought to be shown on the carton thereby, robbing the consumer of his right to know the details from the label with regard to the tablets, as prescribed u/r 96 (1). In such a scenario, the stand of the petitioners that the particulars are printed in the strips with indelible ink and the carton is provided with information to look for the said particulars in the strips would not only be impermissible and not in consonance with the aforesaid provision but would be very much against the best interests of the consumers, which cannot be permitted.



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36. Though it is contended by the learned senior counsel for the petitioners that the carton is not sold in toto and that the strips containing the tablets alone are sold as it is only retails sales and not wholesale sale and, therefore, the particulars provided on the strips would satisfy the requirements found u/r 96 (1), however, it cannot be presumed by this Court that such would be the scenario in all cases. Therefore, the aforesaid contention cannot be acceded for the simple reason that the dilution of the rule is impermissible and if any rule is prescribed to be followed in a particular manner, the same should be followed in the same manner and resorting to any other method is impermissible and infraction of the same is nothing but violation of the Rules.

37. Further, the submission of the learned senior counsel that insofar as retail sales is concerned, which is made to an individual consumer, it is only the strips, which is bought and not the entire carton as there is no further sale envisaged under the retail sales, however, the said contention also cannot have the required force to convince this Court as the definition of retail sale, as found in 2 (f) of the Rules, define "*retail sale*" to mean a sale whether to a hospital, or a dispensary or a medical, educational or research institute or to any other person



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other than a sale by way of whole sale dealing. However, the definition in 2 (g) pertaining to “*sale by way of wholesale dealing*” also takes within its fold a sale made to a hospital, dispensary, meaning thereby that a hospital and dispensary would stand covered under both wholesale and retail sale and the supplier would not be aware of the manner in which the sale is made by a hospital or dispensary, and in such a scenario, the non-labeling of the requisite details on the carton would have wider ramifications to the user of the drug, who would not be aware of the particulars as prescribed u/s 96 (1), which are important knowledge to the consumer with regard to purchase and consumption of the drug.

38. Therefore, the contention of the learned counsel for the petitioners that there is no violation of the Rules, as the mandate of Rule 96 (1) has been complied with under Rule 96 (3) (i) is nothing but stretching the limit too far, which is not envisaged under the aforesaid provision and giving any other construction to the aforesaid provision would be in detriment to the consumer, who is the end user of the product and, therefore, the said contention deserves to be rejected.



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39. Though very many decisions have been relied on by the learned senior counsel in support of his stand, however, it is to be pointed out that the said decisions have emanated in the matter of Prevention of Food Adulteration Act and not under the Drugs and Cosmetics Act. Further, the ratio in the said decisions cannot be imported to the present case, as all the aforesaid cases totally stand on a different footing from the present case and, therefore, would not be applicable to the case on hand.

40. Insofar as the contention of the learned senior counsel for the petitioners that only the Court of Session is vested with jurisdiction u/s 32 of the Act to try offences relating to Drugs and Cosmetics Act is concerned, it is countered by the respondents by adverting to Section 36-A of the Act and also submitting that amendment to Section 32 was carried out by Act 26 of 2008 dated 5.12.2008 and it came to effect on 10.8.2009, however, the samples were taken for testing prior to the date on which the amendment came into operation and, therefore, there is no bar for the court, inferior to the Court of Session, to try the offence. To appreciate the same, the relevant provisions are quoted hereunder :-



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“Section 32

32. Cognizance of offence.—

(1) No prosecution under this Chapter shall be instituted except by

(a) an Inspector, or

(b) any gazetted Officer of the Central Government or a State Government authorized in writing in this behalf by the Central Government or a State Government by a general or special order made in this behalf by that Government; or

(c) the person aggrieved; or

(d) a recognised consumer association whether such person is a member of that association or not.

(2) Save as otherwise provided in this Act, no court inferior to that of a Court of Sessions shall try an offence punishable under this Chapter (Chapter IV).

(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter.”

Section 36-A

Certain offences to be tried summarily - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) all offences (except the offences triable by the Special Court under section 36AB or Court of Session) under this Act, punishable with imprisonment for a term not exceeding three years, other than an offence under clause (b) of sub- section (1) of section 33-I,



shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section it appears to the magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall, after hearing the parties, record an order to that effect and thereafter recall any witness who has been examined and proceed to hear or rehear the case in the manner provided by the said Code.”

41. A perusal of the materials available on record reveal that the samples were taken for testing on 14.10.2008, at which point of time Act 26 of 2008 had not come into force. In that scenario, Section 36-A was operational, which clothed the court, inferior to the Court of Session, to try offences summarily in which sentence would not exceed an imprisonment of one year. In the case on



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hand, the offences for which prosecution and trial has been launched against the petitioners attract a sentence not exceeding one year of imprisonment. Such being the position, as is evidenced from the provision of law, the samples having been taken for testing way back on 14.10.2008 for which report was filed by the chemical analyst on 19.1.2009, which is prior to 10.08.2009, the date on which the amendments were introduced to Section 32 of the Act, there is no bar or ouster of jurisdiction of the Magistrate to try the offence summarily and, therefore, the contention advanced on behalf of the petitioners deserves to be rejected.

42. Contention was also advanced on behalf of the petitioner touching upon Section 17 of the Act relating to misbranded drugs by submitting that merely because the container did not contain the relevant details with regard to batch number, manufacturing date and expiry date, the said drug cannot be said to be misbranded or is a misbranding of the drug and further the chemical analyst is not the appropriate person to go into the misbranding of the drug insofar as it relates to labeling. However, a careful perusal of sub-section (b) to Section 17 reveals that in the absence of proper labeling in the prescribed manner, the same would be deemed to be misbranding of the drug. In such a backdrop, when a



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sample is given to the chemical analyst to be tested, it is the duty of the chemical analyst not only to test the sample, but also to find out whether the pack containing the sample adheres to all the relevant rules governing its production and sale. In such a backdrop, the opinion of the chemical analyst that there is misbranding of the drug cannot be said to be fallacious, as contended on behalf of the petitioners, as the chemical analyst is well within his rights to analyse not only the chemical composition of the drug, but also the requisites with regard to the compliance of the provisions of Rule 96 (1), so as to identify the drug and its usage limitations. In the absence of provision of the particulars as prescribed u/r 96 (1), the opinion of the chemical analyst that there is misbranding of drug, as provided for u/s 17 of the Act cannot be said to be beyond the scope of the duties of the chemical analyst. Therefore there is no merit in the contention advanced on the facet of the issue and the same deserves to be rejected.

43. One of the other ground raised by the 2nd petitioner with regard to her implication in the case is on the ground that at the material point of time, viz., in the year 2008, the 2nd petitioner was not in-charge of the affairs of the 1st petitioner and, therefore, the roping in of the 2nd petitioner in the present case is



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wholly erroneous. However, at this point of time, this Court is not inclined to go into the said issue and it is always open to the 2nd petitioner to raise the said contention before the trial court by substantiating the same through relevant materials, which could be adverted to by the trial court to come to a conclusion.

44. For the reasons aforesaid, all the petitions *sans* merits and, accordingly, all the petitions are dismissed. Consequently, connected miscellaneous petition is closed. No costs.

13.02.2023

Index : Yes / No

GLN

To

1. XV Metropolitan Magistrate
George Town, Chennai.

2. Drugs Inspector
George Town II Range.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
CRL. O.P. NOS.27093 OF 2010, ETC.**

**Pronounced on
13.02.2023**