



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.16250 of 2023
and Crl.M.P.Nos.10268 & 10269 of 2023

1.M/s.Osmed Formulations P Ltd,
56-57 Industial Area, Maxi Road,
Ujjain Madhya Pradesh 456010
rep. by Nipun Maheshwari
Whole time Director

2.Thiru. Nipun Maheshwari

...Petitioners

Vs

The Tamilnadu State rep. by
Drugs Inspector
Tiruttani Range,
Office of the Asst Director of Drugs and Control,
Tiruvalur Zone,
201, Ist Floor, J.N.Road,
Thiruvallur – 602 001.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records connected with S.C.No.61 of 2023 on the file of the 1st Additional District and Sessions Court, Tiruvallur and quash the same.



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For Petitioner : Mr.S.Ramachandran
For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

The manner in which the cognizance has been taken by the Court below has been questioned in this criminal original petition and hence, the main criminal original petition is taken up for hearing.

2.The respondent has filed a complaint against the petitioner for contravention under Section 18(a)(i) and 18 B of the Drug and Cosmetic Act, 1940 punishable under Sections 27(d) and 28-A of the Act.

3.The short point that was raised before this Court was that the Court below had taken cognizance by merely affixing a rubber stamp. Therefore, it was contended that the cognizance which is a judicial act and which requires the application of mind is not reflected in the rubber stamp that has been affixed.

4.The learned counsel for the petitioner also raised several other grounds and this Court is not inclined to go in to any of those grounds for the present. This



Court wants to confine itself to the manner in which cognizance has been taken by the Court below.

5.It has been repeatedly held that taking cognizance is a judicial act which requires application of mind and the Court is expected to give some reasons for taking cognizance. The Apex Court and this Court have deprecated the practice of taking 'Rubber Stamp' cognizance without assigning any reasons. In the present case, the Court below has taken cognizance in the following manner:

*C.C. No.222 of 2019
Taken on File: 27.05.2019
Read Charge Sheet filed by the
Drugs Inspector, Tiruttani Range.
Taken on file under Sections 18(a)(i) and 18 B of
the Drug and Cosmetic Act, 1940 punishable under
Sections 27(d) and 28-A of the Act.
Issue Summons to Accused
Posted to:13.06.2019*

6.It is clear from the above that the Court below has taken rubber stamp cognizance which is not a cognizance in the eye of law. Useful reference can be made to the judgment of this Court in ***Shanmugam and Others vs. Inspector of Police and Another*** reported in **2019 2 LW (Crl) 263** and the relevant portions are extracted hereunder:



19. *It has been repeatedly held that taking cognizance is a judicial act which requires application of mind and the Court must give some reasons for taking cognizance. Failing which, the cognizance itself becomes bad in the eye of law. Unfortunately in this case, the Court below has resorted to "Rubber Stamp" cognizance without assigning any reason.*

20. *The Hon'ble Supreme Court in [Pawan Kumar Sharma Vs. State of Uttaranchal] in Crl. Appeal No.1692 of 2007(ASLP (Crl.) No.4701 of 2007, has dealt with this issue and the relevant portions of the judgment is extracted hereunder :*

"In the State of Uttaranchal (now known as State of Uttarkhand) there exists a strange practice. The Magistrate take cognizance of offence and issue summons in terms of Section 202 of the Code of Criminal Procedure on "rubber stamped" orders.

A distinction exists between an order taking cognizance and an order issuing process. Before process is issued, the Court concerned must apply its judicial mind. It may, not only apply its mind as to whether on the basis of the allegations made in the complaint petition and the statements made by the complainant and his witnesses, a prima facie case has been made out for issuing processes but also must consider as to whether a case has been



made out in terms of proper provisions of the Penal Statute for issuance of process for alleged commission of the offences vis-a-vis, the allegations made.

Appellant herein seriously contend that even if the submissions made in the complaint petition are given face value and taken to be correct in their entirety, no case has been made out for taking cognizance under Section 304(B) of the IPC.

In State of Karnataka and Anr. Vs. Pastor P. Raju (2006) 6 SCC 728, this Court has clearly made out a distinction between an order taking cognizance of an offence and an order of issuance of process stating:

"13. It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the Court decides to proceed against the offenders against whom a prima facie case is made out."

21. The Hon'ble Supreme Court in [Sunil Bharti Mittal Vs. Central Bureau of Investigation] reported in 2015 4 SCC 609 has held as follows :-

51. On the other hand, [Section 204](#) of the Code deals with the issue of process, if in the opinion of the Magistrate taking



cognizance of an offence, there is sufficient ground for proceeding. This Section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under [Section 192](#)), upon a consideration of the materials before him (i.e., the complaint, examination of the complainant and his witnesses if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. *A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into Court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.*

53. *However, the words "sufficient grounds for proceeding" appearing in the Section are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.*



22. *It is clear from the above judgments that the Hon'ble Supreme Court has deprecated the practice of taking cognizance through "Rubber Stamp" orders. The Hon'ble Supreme Court has made it very clear that taking cognizance is a judicial act which requires application of mind. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is a prima facie case against accused persons. Of course, the order need not contain detailed reasons.*

23. *In view of the above judgments, the cognizance taken by the Court below by means of a Rubber Stamped order is patently illegal and this Court has to necessarily interfere with the manner in which the cognizance was taken in this case.*

7. In the light of the above discussion, the cognizance taken by the Chief Judicial Magistrate, Thiruvallur dated 27.05.2019 is hereby set aside. The matter is remanded back to the file of the Ist Additional District and Sessions Judge, Thiruvallur. The learned Judge shall independently apply his mind on the complaint and the materials placed before the Court and pass an order if cognizance is taken. This process shall be completed by the Ist Additional District and Sessions Judge, within a period of four weeks from the date of receipt of copy



of this order.

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N.ANAND VENKATESH, J

SSR

8.In the result, this criminal original petition stands allowed with the above directions. Consequently, connected miscellaneous petitions are closed.

21.07.2023

Index : Yes/No

Speaking order: Yes/No

ssr

To

1.1st Additional District and Sessions Court, Tiruvallur.

2.The Drugs Inspector

Tiruttani Range,

Office of the Asst Director of Drugs and Control,

Tiruvalur Zone,

201, Ist Floor, J.N.Road,

Thiruvallur – 602 001.

3.The Public Prosecutor,

High Court, Madras.

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