IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.06.2023

PRONOUNCED ON: 26.06.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.353 of 2023
and
Crl.M.P.No.2793 of 2023

Saral Henry
M/s.Hannah Medicals,
No.18, Ground Floor,
Corporation shopping Complex,
Indira Nagar 3rd Avenue,
Adyar, Chennai – 600 020.
Residing at :
No.64/2, 1st Coronet garden,
Kottivakkam, Chennai – 600 041. ... Petitioner

/vs/

The State of Tamil Nadu
Rep.by P.TamaraiSelvi
Drug Inspector,
Mylapore Range – Adyar Range In-charge,
O/o.The Asst. Director of Drugs Control,
Zone-III, DMS Campus,
No.259-251, Anna Salai,
Teynampet, Chennai – 600 006. ... Respondent

PRAYER : Criminal Revision Case has been filed under Sections 397 r/w 401 of the Code of Criminal Procedure to allow this criminal revision petition and set aside the order passed in Crl.M.P.No.406/2019 in C.C.No.7933 of 2018 on the file of the IV Metropolitan Magistrate, Saidapet, Chennai, dated 20.01.2023.

For Petitioner ... Mr.C.K.M.Appaji

For Respondent ... Mr.R.Vinothraja
Government Advocate (Crl.side)

ORDER

Challenging the impugned order dated 20.01.2023 passed in Crl.M.P.No.406 of 2019 by the IV Metropolitan Magistrate, Saidapet, Chennai – 15, the presence criminal revision case has been filed.

2.The fact of the case is that the Drugs Inspector, Adayar Range, is a complainant. The Proprietrix of concern, M/s Hannah Medicals, is the respondent /accused in C.C.No.7933 of 2018 on the file of the IV Metropolitan Magistrate Court, Saidapet, Chennai-15. Based on the complaint dated 14.07.2015, the Drug Inspector conducted a joint investigation at M/s.Hannah Medicals, shop at 18, Corporation shopping complex, 3rd Avenue, Indira Nagar, Adyar, Chennai 20 and on verification of the available records and on enquiry with Mrs. Saral Henry, found that the Licence holder Mrs.K.Bhuvaneswari obtained drug licence No.958/MIII/20,962/MIII/21 and transferred the ownership to Mrs.Saral Henry and allowed her to run the medical shop in the said premises without getting proper approval from Drugs Control Department, Tamil Nadu and the shop was acquired by Mrs.Saral Henri from Mrs.K.Bhuvaneshwari on 01.12.2014 by entering Rental Agreement between them. Thereafter, the petitioner is running the shop and not informed the change of ownership to the Drugs Control Department, hence, show cause was issued to the petitioner. Aggrieved by this, the petitioner filed a petition in Crl.M.P.No.406 of 2019 in C.C.No.7933 of 2018 to discharge her from the criminal proceedings before the IV Metropolitan Magistrate Court, Saidapet, Chennai. The learned Judge dismissed the same by not accepting the contention of the petitioner that she is only a staff in Mr.Hannah Medicals and found that the petitioner is running a medical shop without obtaining valid license from the licensing authority. Aggrieved by this order, the present criminal revision case has been filed.

3.The learned counsel for the petitioner contended that the petitioner is a Diploma Holder in Pharmacy worked in M/s.Hanna Medicals and it's proprietrix is Mrs.Bhuvaneswari. The Drug License and Company License are standing in her name. Since Mrs.Bhuvaneswari is a patient, the petitioner looked after the business. The Drug Inspector of Adyar Range regularly conducted inspection in the Medical Shop and found the presence of the Proprietrix and certified the same in the inspection Note and periodically sent report to the competent Authority for renewal of License. The last inspection was conducted on 16.05.2015.

