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Crl.O.P.Nos.25565, 25566 & 24983 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.Nos.25565, 25566 & 24983 of 2016

Crl.O.P.No.25565 of 2016

1. M/s.Solamalai Enterprises,
rep by its Managing Partner P.Pitchai
Agent of Procter & Gamble Hygiene
and Health Care Limited.

2. P.Pitchai
Managing Partner of
M/s.Solamalai Enterprises.
Agent of Procter & Gamble Hygiene
and Health Care Limited.

.... Petitioners

Vs

1. State Represented by
M.Marimuthu,
Drugs Inspector,
Coimbatore II Range,
O/o. The Assistant Director of Drugs Control,
Coimbatore Zone,
219, Race Course Road,
Coimbatore – 18.

2. M/s. Procter & Gamble Hygiene
and Health Care Limited,
Village Katha P.O.Baddi – 173205
Tehsil, Solan (HP).
Shown as represented by Geetha Narayanan
Operation Manager/Site Leader



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3. Geetha Narayanan

Operation Manager/Site Leader
M/s. Procter & Gamble Hygiene
and Health Care Limited.

.... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records connected in C.C.No.222 of 2011 on the file of the Judicial Magistrate No.V, Coimbatore and quash the same.

Crl.O.P.No.25566 of 2016

1. M/s.Solamalai Enterprises,
rep by its Managing Partner P.Pitchai
Agent of Procter & Gamble Hygiene
and Health Care Limited.

2. P.Pitchai
Managing Partner of
M/s.Solamalai Enterprises.
Agent of Procter & Gamble Hygiene
and Health Care Limited.

.... Petitioners

Vs

1. Drugs Inspector,
Erode I Range,
52, EVN Road, 1st Floor,
Rajaganapathy Chambers, Erode – 11.
O/o.The Assistant Director of Drugs Control,
Coimbatore Zone, Coimbatore.

2. M/s. Procter & Gamble Hygiene
and Health Care Limited,
Village Katha P.O.Baddi – 173205
Tehsil, Solan (HP).
Shown as represented by its person-
in-charge of Geetha Narayanan



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3. Geetha Narayanan

Person-in-charge of

M/s. Procter & Gamble Hygiene
and Health Care Limited.

.... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records connected in C.C.No.440 of 2010 on the file of the Judicial Magistrate No.II, Erode and quash the same.

Crl.O.P.No.24983 of 2016

1. M/s.Solamalai Enterprises,
rep by its Managing Partner P.Pitchai

2. P.Pitchai
Managing Partner of
M/s.Solamalai Enterprises.

3. R.Damodaran
Person in charge of
M/s.Solamalai Enterprises

.... Petitioners

Vs

1. The State of Tamil Nadu,
Represented by N.C.Ravichandran
Drugs Inspector,
Mayiladuthurai Range,
Office of the Drugs Inspector,
Room No.13, II Floor, Salam Mansion,
27B Town Extension, Mayiladuthurai.

2. M/s. Procter & Gamble Hygiene
and Health Care Limited,
Village Katha P.O.Baddi – 173205
Tehsil, Solan (HP).
Shown as represented by its Operation
Manager Geetha Narayanan



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3. Geetha Narayanan
Operation Manager of
M/s. Procter & Gamble Hygiene
and Health Care Limited.

4. N.V.Muralitharan
Person in charge of
M/s. Procter & Gamble Hygiene
and Health Care Limited.

5. R.Iyyappan
Prop of M/s.Thirumalai Agencies. Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records connected in C.C.No.71 of 2010 on the file of the Chief Judicial Magistrate, Nagapattinam and quash the same.

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For Petitioners : Mr.R.Anish Kumar
For R1 : Mr.L.Baskaran
Government Advocate (Crl.Side)
For R2 & R3 : No appearance

Crl.O.P.No.24983 of 2016

For Petitioners : Mr.R.Anish Kumar
For R1 : Mr.L.Baskaran
Government Advocate (Crl.Side)
For R2 to R5 : No appearance



