



Crl.RC.No.427 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2023

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Revision Case No.427 of 2020

and

Crl.M.P.No.3407 of 2020

P.Porselvi

... Petitioner/5th accused

Vs.

A.Deepa, M.Pharm
Drugs Inspector, Attur Range
O/o.Assistant Director of Drugs Control
Salem Zone,
No.7, Thiruvallurvar Street
Subramaniya Naga
Salem -5

... Respondent/Complainant

Prayer: Criminal Revision filed under Section 397 read with 401 of Criminal Procedure Code, praying to call for the records relating to Crl.M.P.No.1964 of 2019 in C.C.No.14 of 2016 on the file of the Judicial Magistrate No.I, Attur, Salem District by its order dated 24.02.2020 by setting aside the said impugned order.

For Petitioner : Mr.S.Shunmuga Velayutham
Senior Counsel for
Mr.T.Vijayaragavan

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



Crl.RC.No.427 of 2020

ORDER

This Criminal Revision Petition has been filed seeking to set aside the order in Crl.M.P.No.1964 of 2019 in C.C.No.14 of 2016 on the file of the Judicial Magistrate No.I, Attur, Salem District dated 24.02.2020.

2. The respondent filed a complainant before the learned Judicial Magistrate No.1, Attur, Salem, in C.C.No.14 of 2016 for the offences under Section 18 (b) and 27(d) of the Drugs and Cosmetics Act, 1940. The petitioner is arrayed as A5 in the said complaint. During pendency of the complaint, the petitioner herein had filed a petition before the Magistrate in Crl.M.P.No.1964 of 2019 invoking Section 239 Cr.P.C. to discharge her from the said complaint. The said complaint was dismissed by the Magistrate by order dated 24.02.2020. Aggrieved over the same, the present revision has been filed before this Court.

3. The learned counsel for the petitioner would submit that the petitioner is only running a medical shop. The other accused viz., A1 to



Crl.RC.No.427 of 2020

A4 are the manufacturers of the drugs. The seized drugs were in a sealed pack and therefore, it is not possible for the petitioner to add anything into that and the petitioner had no knowledge that the seized drugs were sub-standard quality. He would further submit that the petitioner is an innocent and there is no averment in the complaint that the petitioner either manufactured the said drugs or she was aware of the fact that the drugs are sub-standard quality. Further he would submit that there is a warranty period given on the drug pack itself and therefore, the petitioner is not responsible for the quality or standard of the drugs. The petitioner received the drugs from dealers and selling the same and she is no away responsible for the quality of the drugs. But the trial Court failed to consider the same and dismissed the petition filed by her seeking to discharge her from the complaint, which warrants interference.

4. The learned Government Advocate (Crl. Side) would submit that some samples of drug viz., 4x1x100 ml of PULMOLOX-XT were taken from the petitioner's medial shop and sent for analysis and the analysis



Crl.RC.No.427 of 2020

report showed that the samples were “Not of Standard Quality” and does not conform to label claim with respect to the content of Terbutaline Sulphate. Hence, the complaint was filed before the Judicial Magistrate. The petitioner is not entitled to be discharged from the complaint since, the sample drugs which were tested and found to be of sub standard quality, were under the custody of the petitioner. Therefore, the trial Court rightly dismissed the petition filed by the petitioner and that the petitioner has to prove as to whether she was aware of the standard of quality or not; whether she is responsible for the quality or not , during trial.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent and perused the materials on record.

6. Admittedly, the respondent who is a Drug Inspector, filed the complaint otherwise than the police report before the Judicial Magistrate



Crl.RC.No.427 of 2020

and the same was taken on file in C.C.No.14 of 2016. During the pendency of the case, the petitioner who was arrayed as A5 in the said complaint, filed a petition before the Magistrate seeking to discharge her from the said complaint. It is an admitted fact that the said drugs which were tested and found to be of sub standard Quality, were seized from the custody of petitioner. While deciding the petition under Section 239 or 245 Cr.P.C., the Court has to see whether there is prima facie allegation against the accused and the Court cannot conduct a roving enquiry on the materials placed by the prosecution. While deciding the petition under Section 239 or 245 Cr.P.C., the Court has to consider the materials placed by the prosecution and not the defence of the accused.

7. A bare perusal of the complaint filed by the respondent shows that there is a prima facie allegation against the petitioner. Whether the petitioner was aware of the fact that the drug was not of standard quality or not; whether the petitioner is responsible for the same or not; are all matter of evidence and that can be decided only after recording evidence and not at this stage.



Crl.RC.No.427 of 2020

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8. Therefore, this Court does not find any merit in the revision and the revision is liable to be dismissed.

9. Accordingly, this Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed.

10. The learned Judicial Magistrate is directed to frame charges against the accused in accordance with law and proceed with the trial and dispose of the matter within a period of 4 months from today.

03.01.2023

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Note: Issue order copy on 04.01.2023



Crl.RC.No.427 of 2020

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- To
1. The Judicial Magistrate No.I, Attur, Salem District
 2. A.Deepa
Drugs Inspector, Attur Range
O/o.Assistant Director of Drugs Control
Salem Zone,
No.7, Thiruvallurvar Street
Subramaniya Naga
Salem -5
 3. The Public Prosecutor
High Court, Madras



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CrI.RC.No.427 of 2020

P.VELMURUGAN,J.

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Criminal Revision Case No.427 of 2020

03.01.2023