4.He further contended that on 14.07.2015, the respondent, who is in charge of Drug Inspector of Adyar Range, conducted surprise raid in the medical shop and seized medicines and book of accounts and records and produced the same before the IV Metropolitan Magistrate, Saidapet. When questioned, the respondent informed that based on the complaint of one Tamil Selvam to the Hon'ble Chief Minister and in follow up of the matter, the inspection was conducted. Immediately after the seizure, Mrs.Bhuvaneswari, the proprietrix of M/s.Hannah Medicals filed an application in M.P.No.3476 of 2015 before the IV Metropolitan Magistrate, Saidapet seeking for return of the medicines. In the application, Mrs.Bhuvaneswari had filed all the documentary proofs including the Drug License and Corporation License to prove her ownership and also examined herself as PW1. The respondent contended that in the complaint of Tamil Selvam, the Rental Agreement annexed thereto. Thus, it was clear that the petitioner was running the Pharmacy, opened a Bank Account on behalf of Hannah Medicals, engaged all the transactions and in view of the change of constitution of the Medical Shop and on failing to inform the factum to the Drug Inspector, the Drug License stood in the name of Mrs.Bhuvaneswari was cancelled. The Respondent was also examined as RW1 and during the cross examination, she had admitted that the complainant Tamil Selvam was not found in the address and the complaint is fictitious and only relying on the copy of the Rental Agreement sent along with the complaint, the enquiry was conducted. The Respondent categorically admitted that Mrs.Bhuvaneswari is the License Holder, no spurious or misbranded drugs had been seized from the Medical Shop and the seizure was made on account of the violations of the License conditions. On 04.11.2015, the learned Magistrate was pleased to allow the application in M.P.No.3476 of 2015 and ordered for the interim custody of the medicines in favour of Mrs.Bhuvaneswari on the ground that the license granted in favour of Mr.Bhuvaneswari from 06.03.1997 to 31.12.2017 is not cancelled by the Asst. Director of Drugs and the petitioner Mrs.Saral Henry is only a staff, who attended the medical shop, when the complainant Tamil Selvam itself is fictitious, on the strength of the xerox copy of the Rental Agreement along with the complaint, sudden inspection ought not to have been conducted, the medical shop was periodically subjected to inspection till 16.05.2015 and the report was drawn up in Form No.35, the sudden inspection dated 14.07.2015 and seizing all the medicines from the shop is illegal and violative of the principles of natural justice. Further contended that the contention of the respondent that due to the Rental Agreement, the constitutions of the Medical shop is changed and the license stood automatically cancelled is also illusive and there is violation of Rules 21 & 22 of the Drugs & Cosmetics Rules. Even after the judicial order passed by the competent Court of law, brushing aside all the contentions of the respondent for the same set of facts the prosecution was launched against the petitioner.

5.Further contended that the learned Magistrate ought to have allowed the discharge petition and discharged the revision petitioner from criminal case in C.C.No.7933 of 2019. Since no prima facie case u/s. 18(c) r/w 27(ii)(2) of the Drugs and Cosmetics act was made out against the revision petitioner/accused.

6.The learned counsel for the respondent supported the order of the trial Court and further contended that the original licensee Mrs.K.Bhuvaneswari transferred the medical shop to Mrs.Saral Henry. Based on the four government documents viz., (***i).Agreement dated 01.12.2014 entered between Mrs.K.Bhuvaneswari and Mrs.Saral Henry. (ii).Commercial taxes Department Certificate (VAT)(iii) Revenue Department Licence (issued by Corporation of Chennai) (iv)Cheque Book issued by TNSC bank (Mentioning Mrs.Saral henry's name as***

Proprietrix of Hannah Mdicals.), it was concluded that Mrs.K.Bhuvanewari, who was the original licence holder under licence no's 958/MIII/20,962/MIII/21 dated 06.03.2007 issued by the Assistant Director of Drugs Control, Zone III, Chennai – 06, has transferred the same in the name of Mrs.Saral Henry on 01.12.2014. Because petitioner Mrs.Saral Henry is the owner of the shop, she has obtained all licence to run the medical shop business from Revenue Department and Commercial tax Department except Drugs Control Department. Hence, here a question is arising that, if Saral Henry is the only incharge of the shop or she is doing business on behalf of Mrs.K.Bhuvaneshwari, it is not required for her to obtain necessary registration to run shop from other Government departments.

