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Crl.O.P.No.26382 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.10.2023

PRONOUNCED ON : 01.12.2023

CORAM

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

Crl.O.P.No.26382 of 2016

and

Crl.M.P.Nos.13123 & 13124 of 2016

1. M/s.Kalpa Health Care (P) Ltd,
represented by its Managing Director
Rajini.

2. Mrs.Rajini,
Managing Director of
M/s.Kalpa Health Care (P) Ltd.

.... Petitioners

Vs

The State of Tamil Nadu
represented by P.Vijayan
Drugs Inspector,
Teynampet Range,
O/o. The Assistant Director of Drugs Control,
Zone III, D.M.S.Campus,
259-261, Anna Salai,
Teynampet, Chennai – 600 006.

.... Respondent

Prayer : Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in connection with C.C.No.405 of 2016 on the file of the learned IV Metropolitan Magistrate, Saidapet, Chennai and quash the same.



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CrI.O.P.No.26382 of 2016

For Petitioners : Mr.R.John Sathyan
Senior Counsel
for Mr.Manuraj

For Respondent : Mr.L.Baskaran
Government Advocate (CrI.Side)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.405 of 2016 on the file of the IV Metropolitan Magistrate, Saidapet, Chennai.

2. The respondent filed a private complaint for contravention of Section 18(c) read with Section 3(f) of the Drugs and Cosmetics Act, 1940 (herein after referred as “Act”), punishable under Section 27(b) (ii) of the Act and Section 18(c) of the Act read with Rule 65(5) (1), 65(5)(3), 65(18) of the Drugs and Cosmetics Rules, 1945 (herein after referred as “Rules”), punishable under Section 27(d) of the Act. The premises of the accused were inspected by the respondent in connection with the issue of Drug Bigan GM2 containing iron pieces. The accused had drug licences validity from 14.11.2003 to 13.11.2013. On inspection, the above mentioned drug was found not labelled properly. Therefore, the drugs are “Misbranded Drugs” as per Section 17(b) of the Act and thereby



CrI.O.P.No.26382 of 2016

contravened the provision under Section 18(a)(i) of the Act by having stocked for sales and having sold the drugs.

3. During inspection, it was found that the petitioners stocked some strips of tablets without outer cartons, certain empty carton boxes and catch covers meant for packing of drugs and therefore, according to the respondent, they were indulging in manufacturing activities without valid license. They were not holding manufacturing license and thereby committed contravention under Section 18(c) of the Act. It was also found that the petitioners were in possession of drugs, which were given for physician sample, thereby they contravened the provision under Section 18(c) of the Act read with 65(18) of the Rules. Some of the drugs were found as standard quality, but not labelled in the prescribed manner and some of the drugs reported to be not of standard quality. Therefore, according to the respondent, the petitioners had contravened the provision under Section 18(a)(i) of the Act for having sold the not of standard quality drug and also contravened under Section 18(a)(i) of the Act read with Section 17(b) of the Act for having sold the misbranded drugs.



4. The learned Senior Counsel appearing for the petitioners submitted that the petitioners would not fall under the category of manufacturer as defined under Section 3(f) of the Act, since they were wholesale distributors for medicine. As per Section 23(1) of the Act, where an Inspector takes any sample of drug, he shall tender the fair price and required acknowledgement thereof, which was not followed in this case. It is not the case of the prosecution that the petitioners are manufacturer of “Misbranded Drugs”. The petitioners are only a marketer. Without prosecuting the manufacturer, launching prosecution as against the marketer is illegal. The complaint was also lodged belatedly, i.e., after a period of three years. Therefore, it is barred by limitation.

5. In support of his contention, he relied upon the Judgment of this Court in ***Crl.O.P.No.13644 of 2012*** dated 14.08.2013 in the case of ***Tidal Laboratories Pvt. Ltd and Ors Vs. State of Tamil Nadu***, in which, this Court held as follows :

“9. According to the petitioner, the Mahazar discloses, “During search, it was found that they have stocked certain salable drugs, expired drugs and physician sample not to be sold, without valid drug licence”. There is no allegation in the Mahazar that



stocks were exhibited for sale or the petitioner company was found selling and distributing the drugs at the time of surprise inspection. Further, according to the petitioner, these drugs were stored for the purpose of demonstration purposes to give training to the medical representatives. In this regard, they also relied upon the earlier statement given by the night watchman and submitted that the statement of Arumugam would show that the samples were kept in the premises only for the purpose of giving training. Further, according to the petitioners, they have vacated the premises in January, 2010."

6. Further he relied upon the Judgment of the Hon'ble Supreme Court of India in ***Criminal Appeal No.103 of 1975*** dated 17.01.1979 in the case of ***Mohd. Sabir Vs. State of Maharashtra***, in which the Hon'ble Supreme Court of India held that to prove the contravention under Section 18(c) of the Act, the prosecution has to prove that affirmatively the accused was manufacturing the drugs for sale or selling the same or stocked them or exhibited the articles for sale.

