



WEB COPY



Crl.R.C.No.429 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.Nos.429 & 466 of 2023

Nagarajan
S/o.Raganathan ... Petitioner in
Crl.R.C.No.429 of 2023

Kanagaraj @ Rajan
S/o.Thirumani ... Petitioner in
Crl.R.C.No.466 of 2023

Vs

State rep by
Deputy Superintendent of Police,
Organized Crime Unit,
Crime Branch CID,
Chennai – 08. ... Respondent in both Crl.R.C.

COMMON PRAYER: Criminal Revision Petitions filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the orders passed by the III Additional Judge, City Civil Court, Chennai in Crl.M.P.Nos.5142 & 5141 of 2016 and to discharge the petitioner in C.C.No.35 of 2016, which is pending before the learned III Additional Judge, City Civil Court, Chennai.



Crl.R.C.No.429 of 2023

In both Crl.R.C

For Petitioner : Mr.S.Suresh

For Respondent : Mr.R.Vinothraja
Government Advocate (Crl.Side)

COMMON ORDER

These Criminal Revision Petitions have been filed to set aside the orders passed by the III Additional Judge, City Civil Court, Chennai, in Crl.M.P.Nos.5142 & 5141 of 2016 and to discharge the petitioner in C.C.No.35 of 2016 which is pending before the learned III Additional Judge, City Civil Court, Chennai.

2. The learned counsel for the petitioners submitted that the respondent/complainant filed complaint against the petitioners for selling tablets of Voveran SR 100 slow Diclofenac Tablets BP, B.No.91002A, M/D 01/09, E/D 12/12, manufactured by M/s.Emcure Pharmaceuticals, Plot No.P2, I.T.R.T. Park, Phase-II, MIDC, Hinjwadi, Pune – 411057. The complainant has sent the tablets for chemical analysis and it has been declared that it is not a standard quality. Hence, a complaint filed against these petitioners along with seven other accused persons.

3. The learned Judge framed specific charges against these



Crl.R.C.No.429 of 2023

petitioners :

WEB COPY

CHARGE - IV

And at the same time, place and in the course of the same transaction pursuant to such conspiracy accused A3. Sathya Nathan, M/a36, S/o.R.Durai, No.8/15, Mangalapuram 4th Street, Chetpet, Chennai-31 of SATHYA PHARAMACY, No.14, Brindavanam Ist Street, Chetpet, Chennai-31 has purchased knowing them as substandard tablet Voveran SR100, Batch No.91002A 3600x15s strips tablets on 05.07.2009 without bills from the accused A1. Ravi sekhar of Manjula Pharmacy and sold it to A2. Perumal Samy of Samy Pharmaceuticals on 06.07.2009 knowing them as duplicate and duplicate product of M/s. Emcure Pharamaceuticals, where as the said 1628/MZ-11/20 & 21 and 2542/MZ-11/20-B, 2568/MZII/21-B issued on 25.09.2006 up to 24/9/2011 has purchased spurious Voveran SR-100, batch No.91002A from one Baskaran, a Medical Representatives from Tanjore knowing them as spurious without bills and sold it to Mamtha Pharma vide Bill Nos (1)92+8X15s Strips in Invoice No.4513, dated 08.07.2009, (2) 575+50X15s Strips in Invoice No.4530, dated: 14.07.2009, and (3) 575+50X15s Strips in Invoice No.4560, dated:04.08.2009, 4) 1242+108X15s Strips Invoice No. 4618, Dated:- 29.08.09 and sold to M.K.



Pharma vide Invoice No.4369 in 2450x15s strips. Accused A9. K.Baskaran a Medical Representatives from Tanjore has purchased spurious Voveran SR-100, batch No.91002A from Sri Ganapathy Agencies, Choolai, Chennai knowing them as spurious without purchase bill or invoice and sold the same without bill / Invoice to Sree G.H. Pharma.