7.Further, the learned counsel for the respondent submitted that as per the conditions of license in Forms 20 & 21 issued under Drugs and Cosmetics Act, 1940, Mrs.Saral Henry, the new Proprietrix should have informed about the change in constitution happened. The condition No.5 of Form 20 License and No.6 of Form 21 License reads as follows:

" The licensee shall inform the Licensing Authority in writing in the event of any change in the constitution of the firm operating under the licensee, where any cange in the constitutin of the firm takes place, the current licence shall be deemed to be valid for a maximum period of three months from the date on which the change takes place unless, in the mean time, a fresh licence has been taken from the licensing Authority in the name of the firm with the changed constitution"

Hence, as per the conditions read above, new proprietor Mrs.Saral Henry has not applied to the Licencing Authority for the change in constitution within three months of change in constitution, until the date of inspection, which is in violation of Section 18(c) of Drugs and Cosmetics Act, 1940 for having stocked and sold the drugs, without having valid drugs licence.

8.I have considered the matter in the light of the submissions made by the learned counsel for the petitioner as well as the learned counsel for the respondent.

9.On perusal of the records and the impugned order, it is noticed that Drug licence No.958/MIII/20,962/MIII/21 has been granted to one

Mrs.K.Bhuvaneswari to run M/s.Hannah Medicals, shop at 18 Corporation shopping complex, 3rd Avenue, Indira Nagar, Adyar, Chennai – 20. Further it is also not disputed that the drug licence is valid up to 31.12.2017. The inspection was carried out by the drugs Inspector on 14.07.2015. Hence, on the date of inception, there is a valid drug licence in favour of Mrs.K.Bhuvaneswari to run M/s.Hannah Medicals, in the abovesaid address. This fact is not disputed. According to the complainant, at the time of inspection, Mrs.K.Bhuvaneswari was not in the shop but the petitioner Saral Henri was in the shop and further during the inspection, the drugs inspector found the following documents in the petitioner's name i.e. (***i)Agreement dated 01.12.2014 entered between Mrs.K.Bhuvaneswari and Mrs.Saral Henry. (ii)Commercial taxes Department Certificate (VAT) (iii)Revenue Department Licence (issued by Corporation of Chennai) (iv)Cheque Book issued by TNSC bank (Mentioning Mrs.Saral henry's name as Proprietrix of Hannah Medicals.)*** Based upon this, complaint has been filed.

10.Now, the question is, whether the petitioner is committed any offences under Sections 18(c) r/w 27(b)(ii) of the Drugs and Cosmetics Act, 1940, which Act read as follows:

> ***"18.Prohibition of manufacture and sale or 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). . . ..***
>
> ***(b). . . . . .***
>
> ***(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 licence issued for such purpose under this Chapter."***

Section 27 of the Drugs and Cosmetics Act, 1940 runs as follows:

> ***27. Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter. – Whoever, himself or by any other person on his behalf, manufacturers for sale or for distribution, or sells, or stocks or exhibits or***

offers for sale or distributes,-

(a) any drug deemed to be adulterated under section 17-A or spurious under section 17-B and which when used by any person for or in the diagnosis, treatment, mitigation, or prevention of any disease or disorder is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt within the meaning of section 320 of the Indian Penal Code (45 of 1860), solely on account of such drug being adulterated or spurious or not of standard quality, as the case may be, shall be punishable with imprisonment for a term which shall not be less than ten years but which may extend to a term for life and shall also be liable to fine which shall not be less than ten lakh rupees or three times value of the drugs confiscated, whichever is more:

Provided that the fine imposed on and released from, the person convicted under this clause shall be paid, by way of compensation, to the person who had used the adulterated or

spurious drugs referred to in this clause:

Provided further that where the use of the adulterated or spurious drugs referred to in this clause has caused the death of a person who used such drugs, the fine imposed on and realized from, the person convicted under this clause, shall be paid to the relative of the person who had died due to the use of the adulterated or spurious drugs referred to in this clause.

