



Crl.O.P.No.22012 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.03.2023

Pronounced on : 06.04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.22012 of 2019

and

Crl.M.P.No.11428 of 2019

Mrs.AR.Maragathavalli,

...Petitioner

Vs.

The State

Represented by Drug Inspector,

Valasaravakkam Range,

Office of Assistant Director of Drugs Control

Zone – IV

Chennai – 600 006.

...Respondent



Crl.O.P.No.22012 of 2019

PRAYER: Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code, to call for the records in CC.No.220 of 2019, on the file of Chief Judicial Magistrate Court, Tiruvallur and quash the same.

For Petitioner : Mr.R.Thirugnanam
for S.Umapathy

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

The petition is to quash the private complaint in CC.No.220 of 2019 on the file of the learned Chief Judicial Magistrate, Tiruvallur for the offences under Section 18 (c) of the Drugs and Cosmetics Act, 1940 which is Punishable under Section 27(b) (ii) of the said Act.

2. It is alleged in the complaint that the petitioner is the proprietrix of M/s.Shanmuga Agencies; that on 25.06.2018, the respondent inspected the premises at No.9, Ground Floor, Krishnan Koil Street, Alwarthirunagar, Valasaravakkam, Chennai- 600 087 (hereafter referred to as new premises); that certain drugs were found stocked in the said premises; that the respondent had



Crl.O.P.No.22012 of 2019

issued a letter under Section 22(1) (cca) of the Drugs and Cosmetics Act to the petitioner to furnish certain documents; that the petitioner had produced a drug licence granted to her to sell, stock or exhibit for sale or distribute drugs in the premises at No.36, Ground Floor, VOC Street, Kaikankuppam, Valasaravakkam, Chennai – 600 087 (hereafter referred to as old premises); that she had shifted the premises from the above said address to the new premises; that since the petitioner did not obtain a valid license to sell/stock drugs in the new premises, she was liable under Section 18 (c) of Drugs and Cosmetics Act, 1940. It is also stated in the complaint that certain samples of the drugs, stocks were taken and those samples were reported as standard quality by the Government Analyst Drugs Testing Laboratory, Chennai; that the respondent issued a show cause notice dated 29.10.2018 to explain as to why the action should not be taken for stocking and selling in unlicensed premises; that the petitioner had sent a reply stating that since the landlord had asked her to vacate the old premises immediately, she could not inform the authorities concerned; that as the petitioner admittedly did not have license to stock in the new premises had violated the conditions of license and hence was liable for the offence under Section 18(c) Drugs and Cosmetics Act, 1940 which is Punishable under Section 27 (b) (ii) of the said Act.



Crl.O.P.No.22012 of 2019

3.The learned counsel for the petitioner would submit that admittedly the petitioner had a valid license for selling, stocking drugs at the old premises.

However on the date of inspection, in the new premises, it is true that she did not have a valid license to stock or sell in the new premises. The learned counsel submitted that the new premises is one street away from the old premises. She had to vacate the old premises within a short time since the landlord asked her to vacate immediately. The learned counsel for the petitioner submitted that the authorities concerned had granted license bearing licence No.1549/ZIV/20V to the new premises on 06.07.2018. The learned counsel therefore submitted that the alleged violation was not intentional and in any case is very trivial. Further, the fact that the respondent had found that the drugs were standard quality show that the petitioner has been doing business in lawful manner. That apart, the learned counsel submitted that in the new premises, they had stocked medicines of negligible quantity. Hence, the learned counsel prayed that in view of the above and considering the fact that subsequently licence was granted to the petitioner to the new premises, the impugned complaint may be quashed.



Crl.O.P.No.22012 of 2019

4.Mr.A.Damodaran, the learned Additional Public Prosecutor submitted that the inspection was conducted on 25.06.2018 in the new premises, wherein the petitioner did not have a valid license to stock or sell drugs. This is in violation of Section 18 (c) of Drugs and Cosmetics Acts 1940. It is true that the petitioner had a valid license in the old premises for the period from 2014 to 2019. However, the act of violating the terms of license by stocking the drugs in a different premises is in violation of the Act. That apart, the license is granted to the person and the premises after the authorities are satisfied that the premises is adequately equipped with proper storage as per Section 64 of Drugs and Cosmetics Act, 1945. Thus, the petitioner had no right to shift the premises without license. The learned Additional Public Prosecutor further submitted that the fact that subsequently the license was granted to the new premises would not alter the situation.

5.This Court finds that admittedly the petitioner had valid license in Form 20B and 21B (license to sell, stock, exhibit or offer for sale or distribute by wholesale) granted to the old premises. On the date of inspection by the respondent i.e., on 25.06.2018, she did not have a valid license in the new premises. It is also admitted that the sample drugs which have taken from the new



Crl.O.P.No.22012 of 2019

premises were found to be a standard quality. The petitioner had admitted that on the date of inspection, there was no valid license to sell or stock in the new premises. However, the respondent themselves on satisfying themselves that the new premises is adequate and properly equipped for storage of drugs had granted licence on 06.07.2018. The above facts would show that the petitioner did not have a valid license in the new premises on 25.06.2018. The fact that she had license in the old premises, the fact that the respondent found the new premises to be eligible for storage and granted licence subsequently and the fact that the petitioner did not sell or stock any substandard or mis-branded drug shows that the violation committed by the petitioner is trivial. It is well settled that where an act is trivial and the harm caused as a result of the act is so slight, it would not be an offence as per Section 95 of Indian Penal Code. Section 95 of Indian Penal Code reads as follows:

“95. Act causing slight harm – Nothing is an offence by reason that it causes or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.”



The Honourable Supreme Court in ***Mrs. Veeda Menezes vs Yusuf Khan and***

another reported in ***AIR 1966 SC 1773*** held that Section 95 of IPC is intended to prevent penalisation of negligible wrong or an offence of trivial character.

The relevant observations of the Hon'ble Apex Court is extracted below:-

“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 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



WEB COPY

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.”

In the facts and circumstances of the instant case, this Court finds that the violation by the petitioner is a negligible wrong and trivial in character for the reasons elaborated earlier. Hence, this Court is inclined to apply the provisions of Section 95 of Indian Penal Code in favour of the petitioner. It is needless to say that this provision is applicable to an offence under the Special Act also in view of Section 40 of IPC.



Crl.O.P.No.22012 of 2019

6.Hence, the impugned complaint is quashed and the Criminal Original

Petition is allowed. Consequently, the connected miscellaneous petition is closed.

06.04.2023

dk/ay

NCC: Yes/No

Index : Yes/No

Speaking/Non Speaking Order



Crl.O.P.No.22012 of 2019

To

1.The Drug Inspector,
Valasaravakkam Range,
Office of Assistant Director of Drugs Control
Zone – IV
Chennai – 600 006.

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



WEB COPY



Crl.O.P.No.22012 of 2019

SUNDER MOHAN. J,

dk/ay

Pre Delivery Order in
Crl.O.P.No.22012 of 2019
and
Crl.M.P.No.11428 of 2019

06.04.2023