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Crl.O.P.No.21668 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2023

CORAM:

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

Crl.O.P.No. 21668 of 2021

and

Crl.M.P.Nos. 11752 & 11754 of 2021

Preeta Chirstabel Arunadevi
Proprietrix of M/s.Crystal Healthcare.

... Petitioner

Vs

State Represented by
Drugs Inspector,
Valasaravakkam Range,
O/o.The Asst. Director of Drug Control,
Zone IV, Chennai – 600 006.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for records in C.C.No.207 of 2021 in the Court of the Chief Judicial Magistrate, Thiruvallur for the contravention of Section 18(c) of the Drugs and Cosmetics Act, 1940 r/w. Rule 65(5)(1)(e) of Drugs and Cosmetics Rules, 1945 and Section 18(a)(vi) of the Drugs and Cosmetics Act, 1940 r/w.Rule 105 Sub Rule 2 of Drugs and Cosmetics Rules, 1945, punishable under Sections 27(d) of the Drugs and Cosmetics Act, 1940 and quash the same.

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



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ORDER

This petition has been filed to quash the proceedings in C.C.No.207 of 2021 on the file of the Chief Judicial Magistrate, Thiruvallur.

2. The petitioner is an accused in the complaint lodged by the respondent for the contravention of Section 18(c) of the Drugs and Cosmetics Act, 1940 (herein after referred as the “Act”) r/w. Rule 65(5)(1)(e) of Drugs and Cosmetics Rules, 1945 (herein after referred as the “Rules”) and Section 18(a)(vi) of the Drugs and Cosmetics Act, 1940 r/w. Rule 105 Sub Rule 2 of Drugs and Cosmetics Rules, 1945, punishable under Sections 27(d) of the Drugs and Cosmetics Act, 1940. The respondent filed a complaint alleging that, on inspection conducted by the Drugs Inspector on 17.09.2019, in the petitioner's shop and found that the petitioner had purchased and sold the drug Diclofenac Sodium Injection as 30ml multi dose vials after the date of notificatin which is in violation of Section 18(a)(vi) of the Act read with 105 sub rule 2 of the Rules made the pack size of Diclofenac Injection for human use shall be in single dose pack only, whereas, the petitioner had purchased and sold the said injection in 30ml multi dose vials. The details of purchases and sales of Diclofenac Sodium Injection 30 ml multi dose vials are as follows:



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Purchases

<i>Sl.No</i>	<i>Name of the Drug</i>	<i>Batch No</i>	<i>Quantity</i>	<i>Supplier details</i>
1	Diclofenac Injection Multidose vial 30 ml	150415	360 vials	M/s.Ramson Medical Distributors Pvt. Ltd., Chennai – 60. Inv.No.RB000869 dated 24.01.2017.
2.	Diclofenac Injection Multidose vial 30 ml	FDFI-063	2600 vials	M/s.Ramson Medical Distributors Pvt. Ltd., Chennai – 60. Inv.No.RB000869 dated 24.01.2017.

Sales

<i>Sl.No</i>	<i>Sold to</i>	<i>Batch No.</i>	<i>Invoice No and Date</i>	<i>Quantity Nos</i>
1	M/s.Vinayaka Medicals Karanodai, Chennai	150415	SF000544 dt : 27.03.17	15
2.	M/s.Vinayaka Medicals Karanodai, Chennai	150415	SF000522 dt : 27.03.17	15
3.	M/s.Kavitha Medicals, Somangalam- 600 069	15045	SF000496 dt:13.02.17	5
4.	M/s.Shree Saravana Medicals, Medavakkam	150415	SF000492 dt:11.02.17	50
5.	M/s.Sournalakshmi Medicals, Virudhunagar	150415	SF003084 dt:14.02.17	250
6.	M/s.Sri Vinayaka Medicals, Karanodai, Chennai	150415	SF000508 dt:20.02.17	10
7.	M/s.Kavitha Medicals, Somangalam – 600 069	150415	SF000481 dt:02.02.17	4
8.	M/s.Vijaya Bharathy Pharma Vellore – 632 004	FDFI-063	SF002875 dt:25.01.17	600
9.	M/s.Sri Saravana Pharma, Vellore – 632 004	FDFI-063	SF002874 dt:25.01.17	2000