COMMON ORDER

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These Criminal Original Petitions have been filed to quash the proceedings in C.C.No.222 of 2011 on the file of the Judicial Magistrate No.V, Coimbatore, C.C.No.440 of 2010 on the file of the Judicial Magistrate No.II, Erode and C.C.No.71 of 2010 on the file of the Chief Judicial Magistrate, Nagapattinam.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The first respondent filed private complaint as against the petitioners and the respondents 2 and 3 in Crl.O.P.Nos.25565 & 25566 of 2016 and the respondents 2 to 5 in Crl.O.P.No.24983 of 2016 for the contravention of Section 18(a)(i) read with Section 17(b) of the Drugs and Cosmetics Act 1940 (herein after referred as “Act”) which is punishable under Section 27(d) of the Act. The first respondent inspected M/s.Mahalakshmi Enterprises and had drawn samples of Vicks Action 500 manufactured by A1 and A2 for analysis. The Analysis Report stated that as “Not of Standard Quality” for the reason the batch number, manufacturing date and expiry date are not printed on the carton



box but stated on the carton that the individual strip has to be seen for the batch number, manufacturing date and expiry date. On the edge of the strip the batch number, manufacturing date and expiry date are printed.

4. As per Rule 96-1(v) the batch number, manufacturing date and expiry date shall appear on a conspicuous manner on the label of the innermost container and on every other covering to which the container is packed. Therefore, the sample is not properly labelled . As per Section 18(a)(i) not of standard quality drug read with Section 17(b) of the Act, is a misbranded drug. Therefore, under Section 18(a) of the Act, M/s.Sri Mahalakshmi Enterprises was required to disclose the name and address of the person from whom they had acquired the said drugs dated 25.02.2009. In the reply dated 13.03.2009, they had disclosed that they had purchased the said drug from A3 & A4 under invoices dated 10.10.2008 to the quantity of 1080 strips. By having sold a misbranded drug, A3 and A4 had contravened under Section 18(a)(i) read with Section 17(b) of the Act. Therefore, it was required to disclose the name and address of the person from whom that they had acquired the said drug. However, on receipt of the show cause notice, they failed to reply. Once again, a reminder was sent to A3 and A4. On receipt of the same,



though the replied dated 27.07.2009 and 25.09.2009, they did not give their purchase details. They disclosed that they had purchased the subject drug from A1 and A2 under the invoices dated 30.08.2008.

5. After issuances of the show cause notices, they failed to furnish the purchase distribution details. In the meanwhile, the Drug Inspector had made inspection on 21.12.2009 and 22.12.2009. The manufacturer accepted the offences of various batches of Vicks Action 500+ tablets. It was also declared as not of standard quality due to misbranded drug. Therefore, the accused had contravened Section 18(a)(i) read with 17(b) of the Act for having manufacture and sold the misbranded drug which is punishable under Section 27(d) of the Act.

6. The learned counsel appearing for the petitioners would submit that no offence has been made out as against the petitioners. They acted as a distributor of A1 and A2 in the State of Tamil Nadu except for some Districts. As per Rule 96-1(v) of the Drugs and Cosmetics Rules, 1945, they did not contravene any of the provision as alleged in the complaint. Since, the first accused had manufactured and cleared Vicks Action 500+ from its factory in Himachal Pradesh for



distribution through various distributors, the petitioners had acted as distributor of the first accused. In fact, the first accused had complied with necessary labelling requirement under the Law. In fact, for the same batch no other complaint has been filed by the respondents. He further submitted that 10 strips consisting of twelve tablets of Vicks Action 500+ with mandatory statutory declarations were packed in outer contained in compliance of the requirements of the Act and Rules. The first accused had declared the batch number on each of the strip consisting of 8 tablets. However, it did not declare the same on the outer carton consisting of 120 tablets. Instead, on the outer carton, it declared refer to the individual strip for batch number, manufacturing date and expiry date., under a bonafide belief that it was not required to make such declaration on the outer carton as the said drug is neither prescribed drug nor sold in bulk along with outer carton to consumers in the retail sector.

7. The first respondent also filed complaints before the other Courts for the very same contravention in C.C.No.71 of 2010 on the file of the Chief Judicial Magistrate, Nagapattinam and in C.C.No.222 of 2011 on the file of the Judicial Magistrate No.V, Coimbatore.



8. In C.C.No.71 of 2010, the petitioners are arrayed as A6, A7 & A8. The defacto complainant made search in the premises of M/s.Thirumalai Agencies, Mayiladuthurai and had taken a sample of the drug New Vicks Action 500 and sent for analysis. It was also declared as misbranded drug, since it was sold without valid drug licence. Therefore, the first respondent filed compliant for contravention under Section 18(c) of the Act for having stocked for sale and sold a misbranded drug without valid drug licence which is punishable under Section 27(b)(ii) of the Act. Further, they had contravened the provision under Section 18(a)(i) of the Act read with Section 17(b) of the Act read with Rules 96-1(v) of the Drugs and Cosmetic Rules (herein after referred as “Rules”) for having stocked for sale and sold a misbranded drug punishable under Section 27(d) of the Act.

