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Crl.O.P.No.12862 & 12871 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.12862 & 12871 of 2021

and

Crl.M.P.No.7100, 7101, 7113 & 7114 of 2021

1.M/s.Nanocut Therapeutics Pvt. Ltd.,
Rep. by its Executing Managing Director,
A.Krishan Kumar,
RS.No.104/19A, E.V.R.Street,
Sedarapet, Puducherry - 605111.

2.A.Krishna Kumar

... Petitioners
(In both Crl.OPs)

Vs.

State Represented by,
Drugs Inspector,
Chidambaram Range,
No.4, Arun Nagarn,
Sellankuppa,
Cuddalore - 607003.

...Respondent
(In both Crl.OPs)

PRAYER in Crl.O.P.No.12862 of 2021: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in C.C.No.74 of 2019 pending on the file of Hon'ble Judicial Magistrate Court-II Chidambaram and quash the complaint and pass such other or other orders.



PRAYER in Crl.O.P.No.12871 of 2021: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in C.C.NO.73/2019 Pending on the file of Hon'ble Judicial Magistrate Court II Chidambaram and Quash the complaint and pass such other or other orders as this Hon'ble Court.

For Petitioners : M/s.G.Krishna Kumar

For Respondent : Mr.A.Damodaran, Addl. Public Prosecutor,
for sole respondent

COMMON ORDER

The petitions are to quash the complaint filed for the offences under Section 18, 18A, 21, 22, 23, 25, 27 & 35 of the Drugs and Cosmetics Act 1940.

2.(a) The learned counsel for the petitioner would submit that the petitioner in his reply had indicated his intention to send the sample for re-analysis as per Section 25(4) of the Drugs and Cosmetics Act (hereinafter referred to as "Act"). However, the respondent had not considered the same and since there is a violation of Section 25(4) of the Act, the impugned complaints are liable to be quashed.



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(b) The learned counsel further submitted that the 2nd petitioner was shown as an Executive Managing Director of the 1st accused company. However, there is no allegation in the impugned complaint that he was in charge of and responsible to the company for the conduct of its business.

(c) The learned counsel also relied upon the judgement of the Manipur High Court in ***Criminal Petition No.24/2017*** wherein the Manipur High Court held that the request for re-analysis need not be in any particular form. If the reply to the show cause notice objects to the report filed by the analyst, it should be taken as a request to send it for re-analysis within a meaning of Section 25(4) of the Act.

3. The learned Additional Public Prosecutor however would submit that in the reply sent by the petitioners, they have not made any request for re-analysis. However, they had requested the respondent to stop further action and assured that they will be more careful in future. They have also admitted that the probable cause for the product to be shown as "not standard quality" could be either because of improper storage and maintenance or by improper handling during its transport.



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4. This Court on perusal of the complaint and the judgements relied upon by the petitioner finds that the points raised by the petitioner both with regard to the violation of Section 25(4) Act and that the 2nd respondents as a Managing Director was not in charge of and responsible to the conduct of the 1st accused company are factual in nature and has to be adjudicated only before the Trial Court. The question of whether the petitioner has made a request, in any form, for re-analysis has to be decided only by the trial Court. Therefore, this Court is not inclined to entertain this quash petition. However, it is open to the petitioners to raise all their contentions before the Trial Court. The appearance of the 2nd petitioner before the Trial Court is dispensed with unless the learned Magistrate considers his presence necessary for the progress of the Trial.

5. With the above observations, the above Criminal Original Petitions are dismissed. Consequently, the connected Miscellaneous Petitions are closed.

26.04.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To

1. The Inspector of Police (Crime)
J-4, Kotturpuram Police Station,
Chennai-600085.
2. Judicial Magistrate Court II, Chidambaram.



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SUNDER MOHAN. J.

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