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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.07.2023

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THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.13125 of 2022

and

Crl.M.P.Nos.7051 & 7052 of 2022

Shri Sanjay Thanvi

.. Petitioner

Vs.

Union of India,
Rep.by its Drug Inspector
Office of the Deputy Drugs Controller (India)
Central Drugs Standard Control Organization,
South Zone, 2nd Floor, Shastri Bhawan Annexe
Chennai - 600 063

.. Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order passed by the Learned III Additional Sessions Judge, Chennai in Crl.R.C.No.32 of 2016 dated 18.04.2017, in so far as, the said order passed is without jurisdiction and authority of law and the said court had committed serious flaw in entertaining criminal revision petition as against the final order passed in C.C.No.2333 of 2015 dated 25.08.2015 passed by the learned X



Metropolitan Magistrate, Egmore, Chennai.

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For Petitioner : Mr.S.Baskaran

For Respondent : Mr.L.Infant Dinesh
Central Government Standing Counsel

O R D E R

This Criminal Original petition has been filed aggrieved by the order passed by the III Additional Sessions Judge, Chennai in Crl RC No.32 of 2016 setting aside the order passed by the X Metropolitan Magistrate Court, Egmore in CC No.2333 of 2015 dated 25.08.2015 and remanding the matter back to the trial Court to frame charges and to dispose of the case in accordance with law.

2. Heard Mr.S.Baskaran, learned counsel for the petitioner and Mr.L.Infant Dinesh, learned Central Government Standing Counsel for respondent.

3. The respondent filed a complaint against the petitioner stating that they have imported drugs without license for 125 entries of various dates from foreign countries without Form 15 and have sold the same. Thereby, the respondent alleged that the petitioner has contravened the provisions of the Drugs and Cosmetics Act (hereinafter called as the “Act”) and consequently, is liable to be



punished under the said Act.

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4. The private complaint was taken on file in CC No.2333 of 2015 by the X Metropolitan Magistrate Court, Egmore, Chennai and the petitioner pleaded guilty before the Trial Court. The Trial Court acted upon the same and held that the petitioner is guilty of the offences under Section 10(c) and 18(b) of the Drugs and Cosmetics Act read with Rule 13(1) (b) and 27(d) and sentenced the petitioner to undergo simple imprisonment till the raising of the Court and also imposed a fine of Rs.20,000/- and in default three months simple imprisonment and also a fine of Rs.500/-.

5. Pursuant to the above order, the petitioner is said to have deposited the sum of Rs.20,500/-, which was imposed by the Court below.

6. The respondent aggrieved by the above order, filed a Criminal revision before the III Additional Sessions Judge, Chennai. The respondent took a stand that the Trial Court after considering the voluntary admission of the accused should have convicted the petitioner for each bill of entry separately and whereas, the trial court had imposed a flee bite punishment on the petitioner. The III Additional Sessions Judge by order 18.04.2017 has set aside the judgement of the



Trial Court and remanded the matter back to the file of the Trial Court. Aggrieved by the same, the present petition has been filed before this Court.

7. The main ground that was raised by the learned counsel for the petitioner is that the Court below ought not to have entertained the criminal revision when there is a remedy of appeal provided under Section 377 of Cr.PC. It was further contended that a single complaint was filed for 125 entries and hence, the Court below was not right in coming to a conclusion that 125 separate offenses were committed by the petitioner.

8. This Court has carefully considered the submissions made on either side and also perused the materials placed before this Court.

9. The petitioner had pleaded guilty before the Trial Court and pursuant to the same, the Trial Court passed the following order :-

In the result, the accused is found guilty of the offence u/s.10(c) & 18(b) of the Drugs and Cosmetics Act r/w rules 13(1) (b) and 27(d) of the Act, and he is sentenced to undergo simple imprisonment till raising of Court (I.T.R.C) and also imposed to pay a fine of Rs.20,000/-, in default



*simple imprisonment for 3 months and also to pay a fine of Rs.5,00/-
for publication charges (Total fine Rs.20,000+ 500 = 20,500/-)*

10. The Trial Court failed to see that Section 27(d) of the Act, specifically provides for a punishment for a term which shall not be less than one year but which may extend to two years. The proviso to Section 27(d) states that the Court for adequate and special reasons can record in the judgement and impose a sentence for a term less than one year.

