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Crl.O.P.No.15816 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No. 15816 of 2021

and

Crl.M.P.Nos. 8628 & 8629 of 2021

1. M/s.SUGANJ ECO CHEMICALS PVT.LTD.

DP-72, SIDCO Industrial Estate,
Thirumazhisai, Chennai – 600 124.

Represented by its Director, R.Suresh Kannan.

2. R.Suresh Kannan

Director of

M/s.SUGANJ ECO CHEMICALS PVT.LTD.

DP-72, SIDCO Industrial Estate,
Thirumazhisai, Chennai – 600 124.

.... Petitioners

Vs

State : Represented by

R.Pradheep Jeyanth,

Senior Drugs Inspector,

O/o.The Asst.Director of Drug Control,

Thiruvallur Zone,

Thiruvallur – 1.

.... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No.117 of 2021 on the file of the learned Chief Judicial Magistrate, Thiruvallur, Thiruvallur District for the contravention of Sections 18(a)(i), Section 18(a)(i) read with Section 17-A(e) and Section 18(c) of the Drugs and Cosmetics Act, 1940 and quash the same.



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Crl.O.P.No.15816 of 2021

For Petitioners : Mr.Swamisubramanian
For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)

ORDER

This petition has been filed to quash the proceedings in C.C.No.117 of 2021 on the file Chief Judicial Magistrate, Thiruvallur.

2. Heard the learned counsel appearing for the petitioners and the learned Government Advocate appearing for the respondent and perused the materials available on record.

3. The respondent filed a private complaint alleging that the respondent conducted inspection on 22.04.2020 and collected samples of Hand Sanitizer from the petitioners for analysis. The samples were drawn under Form 17 and 17A. In total, three samples were collected and sealed. Out of three samples, one was deposited with the petitioners' Company and another sample was sent to the Government Analyst. After receipt of the report dated 13.05.2020, it was declared that the sample does not confirm to the label claim with respect to the contents of Isopropyl Alcohol and it contains Methanol which is not claimed on the label. Further the hand sanitizer was not a standard quality with respect to the content of Isopropyl Alcohol (66.79%) and



Crl.O.P.No.15816 of 2021

having Methanol in contrast to the claims on the label and therefore the hand sanitizer was deemed to be adulterated with Methanol.

4. The petitioners were served with a show cause notice and after obtaining sanction from the authorities concerned, the respondent filed a complaint under Section 32 of the Drugs and Cosmetics Act, 1940 and Section 200 of the Code of Civil Procedure for the contravention of Section 18(a)(i), Section 18(a)(i) read with Section 17-A(e) and Section 18(c) of the Drugs and Cosmetics Act, 1940.

5. The learned counsel appearing for the petitioners would submit that the respondent ought to have seizure process to be done within a period of 22 days from the date of manufacturing of hand sanitizer. The inspection was conducted during COVID-19 and as such, the lock down show the intention of the respondent only to harass the petitioners' Company. The petitioner was not given an opportunity to rebut the Analyst report as envisaged under Section 25(3) of the Drugs and Cosmetics Act, 1940.

6. On receipt of the Analyst report, the petitioners had sent the third sample to the Government Recognized Laboratory on 22.05.2020 and the



Crl.O.P.No.15816 of 2021

report says that the sample has 76.44% Isopropyl Alcohol as claimed on the label. It was intimated to the respondent by a communication dated 17.06.2020. Without considering the same, the respondent filed a complaint. The respondent also failed to take any of the lab report produced by the petitioners and had deliberately waited till the expiry of the samples. As per Section 25(4) of the Act, a sample of the disputed hand sanitizer should have been sent to the Central Drug Laboratory, Kolkata by the respondent. However, the respondent has sent the sample.

7. In support of his contention, he relied upon the Judgment reported in **(2018) 15 SCC 93** in the case of **Laborate Pharmaceuticals India Ltd. Vs. State of Tamil Nadu**, in which the Hon'ble Supreme Court of India held that the valuable right of the appellant to have the sample analysed in the Central Laboratory has been denied by a series of defaults committed by the prosecution; firstly, in not sending to the appellant-manufacturer part of the sample as required under Section 23(4) (iii) of the Act ; and secondly, on the part of the Court in taking cognizance of the complaint on 4th March 2015 though the same was filed on 28th November, 2012. The delay on both counts is not attributable to the appellants and, therefore, the consequences thereof cannot work adversely to the interest of the appellants. As the valuable right



Crl.O.P.No.15816 of 2021

of the accused for reanalysis vested under the Act appears to have been violated and having regard to the possible shelf life of the drug, we are of the view that as on date, the prosecution, if allowed to continue, would be a lame prosecution.

8. After receipt of the show cause notice dated 15.05.2020, admittedly, the petitioner failed to send any explanation. Further, the question of whether the petitioner had made a request, in any form, for re-analysis has to be decided only by the Trial Court. It is a mixed question of facts. Therefore, the grounds raised by the petitioner cannot be considered by this Court that too under Section 482 of Cr.P.C. According to the respondent, as per the report from the Analyst, the sample does not confirm to the label claim with respect to the contents of Isopropyl Alcohol and it contains Methanol which is not claimed on the label. It was not of standard quality with respect to the content of Isopropyl Alcohol (66.79%). It also had Methanol in contrast to the claims on the label and as such, the hand sanitizer was deemed to be adulterated with Methanol.

9. In view of the above, this Court is not inclined to quash the proceedings in C.C.No.117 of 2021 on the file Chief Judicial Magistrate,



Crl.O.P.No.15816 of 2021

Thiruvallur. Accordingly, this Criminal Original Petition stands dismissed.

Consequently, connected miscellaneous petitions are closed.

18.10.2023

Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order

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To

1. The Chief Judicial Magistrate,
Thiruvallur, Thiruvallur District

2. The Senior Drugs Inspector,
O/o.The Asst.Director of Drug Control,
Thiruvallur Zone,
Thiruvallur – 1.

3. The Public Prosecutor
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

Lpp

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