7. He also relied upon the Judgment of this Court in ***Crl.O.P.No.22628 of 2006*** dated 23.02.2010 in the case of ***Ventri Biological Unit of V.H.P.L and Ors Vs. State***, in which this Court held as



follows :-

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“6. Though the contention of the learned Government Advocate (Crl.Side) made by pointing out Sections 23(1) and 25(3) of the Act may be acceptable, still the prosecution in the instant case would fail for, 'the reason that the complaint has been launched on the ground that drugs were stored at room temperature and sale of drugs was effected in contravention of rules. In the instant case, the complaint itself reflects that there was no documentary evidence for selling of the vaccines by the 1st accused firm. Such is the contention of the petitioners viz., vaccines were not meant for sale and meant for use in their hatchery units. If so, the wrongful storage of vaccines would affect none other than the petitioners. It is in this context that the submission of the learned Senior Counsl that the complaint makes no whisper of compliance with Section 23(1) of the Act, which requires an Inspector, who conducts any sample of a drug (or cosmetic) to tender the fair price thereof and to acquire a written acknowledgment therefore becomes relevant. In the absence of any averment in the complaint that the fair price for the sample seized was offered or refused, the contention that the drugs were not held by the petitioners for sale becomes credible.”

8. He further submitted that no invoices and no documents



were produced by the prosecution to substantiate the contravention. On inspection, in connection with the issue of drug Bigan GM2 tablets manufactured by Dexbio Pharma Pvt Ltd., Roorkee containing iron piece found in the premises of the accused and they were granted only wholesale drug licence in Forms 20B and 21B. However, the petitioners were indulging in drug manufacturing activity by packing the strips of tablets in the outer carton box without holding valid drug manufacturing licence. The provision under Section 19(3) of the Act cannot be granted to the petitioners. Therefore, it is in contravention under Section 18(c) of the Act read with 3(f) of the Act.

9. A perusal of the records reveals that the petitioners had only a wholesale licence in Form 20B and 21B. They were not issued with any manufacturing drug licence. However, they had stocked larger quantity of catch covers and strip of tablets without outer carton boxes or outer catch covers. Though the petitioners replied for the show cause notice that some carton boxes were defective or damaged while transit from Himachal Pradesh and hence, those strips were available without carton, even then, it was never reported in order to return to the manufacturer. Thereby they stocked larger quantity of strips without outer carton. During inspection, there was also excess quantity of carton



boxes were lying in the premises.

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10. On perusal of the statement of the petitioners revealed that some of the drugs have come from the manufacturer as strips without outer carton. Since the printer have not supplied the printed outer cartons in time to the manufacturer, the drugs, which was manufactured by the manufacturer, were supplied to them and later on the cartons, after manufacturers inspection and batch printing, will reach them.

11. However, in reply dated 23.03.2013 for the show cause notice, it was stated that cartons and catch covers were printed by them for the manufacturers at Sivakasi and the entire stocks were sent to the manufacturer directly. Some carton boxes and catch covers were sent by the printers as samples for payment. Therefore, the empty catch covers, empty cartons and those strips of tablets without outer carton proves that the petitioners had indulged in the process of manufacturing activity by packing the strips of tablets into the printed carton/catch covers in respect to the companies without holding any valid drug manufacturing licence which is in contravention of Section 18(c) read with Section 3(f) of the Act. The cash or credit memos do not bear the name of the



Crl.O.P.No.26382 of 2016

manufacturer of the drug, which is in contravention of Section 18(c) of the Act read with Rule 65(5)(1)(d) of the Rules. Further, the petitioners also failed to affix her signature in the sales bills, which is in contravention of Section 18(c) of the Act read with Rule 65(5)(1)(e) of the Rules.

12. It is also categorically admitted by the reply dated 27.06.2013 for the show cause notice that some of the copies maintained by them do not bear the signature of the competent person, which is a clerical error. Therefore, it shows that the petitioners had sold the drugs without issuing any cash or credit memo at the time of supplies by way of wholesale and not maintained the carbon copies of the same as it is mandated to preserve them as records for a period of three years from the date of the sale of drug.

13. On verification of the purchase and sales records, it is also found that the petitioners had sold the excess quantity of drugs for which the petitioners did not furnish the record of purchase invoices, which is in contravention of Section 18(c) of the Act read with Rule 65(5)(3) of the Rules. During inspection, it was also found that the petitioners had



CrI.O.P.No.26382 of 2016

stocked the date expired physician's sample. The expired drug was kept along with other saleable drug. It is in contravention of Section 18(c) of the Act read with Rule 65(18) of the Rules.

14. Therefore, the Judgments cited by the learned Senior Counsel are not applicable to the case on hand. That apart, the grounds raised by the petitioners are mixed question of facts and it cannot be considered in a quash petition under Section 482 Cr.P.C and it can be considered only before the trial Court during the trial.

15. In view of the above discussions, this Court is not inclined to quash the proceedings in C.C.No.405 of 2016 on the file of the learned IV Metropolitan Magistrate, Saidapet, Chennai and it is liable to be dismissed. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

01.12.2023

Index:Yes/No
Internet:Yes/No
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To



Crl.O.P.No.26382 of 2016

1. The IV Metropolitan Magistrate,
Saidapet, Chennai.

2. The Drugs Inspector,
Teynampet Range,
O/o. The Assistant Director of Drugs Control,
Zone III, D.M.S.Campus,
259-261, Anna Salai,
Teynampet, Chennai – 600 006.

3. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN,J.



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