9. In C.C.No.222 of 2011 on the file of the Judicial Magistrate No.V, Coimbatore, the petitioners are arrayed as A3 & A4. The first respondent lodged complaint for contravene of Section 18(a)(i) read with Section 17(b) of the Act for having manufactured for sale, sold and distributed a misbranded drugs and punishable under Section 18(c) of the Act read with Rules 65(5) (1) of the Rules for having not entered the



batch number and manufacturer address in the sale bills for the drugs sold, which is punishable under Section 27(d) of the Act.

10. It is relevant to extract the provisions under Rule 96-1(v) of the Drugs and Cosmetics Rules, 1945, which reads as follows :

“96. Manner of Labelling -

(i) 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 :-

(i).....

(ii)

(iii)

(iv)

(v) A distinct 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'.”



11. Admittedly, the accused had contravened the provisions of Section 18(i)(c) of the Act and 18(a)(i) of the Act for inadequate declaration and it amounted to misbranding. Rule requires that the details of manufacturing to be printed on the label of the inner most container and also printed on every carton. A perusal of the reply statement revealed that they were under a bonafide belief that it was not required to make such declaration on the outer carton as the said drug is neither a prescribed drug nor sold in bulk along with outer carton to consumers in the retail sector. However, the Rule mandates that it should be declared in the outer carton box, failing which, it would amount to misbranding.

12. A perusal of the Analysis Report reveals that the batch number, manufacturing date and expiry date of the sample are printed on the carton box, but stated on the carton that the individual strip has to be seen for the batch number, manufacturing date and expiry date. Therefore, it is clear contravention of the provision under Section 18(a)(i) and 18(c) of the Act. It is relevant to extract the provision under Rule 96(3)(i) of Rules, which reads as follows :

“Rule 96(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.”

13. It shows 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. In both the Rules 96(1) and 96(3), the term used is “container”. The definition of container has not been provided for in the Act or in the Rules. However, as per Concise Oxford English Dictionary – 12th Edn, “Container” is an object for holding or transporting something a large standard sized metal box for the transport of good by road, rail, sea or air.

14. Though the learned counsel for the petitioner specifically contented that the tablets are not sold loosely, but sold in strips in retail



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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. Admittedly, the strips of tablets are packed in each carton box and that on the carton, the particulars as prescribed under Rule 96(1) are printed with the details of the particulars to be looked into the strips, which carry the tablets. Therefore, it could, by no means, be termed to be a container, coming within the meaning of the word container found under Rule 96(1) and 96(3)(i). Therefore, the carton box shall carry the particulars as provided under Rule 96(1) and 96(3).

15. The same grounds were raised by A1 and A2 in all the complaints while challenging the very same complaint in Crl.O.P.No.27093, 27699 & 28263 of 2010 and this Court dismissed all the quash petitions by an order dated 13.02.2023. The relevant portion of the order dated 13.02.2023 is extracted hereunder :

“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



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*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 reiterated in *Union of India and Ors. V. Filip Tiago De Gama of Vedem Vasco De Gama* (AIR 1990 SC 981). * * * * **

*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*



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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*



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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".]

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, 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.*

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*



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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 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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16. Insofar as other contraventions are concerned, the grounds raised by the petitioners can be considered only before the Trial Court during trial, since it is mixed question of facts and law.

17. In view of the above discussions, this Court is not inclined to quash the proceedings in C.C.No.222 of 2011 on the file of the Judicial Magistrate No.V, Coimbatore, C.C.No.440 of 2010 on the file of the Judicial Magistrate No.II, Erode and C.C.No.71 of 2010 on the file of the Chief Judicial Magistrate, Nagapattinam. Accordingly, these Criminal Original Petitions are closed.

30.11.2023

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Index: Yes/No
Internet: Yes/No

To

1. The Drugs Inspector,
Coimbatore II Range,
O/o. The Assistant Director of Drugs Control,
Coimbatore Zone,
219, Race Course Road,
Coimbatore – 18.



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2. The Drugs Inspector,
Erode I Range,
52, EVN Road, 1st Floor,
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O/o.The Assistant Director of Drugs Control,
Coimbatore Zone, Coimbatore.

3. The Drugs Inspector,
Mayiladuthurai Range,
Office of the Drugs Inspector,
Room No.13, II Floor, Salam Mansion,
27B Town Extension, Mayiladuthurai.

4. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN,J.

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