



Crl.O.P.No.10917 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P. No.10917 of 2021

&

Crl. M.P.Nos.6467 & 6468 of 2021

1. Y.V.Hari Krishna

2. Y.V.Niranjana Krishna

... Petitioners

Vs.

State rep. by the Drugs Inspector

Red Hills Range

Office of the Assistant Director of Drugs Control,

Thiruvallur Range,

No.201, J.N.Road, 1st Floor,

Vishnu Complex, Thiruvallur – 602 001.

Respondent

...

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in C.C.No.112 of 2020 pending on the file of the Chief Judicial Magistrate at



Crl.O.P.No.10917 of 2021

Thiruvallur and quash the same.

WEB COPY

For Petitioners : Mr. P.S.Raman
Senior Advocate
For Mr. T.Selvan Babu

For Respondent : Mr. A.Damodaran
Additional Government Pleader

ORDER

The petition is filed to quash the complaint filed for the alleged offences under Section 18 (c) read with Section 27 A (ii) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as the Act).

2. The allegation in the complaint is that the petitioners were found in possession of “*Gopuram Manjal Kumkumam*” without a valid licence; that Kumkumam is a cosmetic and inserted as 27th item in Schedule S as per notification GSR 553(E) dated 20.07.1995 with effect from 20.07.1995; and that hence, the manufacturing and possession of Kumkumam is in violation of Section 18 (c) of the Act.



WEB COPY 3. Mr. P.S.Raman, learned senior counsel for the petitioners submitted that Kumkumam cannot be considered as a cosmetic since there is a difference between “*religious Kumkumam*” and “*cosmetic Kumkumam*”. The learned senior counsel would submit that the petitioners are manufacturing only a religious Kumkumam; that the inspection and seizure was done on 16.08.2018; that the complaint was filed on 13.09.2019; that the complaint is barred by limitation; and that this Court in ***Crl.O.P.No.6127 of 2020*** dated ***14.06.2022*** had quashed a similar complaint under the Act since it was barred by limitation.

4. The learned Additional Public Prosecutor per contra submitted that there is no distinction in the schedule between “*religious Kumkumam*” and “*cosmetic Kumkumam*”; that Kumkumam is a cosmetic and has been inserted in Schedule – S in the year 1995. Hence, he submitted that the manufacturing and



Crl.O.P.No.10917 of 2021

possession of Kumkumam without a valid licence is in violation of the Act. As regards the question of limitation, the learned Additional Public Prosecutor submitted that it is true that the complaint was filed with delay. However, the respondent waited for the reply to the show cause notice and also had applied for sanction and the sanction was granted only on 26.08.2019. Hence, the learned Additional Public Prosecutor would submit that the period between the proposal for sanction i.e., on 24.07.2019 and the date of order of sanction i.e., on 26.08.2019 has to be excluded for the purpose of calculating limitation and prayed for dismissal of the quash petition.

5. Heard the learned senior counsel for the petitioners and the learned Additional Public Prosecutor for the respondent.

6. The respondent inspected the petitioner's premises on 16.08.2018. The maximum punishment prescribed for the offence under Section 27 A (ii) of the Act is imprisonment, which may extend



to one year. The complaint ought to have been filed as per Section 468 of the Cr.P.C within one year (i.e.,) on or before 15.08.2019. The complaint was filed on 13.09.2019. Hence, the complaint admittedly was filed with a delay of 37 days. The reasons given for the delay by the respondent is that they had made a proposal for sanction on 24.07.2019 and the sanction order was passed only on 26.08.2019. Therefore, the time taken for obtaining sanction has to be excluded in terms of Section 473 Cr.P.C. This Court is of the view that the very same issue was dealt into by this Court in ***Crl.O.P.No.6127 of 2020*** dated ***14.06.2022..*** The observation made in the said Judgement would read as follows:

“8. In the case on hand, the complaint was filed by the Drugs Inspector whose authorization is not required. As per the provisions under Section 32 of the Act, it does not require sanction to be obtained from the competent authority for launching prosecution. It is also relevant to extract the provisions under Section 33M of the Act,



WEB COPY

which deals with the offences falling under Chapter IVA of the Act, as follows :-

“33M. Cognizance of offences :-

(1) No prosecution under this Chapter shall be instituted except by an Inspector [with the previous sanction of the authority specified under sub-section (4) of Section 33G]

(2) No Court inferior to that [of a Metropolitan Magistrate or of a Judicial Magistrate of the first class] shall try an offence punishable under this Chapter?

It shows that for the offence under Chapter IV of the Act, sanction of the authority specified under sub-Section (4) of Section 33G is required. There is no requirement of obtaining any sanction for an offence under Chapter IV of the Act. Therefore, no sanction is required for launching the complaint for the offence under Chapter IV of the Act. However, the right which is accrued to the accused as a result of the expiry of the limitation period is a valuable right flows from the accused-s right to a



and fair trial as conceptualized under Article 21 of the Constitution of India. Whereas in the present case, the inspection was made on 13.08.2018, the proposal for sanction was sent on 17.07.2019 and the sanction was accorded on 27.08.2019. The complaint was filed on 13.09.2019. Therefore, it beyond the period of one year and the complaint is barred by limitation.”

7. In the instant case, this Court finds that the offences is under Chapter IV of the Act and hence no sanction is required for lodging the complaint. In view of the same, the prosecution cannot claim that the time taken for obtaining sanction has to be calculated for the purpose of the limitation. Hence, this Court is of the view that the impugned complaint is barred by limitation and liable to be quashed.

8. In view of the above, this Court is of the view that the other contention of the learned senior counsel for the petitioner that the “kumkumam” seized by the respondent is not a cosmetic need not be gone into in the instant quash petition.



Crl.O.P.No.10917 of 2021

WEB COPY 9. In the result, the petition is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

26.06.2023

kan

Index : Yes/No

Internet : Yes/No

Neutral Citation :Yes/No

To

1.The Chief Judicial Magistrate,
Thiruvallur.

2.The Drugs Inspector
Red Hills Range
Office of the Assistant Director of Drugs Control,
Thiruvallur Range,
No.201, J.N.Road, 1st Floor,
Vishnu Complex, Thiruvallur – 602 001.



WEB COPY



Crl.O.P.No.10917 of 2021

SUNDER MOHAN. J,

kan

Crl.O.P.No. 10917 of 2021



WEB COPY



Crl.O.P.No.10917 of 2021

26.06.2023