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Crl.O.P.No.17039 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2023

CORAM:

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

Crl.O.P.No.17039 of 2021

and

Crl.M.P.No.9321 of 2021

1. M/s. R.K.B.Multispecialty Hospitals (India) Pvt. Ltd,
Ground Floor, Room No. 3, No. 45/1, J.N.Road,
Rajajipuram, Thiruvallur,
Represented by its Director,
Thiru.R.Vijayanarayanan.

2. Thiru.R.Vijayanarayanan, Director of
M/s. R.K.B.Multispecialty Hospitals (India) Pvt. Ltd,
Ground Floor, Room No. 3, No. 45/1, J.N.Road,
Rajajipuram, Thiruvallur.

3. Mrs. R.Amutha, the person in charge of
M/s. R.K.B.Multispecialty Hospitals (India) Pvt. Ltd,
Ground Floor, Room No. 3, No. 45/1, J.N.Road,
Rajajipuram, Thiruvallur Taluk.

... Petitioner

Vs.

The Tamil Nadu State represented by,
Drugs Inspector, Thiruvallur Range i/c,
Office of the Asst. Director of Drugs Control,
Thiruvallur Zone.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C.
praying to call for the records in CC No. 151 of 2020 on the file of the learned
Chief Judicial Magistrate Court at Thiruvallur and to quash the same.



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For Petitioners : Mr.R.Prathap Kumar

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

ORDER

This petition has been filed to quash the proceedings in C.C.No. 151 of 2020 on the file for the learned Chief Judicial Magistrate court at Thiruvallur and to quash the same.

2. The respondent lodged a complaint for the contraventions under Section 18(c) of the Drugs and Cosmetics Act, 1940 read with rule 65(3)(1) and 65(2) of the Drugs and Cosmetics Rules, 1945 punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940.

3. On 08.03.2018, an inspection was conducted in the petitioners Hospital. During the inspection, it was noticed that the prescription register was not maintained properly and the drugs were supplied without prescription and without the personal supervision of Pharmacist. Therefore, a show case notice was issued to the petitioners. On receipt of the same, the petitioners sent a reply notice and without satisfying the reply submitted by the petitioners, the respondent lodged a complaint.



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4. The learned counsel for the petitioners would submit that so far as the first and second petitioners are concerned, they are no way connected with the medical shop and there are no specific averments as of the role played by the first and second petitioners. The complaint also does not reveal about the day to day affairs of the business activities of the first petitioner. Therefore, the complaint itself lacks the vital material fact to make out a *prima-facie* case for the criminal prosecution. In the complaint, there is no allegation as to whether the first and second petitioners are in charge of and are responsible for the conduct of the business of the shop under Section 34 of the Drugs and Cosmetics Act, 1940.

5. The learned counsel for the petitioners would further submit that if the offences is committed by the person in charge and the said person only responsible in the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence. A person merely being a Director of a company will not be sufficient to make him liable for an offence, unless he is responsible and in charge of the day to day business activities of the company. He further submitted that so far as the third petitioner is



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concerned, the complaint itself is barred by limitation. In respect of the contraventions mentioned, the respondent issued a show case memo on 28.12.2018 and an inspection was made on 08.03.2018. Therefore, this showcause notice itself was issued after a period of nine months. Immediately on receipt of the said showcause notice, the petitioners were sent reply on 07.01.2019. Thereafter, the complaint was lodged only on 31.10.2019. Therefore, there was a huge delay for initiation of prosecution as against the petitioners.

6. In this regard, the learned counsel for the petitioners relied upon the judgement of the Hon'ble Supreme Court of India reported in **MANU/SC/1639/2022** in the case of **Hasmukhlal D.Vora and ors. Vs. The State of Tamilnadu**, in which the Hon'ble Supreme Court of India held as follows:

“ 23. There has been a gap of more than four years between the initial investigation and the filing of the complaint, and even after lapse of substantial amount of time, no evidence has been provided to sustain the claims in the complaint. As held by this Court in Bijoy Singh and Anr. v.State of Bihar MANU/SC/033/2002 : (2002) 9 SCC 147, inordinate delay, if not reasonably explained, can be fatal to



the case of the prosecution. The relevant extract from the judgment is extracted below:

Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn, but failure to explain the delay would require the Court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implication in the crime or not. Insisting upon the Accused to seek an explanation of the delay is not the requirement of law. It is always for the prosecution to explain such a delay and if reasonable, plausible and sufficient explanation is tendered, no adverse inference can be drawn against it.

24. In the present case, the Respondent has provided no explanation for the extraordinary delay of more than four years between the initial site inspection, the show cause notice, and the complaint. In fact, the absence of such an explanation only prompts the Court to infer some sinister motive behind initiating the criminal proceedings.



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25. While inordinate delay in itself may not be ground for quashing of a criminal complaint, in such cases, unexplained inordinate delay of such length must be taken into consideration as a very crucial factor as grounds for quashing a criminal complaint.”

7. The learned counsel for the petitioners also relied upon the judgement of this Court in ***Criminal OP. 16863 of 2014*** dated **28.02.2019** in the case of ***M/s. Medplus Pharmacy and Ors. Vs. State of Tamil Nadu***, in which it was held as follows:-

“7. On perusal of records, the petitioners are arrayed as A1 to A3. According to the complaint, the first accused is the company, and the second and third accused are the Director and General Manager: Insofar as the allegations as against the petitioners are that the first petitioner is the company, and the second and third petitioners are being the Director and General Manager, they have been impleaded as accused. On inspection of the Drug Inspector, it was found irregularities and issued show cause notice dated 03.07.2015. By the reply dated 17.08.2015, the petitioners submitted their explanation and denied the allegations made in the show cause notice.