11. It is clear from the above provision that the minimum punishment provided under Section 27 (d) is one year. If the Trial Court wants to impose a punishment less than one year, special and adequate reasons must be recorded in the judgement. In the instant case , the Trial Court has not recorded any reason and has straight away imposed the punishment of simple imprisonment till the raising of the Court. This sentence imposed by the Trial Court on the face of it is illegal.

12. Section 377 of Cr.PC provides for appeal that can be filed by the Government against inadequacy of sentence. In the instant case, we are not dealing with adequacy of sentence and what is being dealt with is the legality of the order passed by the Trial Court in imposing punishment lesser than what has been



provided under Section 27(d) of the Act. Under such circumstances, it is always left open to the High Court or Sessions Court to exercise its revisional jurisdiction under Section 397 of Cr.PC. The said provision will come into operation whenever the Court finds that the Court below has not exercised its jurisdiction with correctness, legality or propriety. Hence, the jurisdiction that was exercised by the Court below under Section 397 of Cr.PC does not suffer from any illegality.

13. In the light of the above discussion, the matter stands remanded back to the file of the Trial Court as directed by the Court below. The respondent has taken a stand that each of the entry is a separate offence and hence, while imposing the punishment, separate punishment must be imposed for each entry. On the other hand, the learned counsel for the petitioner submitted that the respondent had consciously filed a single complaint for the 125 entries and hence, the respondent cannot seek for trying each entry separately and punishing the petitioner separately for each entry.

14. The above issue that has been raised by both the sides need not be gone into in this petition. The matter is remanded back to the Trial Court and the Trial Court is directed to commence the proceedings from the stage of taking cognizance of the complaint and proceed further in accordance with law. It is left open to



both the parties to raise all the grounds before the Trial Court and the same shall be considered on its own merits and in accordance with law. The observations made by the Court below in Crl.RC No.32 of 2016 in this regard need not influence the mind of the Trial Court and the Trial Court can deal with the issue independently and come to a conclusion after considering the stand taken by both sides.

15. In the result, this Criminal Original petition is disposed of in the above terms and there shall be a direction to the concerned sessions Court, Chennai, to which the case is made over, to complete the proceedings within a period of six months from the date of taking cognizance of the complaint. The complaint was filed by the respondent before the Metropolitan Magistrate Court and it has been taken cognizance by the concerned Court. Under Section 32(2) of the Act no Court inferior to that of a Court of sessions shall try an offence punishable under Chapter 4. In view of the same, the continuation of the proceedings before the X Metropolitan Magistrate, Egmore, Chennai may suffer from lack of jurisdiction. In view of the same, the case has to be tried before the Sessions Court which is designated to try the offence under the Drugs and Cosmetics Act, 1940. Hence there shall be a direction to the Principal District and Sessions Judge, Chennai to transfer the case from the file of X Metropolitan Magistrate Court and the case shall be made over to any other Sessions Court in Chennai. This process shall be completed by the



learned Principal District and Session Court, Chennai, within a period of two weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

25.07.2023

Index :Yes/No
Internet:Yes/No
Speaking/Non speaking order
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To

1. Union of India,
Rep.by its Drug Inspector
Office of the Deputy Drugs Controller (India)
Central Drugs Standard Control Organization,
South Zone, 2nd Floor, Shastri Bhawan Annexe
Chennai - 600 063

2.The Public Prosecutor,
High Court, Madras.



