



Crl.O.P.No.17451 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2023

CORAM:

THE HON'BLE Mr. JUSTICE SUNDER MOHAN

Crl.O.P.No.17451 of 2021
and Crl.M.P.No.9588 of 2021

B.Sanjay Kumar

...Petitioner/Accused No.2

Versus

The State of Tamil Nadu Rep. by
Drug Inspector, Avadi Range
Office of the Asst Director of
Drugs Control, Thiruvallur Zone.

...Respondent/Complainant

PRAYER : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, seeking to call for the entire records relating to the proceedings in Chief Judicial Magistrate, Tiruvallur as C.C.No.90 of 2018 and quash the same.

For Petitioner : Mr.M.Mohammed Riyaz

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



ORDER

The petition is to quash the complaint for the alleged offences under Section 18 (c) of the Drugs and Cosmetics Act, 1940 and punishable under Section 27 (b) (ii) of the above said Act.

2. It is alleged in the complaint that the respondent inspected the premises of the petitioner/A2 and seized a drug by name “Action 500 Extra”, from the ground floor of the premises at Plot No.1111 – 1112, Tamil Nadu Housing Board, 60 Feet Road, Avadi, Chennai- 600 054; that the said drug was a banned drug; that thereafter, the High Court of Delhi had quashed the notifications banning the said drug; that though the petitioner was not guilty of possessing a banned drug, the petitioner was guilty of stocking the said drug in an unlicensed premises namely the ground floor of the building, when they had license to stock the drugs in the first floor of the same building. Hence, the complaint.

3. Mr.M.Mohammed Riyaz, the learned counsel for the petitioner submitted that admittedly the petitioner had a valid license for selling and stocking drugs at the first floor of the said premises; that the inspection was



mainly carried out to seize the banned drugs “Action 500 Extra”; that since the notifications banning the said drug were quashed by the Delhi High Court, the respondent proceeded with the instant complaint alleging that the petitioner had no valid license for the ground floor of the premises; that the offence committed by the petitioner under the Drugs and Cosmetics Act, 1940 is likely to cause a slight harm and therefore, this case would be covered under Section 95 of the Indian Penal Code. Hence, he prayed for quashing of the complaint.

4. Mr.A.Damodaran, the learned Additional Public prosecutor for the respondent, submitted that it is the fact that the inspection was conducted and a drug “Action 500 Extra” was seized from the premises of the petitioner; that later, it was found that the petitioner had violated the terms of the license by stocking the said drug in the ground floor of the said premises whereas, he had licensed only to stock the drugs in the first floor of the premises; that since this is in violation of the conditions of stock of license, the petitioner is guilty of the offences alleged. Hence, he prayed for dismissal of the quash petition.



5. This Court is of the view that the petitioner had violated the terms of the license admittedly. The petitioner had license to stock goods only in the first floor. The petitioner ought not to have used the ground floor to stock the said drugs. However, this Court is inclined to accept the submission of the learned counsel for the petitioner that since the act causes slight harm, this case would be covered under Section 95 of IPC. Further, this Court by applying Section 95 of IPC, had quashed the case where the petitioner had stored the drugs in their new premises, when she had license only in the old premises. Ultimately, the authorities concerned had granted license in the new premises as well. By applying Section 95 of IPC, this Court had quashed the said prosecution in Crl.O.P.No.22012 of 2019, dated 06.04.2023 - ***A.R.Maragathavalli Vs. State*** reported in ***2023 (1) LW CrL. 614***. This Court is of the view that since the first petitioner had license for the first floor premises, though it is a wrong and a violation of the license conditions, it is a negligible wrong and Section 95 of IPC can be applied in the instant case. The Hon'ble Supreme Court in ***Veeda Menezes Vs. Yusuf Khan and others*** reported in ***AIR 1966 SC 1773***, while dealing with Section 95 of IPC held as follows:



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“4. It is true that the object of framing s. 95 was to exclude from the operation of the Penal Code those cases which from the imperfection of language may fall within the letter of the law, but are not within its spirit and are considered, and for the most part dealt with by the Courts, as innocent. It cannot however be said that harm caused by doing an act with intent to cause harm or with the knowledge that harm may be caused thereby, will not fall within the terms of s. 95. The argument is bailed by the plain terms of s. 95. The section applies if the act causes harm or is intended to cause harm or is known to be likely to cause harm, provided the harm is so slight that no person of ordinary sense and temper would complain of such harm.

5. The expression "harm" had not been defined in the Indian Penal



Code: in its dictionary meaning it connotes hurt, injury; damage; impairment, moral wrong or evil. There is no warrant for the contention raised that the expression "harm" in s. 95 does not include physical injury. The expression "harm is used in many sections of the Indian Penal Code. In Sections 81, 87, 88, 89, 91, 92, 100, 104 and 106 the expression can only mean physical injury. In s. 93 it means an injurious mental reaction. In s. 415 it means injury to a person in body, mind, reputation or property. In Sections 469 and 499 harm, it is plain from the context, is to the reputation of the aggrieved party. There is nothing in s. 95 which warrants a restricted meaning which counsel for the appellant contends should be attributed to that word. Section 95 is a general exception, and if that expression has in many other sections dealing with the general exceptions a



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wide connotation as inclusive of physical injury, there is no reason to suppose that the Legislature intended to use the expression "harm" in s. 95 in a restricted sense.

"6. The next question is whether, having regard to the circumstances, the harm caused to the appellant and to her servant Robert was so slight that no person of ordinary sense and temper would complain of such harm. Section 95 is intended to prevent penalisation of negligible wrongs or of offences of trivial character. Whether an act which amounts to an offence is trivial would undoubtedly depend upon the nature of the injury, the position of the parties, the knowledge or intention with which the offending act is done, and other related circumstances. There can be no absolute standard or degree of harm which may be regarded as so slight



that a person of ordinary sense and temper would not complain of the harm. It cannot be judged solely by the measure of physical or other injury the act causes. A soldier assaulting his colonel, a policeman assaulting his Superintendent, or a pupil beating his teacher, commit offences, the heinousness of which cannot be determined merely by the actual injury suffered by the officer or the teacher, for the assault would be wholly subversive of discipline. As assault by one child on another, or even by a grown-up person on another, which causes injury may still be regarded as so slight, having regard to the way and station of life of the parties, relation between them, situation in which the parties are placed, and other circumstances in which harm is caused, that the victim ordinarily may not complain of the harm.”



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7. This Court is of the view that in the facts of this case, the respondent originally intended to prosecute the petitioner for possessing a banned drug. The Hon'ble Delhi High Court found that the notifications banning the said drugs were liable to be set aside. The respondent thereafter found that the petitioner had stocked the drugs in an unlicensed premises. Stocking the goods in the ground floor when the petitioner had license only for the first floor premises in the given circumstances of the case, though is a wrong act would cause only a slight harm and therefore, no offence can be said to be made out. Hence, the proceedings are liable to be quashed. Accordingly, the Criminal Original Petition shall stand allowed. Consequently, connected miscellaneous petition is closed.

20.06.2023

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation Case: Yes/No

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To

1.The Chief Judicial Magistrate,
Tiruvallur.

2.The Drug Inspector, Avadi Range
Office of the Asst Director of
Drugs Control, Thiruvallur Zone.



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3.The Public Prosecutor,
High Court of Madras,
Chennai – 600 104.

SUNDER MOHAN, J.

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