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3. It is in contravention under Section 18(c) of the Act read with 65(5)(1)(e) of the Rules. Therefore, a spot memo dated 17.09.2019 was issued as contemplated under Section 22(1)(cca) of the Act to produce the documents, records and registers in original for verification. The documents were produced by the accused and the show cause notice dated 28.11.2019 was issued to the accused. However, no reply was received and as such, the respondent filed a complaint to punish the petitioner under Section 27(d) of the Act for the contravention of Section 18(c) of the Act r/w. Rule 65(5)(1)(e) of the Rules and Section 18(a)(vi) of the Act r/w. Rule 105 Sub Rule 2 of the Rules.

4. The learned counsel appearing for the petitioner submitted that the respondent lodged a complaint before the Chief Judicial Magistrate, Thiruvallur. The Chief Judicial Magistrate has no jurisdiction to entertain the complaint and as such, the cognizance taken by the Trial Court itself is illegal as per Section 32 of the Act. He further submitted that the petitioner is only a wholeseller and she is no way involved in manufacturing or packing of any drugs or combinations sold by her and hence the contravention of Section 18(a)(vi) of the Act r/w. Rule 105 sub rule 2 of the Rules is prima facie is not made out and the prosecution is bad in law.

5. As per Section 19(3) of the Act, the petitioner has not



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committed any violations as alleged in the complaint. The petitioner had purchased the Diclofenac injection multi dose vials from a duly licensed distributor. The said medicine are common industrial pharmaceutical product sold across the length and breadth of the country. The petitioner had believed that the same was legal and was not in contravention of any provision under the Act.

6. The learned Government Advocate (Crl.Side) submitted that the grounds raised by the petitioner can be considered only before the Trial Court. It is a mixed question of facts. Therefore, the grounds raised by the petitioner cannot be considered by this Court that too under Section 482 of Cr.P.C. Insofar as the jurisdiction is concerned, the offence punishable with imprisonment for a term not exceeding three years, other than an offence under clause (b) of sub-section (1) of Section 33-I shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate. Therefore, the respondent lodged complaint before the Chief Judicial Magistrate and it has jurisdiction to try the offence. In support of his contention he relied upon the Judgment of this Court in Crl.O.P.No.27093 of 2010 batch etc., dated 13.02.2023.

7. He also submitted that the provision under Section 32(2) of the Act is very clear that no Court inferior to the Sessions Court shall try an offence



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punishable under Chapter IV of the Act. Therefore, the learned Magistrate can very well take cognizance and thereafter it can be made over to the Court of Sessions for trial. By the provision under Section 193 of Cr.P.C, there is a bar to take cognizance by the Court of Sessions. Therefore, the complaint may be made over to the Court of Sessions for trial for the offence under Section 18(a)(vi) of the Act r/w. Rule 105 Sub Rule 2 of the Rules.

8. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent and perused the materials available on record.

9. On verification of purchase and sale invoices that the petitioner had purchased and sold the drug Diclofinac Sodium Injection as 30ml multi dose vials after the date of notification which is in violation of Section 18(a)(vi) of the Act r/w.Rule 105 sub-rule 2 of the Rules wherein the pack size of Diclofinac Injection for human use shall be in single dose pack only. It is relevant to extract the provisions under Section 19(3) of the Act, which reads as follows :

19 Pleas – (3) A person, not being the manufacturer of



a drug or cosmetic or his agent for the distribution thereof, shall not be liable for a contravention of Section 18 if he proves -

i (a) that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof ;

ii (b) that he did not know and could not, with reasonable diligence, have ascertained that the drug or cosmetic in any way contravened the provisions of that section ; and

iii (c) that the drug or cosmetic, while in his possession, was properly stored and remained in the same state as when he acquired it.

