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Crl.O.P.No.28210 of 2023

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in
Crl.A.SR.No.33395 of 2023

M. NIRMAL KUMAR, J.

This petition has been filed seeking to grant special leave to the petitioner to prefer the above criminal appeal.

2.The petitioner, who is the Drugs Inspector of Tiruvottiyur, has filed this leave petition. The respondent was running a Pharmacy in the name of Shanthi Medicals. The shop was inspected by the petitioner on 08.07.2017 in the presence of the respondent. During the inspection, it was found that there was a contravention of Section 18(c) r/w 65(3)(1) of Rules r/w Section 27(d) of the Drugs and Cosmetics Act, 1940. Further found that specified scheduled drugs were sold without the prescription of the registered medical practitioner in contravention of Section 18(c) r/w 65(9)(a) of Rules r/w Section 27(d) of the Act. Therefore, the drug license, purchase invoice, purchase bill certified by the respondent were received. Thereafter, a show cause notice issued to the respondent on 16.08.2017 calling upon the respondent for explanation. A reply was sent by the respondent on 28.08.2017 stating that the respondent was maintaining the prescription register in the system itself and the A4 printing alignment in the printer was corrupted, hence, he was unable to take print out of



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the same and requested to consider his explanation. Since the reply was not tenable and acceptable, a proposal for prosecution was sent to the appropriate authority on 06.11.2017, sanction was obtained on 16.11.2017. Thereafter, complaint filed and proceeded with a trial.

3.During trial, the petitioner examined herself as PW1 and marked Exs.P1 to P11. The Trial Court on conclusion of the trial, convicted the respondent for offence under Sections 18(c) Rule 65(3)(1) r/w Section 27(d) and Section 18(c) Rule 65(9)(a) r/w Section 27(d) of the Drugs and Cosmetics Act, 1940 and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.50,000/-. Aggrieved against the same, the respondent filed an appeal in Crl.A.No.3 of 2020 before the learned I Additional District and Sessions Judge, Tiruvallur. The learned Sessions Judge by judgment dated 08.07.2022, allowed the appeal and acquitted the respondent on a wrong notion finding that as per Section 32(2) of the Drugs and Cosmetics Act, no Court inferior to that of Court of Sessions shall try offences punishable under Chapter IV and hence, filing of the complaint before the Chief Judicial Magistrate, who is an Assistant Sessions Judge, would not satisfy Section 32(2) of the Act. Aggrieved against the same, the petitioner filed the above appeal with a delay of 269 days.



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4.This Court, at the stage of condonation of delay, issued notice to the respondent. One Mr.M.Kamalanathan, appeared for the respondent during condonation of delay. The delay was condoned, now leave petition is listed for hearing.

5.Today, there is no representation for the respondent either in person or through his counsel.

6.The contention of the learned Additional Public Prosecutor is that the Trial Court rightly convicted the petitioner. The Lower Appellate court on a wrong notion finding that the complaint not filed before the Special Court as per Section 32(2) of the Drugs and Cosmetics Act, allowed the appeal, which is not proper. In this case, it is not with regard to the violation of any adulterated, spurious drugs, it is for selling scheduled H1 drug without prescription. The minimum sentence of punishment is only one year, extended to three years, which can be tried before the Judicial Magistrate as per Section 36A of Drugs and Cosmetics Act, wherein it is stated that any offences which is punishable with imprisonment for a term not exceeding three years can be tried. He further relied upon the District Gazette issued by the Tiruvallur District, wherein the



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Chief Judicial Magistrate, Tiruvallur has been conferred with the powers under Cr.P.C. to try cases instituted by the Drugs Inspector. In view of the same, the finding of the Sessions Judge that Chief Judicial Magistrate is not the appropriate forum to entertain the complaint of the petitioner is not proper.

7.Finding reason and substance in the petitioner's submission, this Court is inclined to grant leave. Accordingly, leave is granted.

19.12.2023

Note: Registry is directed to number the Criminal Appeal, if it is otherwise in order.
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