Thus the above said accused A1. Ravi Sekhar, AZ. Perumal Samy, A3. Sathya Nathan, A4. T.Kanagaraj @ Rajan A5. Nagarajan, A6 Suresh @ Pasumaruthi Suresh, A7.T.S.Sekar, AB.Pradeep Kumar Chordia, A9.Baskaran in between July 2009 to May 2010 several places at Chennai and Vijayawada agreed to do an illegal Act or legal act by illegal means and thus conspired to commit and offence of purchasing for cheaper rate and selling for higher rate with or without bills the substandard Voveran SR. 100, Batch No.91002A which is used for Rheumatoid Arthritis, severe osteoarthritis, short term acute Musculoskeletal pains with profitable discount relating to the purchase and sale of medicine instead of getting purchasing from the original manufacturing firm of Voveran SR. 100, Batch No.91002A namely M/s. Emcure Pharmaceuticals. Plot No.P2, ITBT Park, Phase II M.I.D.C. Hinjwadi, Pune-411057, and sold such substandard Voveran SR 100, to the public as if such medicine, was the product of M/s. Emcure



Pharamaceuticals referred above, and sold the same under such pretext as genuine to the public by dishonestly induced them to purchase under such misconception/deception and thus conspired to commit the following offences as narrated here under in the execution of common design of such conspiracy by abetting themselves in one way or other to achive the common design of said conspiracy and each one did their best and took part in several stages before the consummation of the intended object of such conspiracy with knowledge of the said illegal Act and thereby accused A1 Ravi Sekhar, A.2 Tr.Perumal Samy, A3 Sathya Nathan, A4 T.Kanagaraj @ Rajan, A5 R.Nagarajan, A6 Suresh @ Pasumaruthi Suresh A7.TS.Sekar, A8.Pradeep Kumar Chordia, A9.Baskaran appear to have committed an offence of criminal conspiracy punishable u/s.120B IPC.

CHARGE-V

And at the same time, place and in the course of the same transaction pursuant to such conspiracy accused A4. T.Kanagaraj @ Rajan M/a.30, S/o.Thirumani, Door No.12A/1, Karnam Street, Selaiyur, Chennai-73 of ANGEL MEDICALS, Door No.24, Shop No.5, Karpaga Vinayagar Koil Street, Tambaram East, Chennai-59 has purchased knowing them as substandard tablet Voveran SR100, Batch No.91002A without bills from the accused



A1.Ravi sekhar of Manjula Pharmacy and sold it without bills to A5. R.Nagarajan of Anu Medicals who is known that the Voveran SR100, Batch No.91002A tablet, were not the product of M/s.Emcure Pharamaceuticals, and not truly the product of M/s. Emcure Pharamaceuticals, and there by termed to be a Spurious Drug as defined U/s. 17 B (e) which is punishable U/s.27 (c) of the Drugs and Cosmetics Act of 1940 and thereby the accused A4. J.Kanagaraj @ Rajan is appear to have committed an offence punishable U/s.17 B r/w.27 (c) of the Drugs and Cosmetics Act 1940 and also u/s.18(c) r/w 65 (4) (4) of Drugs and Cosmetics Rules 1945 as the accused did not maintain any account for such sale and purchase.

CHARGE-VI

And at the same time, place and in the course of the same transaction pursuant to such conspiracy accused A5.Tr.R.Nagarajan, M/a.36, S/o.A.Ranganathan, No.55, Muthuramalingam street, Tambaram East, Chennai-59 of ANU MEDICALS, No.16, Elangovan Street, East Tambaram, Chennai 59 has purchased knowing them as substandard tablet Voveran SR100, Batch No.91002A without bills from the accused A4. T.Kanagaraj @ Rajan of Angel Medicals and sold it without bills to one Tr.Baskaran, Medical Representatives of Nanganallur to make it appear to him that the Voveran SR100, Batch No.91002A tablet, were the product of M/s.Emcure



Pharamaceuticals, where as the said tablet are not truly the product of M/s. Emcure Pharamaceuticals, and there by termed to be a Spurious Drug as defined U/s. 17 B (e) which is punishable U/s.27 (c) of the Drugs and Cosmetics Act of 1940 and thereby the accused A5. Tr.R.Nagarajan is appear to have committed an offence punishable U/s.17 B (e) r/w.27 (c) of the Drugs and Cosmetics Act 1940 and u/s 18 (c) r/w 65 (4) (4) Drugs and Cosmetics Rules 1945 as the accused did not maintain any account for such purchase and sale.