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N. ANAND VENKATESH, J

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Crl.O.P.No.13125 of 2022
and
Crl.M.P.Nos.7051 & 7052 of 2022

25.07.2023



Crl.O.P.No.13125 of 2022

WE N.ANAND VENKATESH, J

Today, the matter was listed under the caption “for being mentioned” on the ground that Paragraph No.15 of the order is causing some confusion with respect to the Court which has to take cognizance for the offence under the Drugs and Cosmetics Act, 1940 (herein after called as “Act”).

2.While disposing of the criminal original petition, this Court at Paragraph No.15 had taken note of Section 32(2) of the Act and has held that no Court inferior to that of a Court of Session can try any offence punishable under Chapter IV. In the light of this observation made at Paragraph No.15, a mistaken impression has been created in the minds of many Magistrate Courts that the cases which are pending before them must be committed to the Sessions Courts. In view of the same, there is a lot of confusion prevailing place in all the Sessions divisions. Hence, this Court is duty bound to clarify the issue so that there is no further confusion with respect to the Court which has to deal with the case under the Act.

3.Chapter IV of the Act covers the provisions which provides for the Courts which can take cognizance of the offence and deal with the case. Section 32 of the Act deals



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with cognizance of offences and Section 32(2) of the Act is extracted hereunder:

32. Cognizance of offences.

..

(2) Save as otherwise provided in this Act, no Court inferior to that of a Court of Session try an offence punishable under this Chapter.

4. It is clear from the above provision that no Court inferior to that of a Court of Session can try any offence punishable under Chapter IV, save as otherwise provided in the Act. This would mean that if there is any other provision under the Act which enables some other Court to try the offence, Section 32(2) of the Act will have to yield to that provision,

5. The other provisions which have to be taken into consideration are Sections 36A and 36AB. Section 36A deals with certain offences which can be tried summarily. This provision was brought in through an amendment made by Act 68 of 1982 which came into effect from 01.02.1983. The provision itself start with a non-obstante clause and its states that the offences punishable with imprisonment for a term not exceeding three years, other than an offence under Clause(b) of Sub-section (1) of 33-I, can be tried in a summary manner by a Judicial Magistrate of the first class especially empowered in this regard by the State Government or by a Metropolitan Magistrate. The provision also makes it clear that the Magistrate Court must follow the provisions of Sections 262 to



265 of Cr.P.C., while conducting the summary proceedings.

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6.It is quite apparent from the above provision that Section 36A is one exception to Section 32(2) of the Act. Whatever offences fall within the scope of Section 36A can be dealt with by means of summary proceedings by the Judicial Magistrate of first class especially empowered by the State Government or by any Metropolitan Magistrate. Paragraph 15 of the order does not deal with cases of this nature and it is made clear that the cases which falls within the scope of Section 36A will be tried only by the notified Judicial Magistrate of first class or by any Metropolitan Magistrate and it does not require any committal to the Sessions Court.

7.The Second category which is also an exception to Section 32(2) of the Act are those cases which are falling under Section 36AB. This provision was brought into force through Act 26 of 2008 w.e.f., 10.08.2009. There are certain specified offences relating to adulterated drugs or spurious drugs which can be tried before the Special Courts. Such Special Courts must be constituted / designated by a notification by the Central Government or the State Government in consultation with the Chief Justice of the High Court. Wherever, such Special Court is constituted and the offences contemplated under Section 36AB is committed, it can be tried only before the Special Court.



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N.ANAND VENKATESH, J

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8.To make it more clearer, only those cases which do not fall within the scope of Section 36A and Section 36AB, will come within the scope of Section 32(2) of the Act. Only such cases can be tried by the Court of Sessions as contemplated under Section 32(2) of the Act. This clarification will sufficiently take care of the prevailing confusion and a copy of this order shall be marked to the Principal District Judges across the State of Tamil Nadu. The cases shall be taken cognizance by the concerned Courts in line with the clarification issued in this order.

04.01.2024

Index : Yes
Internet : Yes
Speaking Order
Neutral Citation : Yes
SSR

To

1.All Principal District and Sessions Judges,
State of Tamil Nadu.

Crl.O.P.No.13125 of 2022