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8. The points for consideration are that whether the complaint is sustainable as against the petitioners?”

8. The learned counsel for the respondent filed a counter statement on behalf of the respondent. It is submitted that there is absolutely no delay in filing the complaint, since, the contraventions are punishable for the sentence of two years. Therefore, as per the Section 468 of Cr.P.C., the complaint was lodged within a period of three years from the date of offence. Accordingly, the respondents filed a complaint on 31.10.2019 itself and the inspection was conducted on 08.03.2018. In so far as the involvement in the day to day affairs of the company is concerned, the first petitioner is represented by the second petitioner and being the Director, he only received the show cause notice and issued a reply. Therefore, he is liable for the contravention, since he is the Director cum responsible person for the day to day affairs of the first petitioner company.

9. Heard Mr.R.Prathap Kumar, learned counsel appearing for the petitioners and Mr.A.Gopinath, learned Government Advocate (Crl.Side) appearing for the respondent.



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10. On perusal of the records, it revealed that on 08.03.2018, the respondent made an inspection on the premises of the petitioners herein in the presence of the third petitioner who is in-charge of the firm. During the inspection, it was observed that the prescription register was not maintained properly with the signature of the pharmacist for the period from 21.01.2018 to 07.03.2018. The authorised registered Pharmacists Miss.A.Priya and Thiru.M.Yuvaraj were not present and no other Pharmacists were present during the inspection. Further, certain drugs were found sold without maintaining carbon copies of cash or credit memos. Certain records were required for inspection as contemplated under Section 22(1) (cca) of the Drugs and Cosmetic Act, 1940. Thereafter, it was returned after taking certified copies therefrom under acknowledgment. As per the voluntary statement given by the third petitioner herein who was in charge of the firm and she categorically admitted the contraventions. Therefore, on verification of the prescription register, the drugs sold on prescription were entered in the prescription register and it was maintained without the signature of the Pharmacist for a period from 21.01.2018 to 07.03.2018. Thereby, the licensee has not maintained the prescription register properly with the signature of the Pharmacist and complete address of the patient. Therefore, the licensee itself



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contravened the Section 18(c) of the Drugs and cosmetics Act, 1940 read with Rule 65(3)(1) of the Drugs and Cosmetics Rules, 1945.

11. As rightly pointed out by the learned Government Advocate (Crl. Side), the show cause notice was issued on 08.03.2018 and the compliant was lodged on 31.10.2018 and it is very well in time as contemplated under Section 468 of Cr.P.C. In so far as the involvement in the day to day affairs of the company is concerned, it is relevant to extract the provision under section 34 of the Drugs and Cosmetics Act, 1940 herein.

“1.Where an offense under this Act has been committed by a company, every person who at the time the offense was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offense and shall be liable to be proceeded against and punished accordingly: Here a company means a private corporate and includes firm or other association of individuals.

2.Notwithstanding anything contained in subsection (1), where an offense under this Act has been committed by a company and it is proved that the offense has been committed with the consent or



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connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officers of the company, such director, manager, secretary or other officers shall also be deemed to be guilty of that offense and shall be liable to be proceeded against and punished accordingly.”

12. After receipt of the show cause notice, the petitioners never ever whispered to the licensing authority that they are not involved in the day to day affairs of the company and they are not responsible for any contraventions. In this regard, it is relevant to rely upon the judgment of this Court in ***Criminal OP No. 11184 of 2019*** dated ***12.10.2022*** in the case of **Vikas Rambal and ors Vs. The State rep. by the Drugs Inspector, Coimbatore Range, Coimbatore**, wherein this Court has held that the offence and the offenders in the case of this nature is manufacturing and distribution of substandard Drugs by the company which is managed by its Board of Directors. The decision to manufacture the drugs is the collective decision of the Board of Directors. Therefore, the Directors cannot claim that they are not directly involved in the products of Drugs and the decision to produce drugs. Therefore, the case of the Directors signing the cheque on behalf of the company and in case of Director participating in the decision to produce substandard drugs are not one and the



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same to hold these petitioners are not involved in day to day affairs of the company.

13. In the case on hand, the first petitioner only received show cause notice and he replied by detailed explanation. Only with the consent and acknowledgment of the first and second petitioner, the third petitioner was in charge of the pharmacy. Therefore, they had acknowledged as such they claim that they are not directly involved in the pharmacy sale of medicines. Therefore, the judgment cited by the learned counsel for the petitioners are not helpful to the case.

14. In view of the above discussion, this court has not find any grounds to quash the case in C.C No. 151 of 2020 on the file for the learned Chief Judicial Magistrate court at Thiruvallur. Considering the age of the petitioners, the personal appearance of the petitioners are dispensed with and they shall be represented by a counsel after filing appropriate application. However, the petitioners shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. The trial Court is directed to complete the trial, within a period of six months from the date of receipt of a copy of this Order.



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15.Accordingly, this Criminal Original Petition stands dismissed.

Consequently, connected miscellaneous petition is closed.

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Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order

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G.K.ILANTHIRAIYAN, J.

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- To
1. The Chief Judicial Magistrate court at Thiruvallur.
 2. The Tamil Nadu State represented by,
Drugs Inspector, Thiruvallur Range i/c,
Office of the Asst. Director of Drugs Control,
Thiruvallur Zone.
 3. The Public Prosecutor,
High Court, Madras.

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and

Crl.M.P.No. 9321 & 9322 of 2021

09.10.2023