Explanation.- For the purposes of the second proviso, the expression "relative" means-

(i) spouse of the deceased person; or

(ii) a minor legitimate son, and unmarried legitimate daughter and a widowed mother; or

(iii) parent of the minor victim; or

(iv) if wholly dependent on the earnings of the deceased person at the time of his death, a son or a daughter who has attained the age of eighteen years; or

(v) any person, if wholly or in part, dependent on the earnings of the deceased person at the time of his death, -

(a) the parent; or

(b) a minor brother or an unmarried sister; or

(c) a widowed daughter-in-law; or

(d) a widowed sister; or

(e) a minor child of a pre-deceased son; or

(f) a minor child of a pre-deceased daughter where no parent of the child is alive; or

(g) the paternal grandparent if no parent of the member is alive;

(b) any drug —

(i) deemed to be adulterated under section 17A, 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 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 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 not be less than seven years but which may extend to imprisonment for life and with fine which shall not be 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 less than seven years but not less than three years and 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 any rule made there under, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to two years 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.***

Therefore, Section 27 (b)(ii) of the Drugs and Cosmetics Act, 1940 would attract in the absence of any valid licence as required under clause (c) of Section 18 of the Act.

11.In **Union of India V. Prafulla Kumar** *reported in* ***AIR 1979 SC 266,*** after considering the leading cases on the point, the Hon'ble Supreme Court laid down the following principles as to when the charge should be framed.

"*(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:*

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Court, cannot act merely as a Post

office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

12.In the instant case, there is no allegation of selling or possession adulterated and spurious drugs. The allegation is, violation of conditions of licence in Form -20 and 21 issued under Drugs and Cosmetics Act, 1940 to Mrs.K.Bhuvaneswari. According to the complainant, Mrs.K.Bhuvaneswari by way of agreement dated 01.12.2014 handed over the M/s. Hannah Medicals to the petitioner. The petitioner denied the fact that she is working as a staff under Mrs.K.Bhuvaneswari. Though she denied the ownership, investigating authority, the complainant during the inspection recovered the following documents viz., (***i). Agreement dated 01.12.2014 entered between Mrs.K.Bhuvaneswari and Mrs.Saral Henry. (ii)Commercial taxes Department Certificate (VAT) (iii)Revenue***

Department Licence (issued by Corporation of Chennai) (vi)Cheque Book issued by TNSC bank (Mentioning Mrs.Saral henry's name as Proprietrix of Hannah Medicals.)

13.Under these circumstances, this factual dispute has to be adjudicated by letting evidence before the trial Court and inappropriate to discharge at this stage. Therefore, I find no infirmity in the order passed by the learned trial Judge and there is no ground for discharge the accused from the criminal proceedings and no merit in this criminal revision case. Accordingly, the criminal revision case is dismissed. Consequently, connected miscellaneous petition is closed.

Index : Yes/No
Internet : Yes/No 26.06.2023
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To
1.The IV Metropolitan Magistrate, Saidapet,
Chennai.

2.The State of Tamil Nadu
Rep.by P.TamaraiSelvi
Drug Inspector,

Mylapore Range – Adyar Range In-charge,
O/o.The Asst. Director of Drugs Control,
Zone-III, DMS Campus,
No.259-251, Anna Salai,
Teynampet, Chennai – 600 006.

3.The Public Prosecutor,
High Court, Madras.

V.SIVAGNANAM ,J.

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Pre-delivery order made in
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