CHARGE-IX

And in the course of the same transaction pursuant to such conspiracy accused A8. Tr.Pradeep Kumar Chordia,M/a.33, S/o.Sugand Chand Jain, No.33, Varadarajulu Street, Choolai, Chennai-112 Proprietor of Sree G.H. Pharma, No.7, Nehru Street, Razaak Garden Road, Arumbakkam, Chennai-106 has purchased knowing them as substandard tablet Voveran SR100, Batch No.91002A without bill from A9.Baskaran, a Medical Representatives from Tanjore knowing them as spurious without bills and sold knowing them as substandard tablet Voveran SR 100, Batch No.91002A to Mamtha Pharma vide Bill Nos.(1)92+8X15s Strips in Invoice No.4513, dated:08.07.2009, (2) 575+50X15s Strips in Invoice No.4530, dated: 14.07.2009, and (3) 575+50X15s Strips in Invoice No.4560,



Crl.R.C.No.429 of 2023

dated:04.08.2009, 4) 1242+108X15s Strips Invoice No. 4618, Dated:29.08.09 and sold to M.K. Pharma vide Invoice No.4369 in 2450x15s strips to make it appear to them that the Voveran SR100, Batch No.91002A tablet, were the product of M/s.Emcure Pharamaceuticals, where as the said tablet are not truly the product of M/s. Emcure Pharamaceuticals, and there by termed to be a Spurious Drug as defined U/s. 17 B (e) which is punishable U/s.27 (c) of the Drugs and Cosmetics Act of 1940 and thereby the accused A8. Tr.Pradeep Kumar Chordia is appear to have committed an offence punishable U/s.17 B (e) r/w.27 (c) of the Drugs and Cosmetics Act 1940 and u/s 18 (c) r/w 65 (4) (4) Drugs and Cosmetics Rules 1945 as the accused did not maintain any account for such purchase and sale.

4. The learned counsel for the petitioners contended that the complainant had not seized Voveran SR 100, Batch No.91002A tablets from these petitioners. Under these circumstances, no offence is made out against these petitioners. Hence, pleaded to set aside the impugned order and to discharge the accused from the criminal proceedings in C.C.No.35 of 2016 on the file of the III Additional Judge, City Civil Court, Chennai.

5. The learned Government Advocate (Criminal Side)



Crl.R.C.No.429 of 2023

submitted that these petitioners purchased Voveran SR 100, Batch No.91002A tablets from the first accused and to this effect. In this regard, Backiyaraj (LW-13) and another witness Mohan (L.W.14), Auto Driver, deposed that the delivery of the tablets to these petitioners.

6. The learned counsel for the petitioners cited the inconsistency between the evidence of Backiyaraj and Mohan. Backiyaraj is working as an employee of A1 and Mohan is the Auto Driver accompanied with Backiyaraj. The inconsistency between two statements make them unbelievable. Further, apart from that in the absence of recovery of any Voveran SR 100, Batch No.91002A tablets, their evidence cannot be taken into consideration.

7. On perusal of the records reveals that the complainant/ Drug Inspector, on 17.05.2010 has taken sample of tablets of Voveran SR 100, Batch No.91002A, manufactured by M/s.Emcure Pharmaceuticals and sent it for chemical analysis. The Government Analysis Drugs Testing Laboratory, Chennai, reported that these tablets are not of standard quality. Thereafter, he investigated further and



handed over to the respondent for investigation. After investigation, final report has been filed. The Trial Court framed totally 11 charges against all the accused persons and charge Nos.4,5,6 and 9 were framed against these petitioners.

8. In this regard, it is relevant to extract Section 17A, 17B and 18 of Drugs and Cosmetics Act :

17-A. Adulterated Drugs. - For the purpose of this Chapter, a drug shall be deemed to be adulterated, -

(a) if it consists in whole or in part, of any filthy, putrid or decomposed substance ; or

(b) if it has been prepared, packed or stored under insanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health ; or

(c) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health ; or

(d) if it bears or contains, for purposes of colouring only, a colour other than one which is prescribed ; or

(e) if it contains any harmful or toxic substance which may render it injurious to health ; or

(f) if any substance has been mixed therewith so as



to reduce its quality or strength.