10. On a perusal of reply issued by the petitioner for the show cause notice dated 29.01.2020 revealed that the petitioner purchased Diclofenac Injection 30ml vial and distributed in two occasions. They were completely not aware of the fact that Diclofenac Injection in multi dose vial is not permissible to be purchased and distributed at that particular point of time. Due to their lack of knowledge and misunderstanding the subjected purchase and sales happened unintentionally. The notification dated 17.07.2015, issued by the Ministry of Health and Family Welfare, is very clear that the amended Rules provides that Diclofenac Injection for human use shall be in single unit dose pack only. Therefore, as against the said Rule, the petitioner purchased



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and sold Diclofenac Injection as 30 ml multi dose vials. Therefore, it is in contravention of Section 18(c) of the Act r/w. Rule 65(5)(1)(e) of the Rules and Section 18(a)(vi) of the Act r/w. Rule 105 Sub Rule 2 of the Rules.

11. Section 36A provides for certain offence to be tried summarily by the Magistrate, where the term of imprisonment does not exceed one year. The offences for which the petitioners have been implicated are summarily triable and imprisonment does not exceed one year. That being the case, the cognizance taken by the Magistrate cannot be said to be bad and there is no necessity for the Court of Session to take cognizance of the issue. It is seen from Section 32(2) of the Act that for the offence punishable under Section Chapter IV of the Act, no Court inferior to the Sessions Court that of a Court shall try the offences. Therefore, these offences can be tried only by the Sessions Court. Further, the Court of Sessions cannot take cognizance unless the case has been committed to it by the Magistrate under the Criminal Procedure Code. It is relevant to extract the provisions under Section 193 of Code of Criminal Procedure, which reads as follows :-

“193. Cognizance of offences by Courts of Session : Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of



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Sessions shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.”

12. Thus, it is clear that otherwise expressly provided or by any other law, the Court of Sessions cannot take cognizance of any offence as a Court of original jurisdiction. Therefore, the respondent rightly filed a complaint before the Chief Judicial Magistrate, Thiruvallur. As per Section 32(2) of the Act, the offences under Chapter IV shall be tried only by Court of Sessions. It is relevant to extract the provision under Section 32 of the Drugs and Cosmetics Ac, 1940, which reads as follows :

32. Cognizance of offences : (1) No prosecution under this Chapter shall be instituted except by -

(a) any Inspector ; or

(b) any Gazetted Officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government or a State Government by a general or special order made in this behalf by that Government ; or

(c) the person aggrieved ; or

(d) a recognized consumer association whether such person is a member of that association or not.



(2) Save as other wise provided in this Act, no Court inferior to that of a Court of Session shall try an offence punishable under this Chapter.

(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter.

13. Therefore, the Trial Court, viz., The Chief Judicial Magistrate, Thiruvallur, can very well commit the complaint after taking cognizance for trial before the Court of Sessions. Now, the Chief Judicial Magistrate, Thiruvallur, had taken cognizance and it is pending for trial. Further on these grounds, the entire proceedings initiated by the respondent for the contravention under Section 18(c) of the Act read with 65(5)(1)(e) of the Rules cannot be quashed. However, after taking cognizance, any Magistrate shall have to commit the case for trial for the offence punishable under Chapter IV of the Act before Court of Sessions.

14. In view of the above, this Court is not inclined to quash the proceedings in C.C.No.207 of 2021 on the file of the Chief Judicial Magistrate, Thiruvallur, and it is liable to be dismissed. Accordingly, this Criminal Original



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Petition stands dismissed. The Chief Judicial Magistrate, Thiruvallur, is directed to make over the case in C.C.No.207 of 2021 before the Principal District and Sessions Court, Thiruvallur, for trial within a period of two weeks from the date of receipt of a copy of this order. On receipt of the entire bundle, the Sessions Court shall complete the trial within a period of six months from the date of receipt of the entire bundle. Consequently, connected miscellaneous petitions are closed.

19.10.2023

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
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To

1. The Drugs Inspector,
Valasaravakkam Range,
O/o.The Asst. Director of Drug Control,
Zone IV, Chennai – 600 006.

2. The Public Prosecutor
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

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