17-B. Spurious drugs. - For the purpose of this Chapter, a drug shall be deemed to be spurious, -

(a) if it is manufactured under a name which belongs to another drug or

(b) if it is an imitation of, or is a substitute for, another drug or resembles another drug in a manner likely to deceive or bears upon it or upon its label or container the name of another drug unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug ; or

(c) if the label or container bears the name of an individual or company purporting to be the manufacturer of the drug, which individual or company is fictitious or does not exist ; or

(d) if it has been substituted wholly or in part by another drug or substance ; or

(e) if it purports to be the product of a manufacturer of whom it is not truly a product.

18. Prohibition of manufacture and sale of certain drugs and cosmetics – From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf -

(a) Manufacture for sale or for distribution, or sell,



or stock or exhibit or offer for sale or distribute -

(i) any drug which is not of a standard quality, or is misbranded, adulterated or spurious ;

(ii) any cosmetic which is not a standard quality, or is misbranded, adulterated or spurious ;

(iii) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof [the true formula or list of active ingredients contained in it together with the quantities, thereof] ;

(iv) any drug which by means of any statement, design or device accompanying it or by any other means, purports or claims [to prevent, cure or mitigate] any such disease or ailment, or to have any such other effect as may be prescribed ;

(v) any cosmetic containing any ingredient which may render it unsafe or harmful for use under the directions indicated or recommended ;

(vi) any drug or cosmetic in contravention of any of the provisions of this Chapter or any rule made thereunder;

(b) sell, or stock or exhibit or offer for sale or distribute any drug or cosmetic which has been imported or manufactured in contravention of any of the provisions of this Act or any rule made thereunder ;



(c) manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale or distribute any drug or cosmetic except under, and in accordance with the conditions of, a license issued for such purpose under this Chapter ;

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis :

Provided further that the Central Government may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the manufacture for sale or for distribution, sale, stocking or exhibiting or offering for sale or distribution of any drug or class of drugs not being of standard quality.

9. In this case, the alleged tablets of Voveran SR 100, Batch No.91002A had not been seized from the shops of the petitioners to show that they have kept the tablets of Voveran SR 100, Batch No.91002A for sale to anyone.

10. The prosecution, relied upon the statements of Backiyaraj (L.W.13) and Mohan (L.W.14) and I have gone through the statement of the said Backiyaraj and Mohan. In their statement, they have not stated anything clearly about handing over the tablets of



Crl.R.C.No.429 of 2023

Voveran SR 100, Batch No.91002A. There is no consistency in their statement with regard to receiving of amount for handing over the above said tablets. Therefore, even admitting their statement is true, it is not enough to frame a charge against the petitioners upon their statement.

11. In the absence of any material to show that the petitioners had possessed the substandard Voveran SR 100, Batch No.91002A tablets in their shop for sale or sold to any consumer, the charges framed as above is not maintainable. There is no prima-facie case to proceed against the petitioners for the offence stated. Therefore, the impugned charge is unsustainable.

12. Hence, the impugned orders passed against the petitioners are set aside and the revision is allowed. The petitioners are discharged from the criminal proceedings in C.C.No.35 of 2016 on the file of the III Additional City Civil Court, Chennai.

29.03.2023

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral citation : Yes/No
Lpp

Note : Issue order copy on 19.04.2023



Crl.R.C.No.429 of 2023

To

WEB COPY

1. The III Additional Judge,
City Civil Court,
Chennai.

2. The Deputy Superintendent of Police,
Organized Crime Unit,
Crime Branch CID,
Chennai – 08.

3. The Public Prosecutor,
Madras High Court,
Chennai.



WEB COPY



Crl.R.C.No.429 of 2023

V.SIVAGNANAM, J.,
Lpp

Crl.R.C.Nos.429 & 466 of 2023

29.03.2023