



Crl.O.P.No.22483 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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Reserved on : 20.11.2023

Pronounced on : 29.11.2023

Coram:

**THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN**

Criminal Original Petition No.22483 of 2022

and

Crl.M.P.No.14460 of 2022

Dr.S.Mohan Raj

... Petitioner

**/versus/**

State of Tamil Nadu  
Represented by  
Senior Drugs Inspector,  
Velachery Range Incharge,  
Thiruvanmiyur Range incharge,  
O/o.Assistant Director of Drugs Control  
Zone III,  
Chennai-600 006.

... Respondent

**Prayer:** Criminal Original Petition has been filed under Section 482 Cr.P.C.,  
pleased to call for the records in C.C.No.988 of 2022, pending before the  
learned IV Metropolitan Magistrate Court, Saidapet, Chennai and quash the  
same.

For petitioner : Mr.T.Mohan, Senior Counsel  
for Mr.G,Gokul

For Respondent : Mr.S.Udaya Kumar  
Government Advocate (Crl.Side)



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### **ORDER**

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The petitioner herein is a Registered Medical Practitioner under Section 2 (ee) of the Drugs and Cosmetics Rules 1945. He is a qualified allopathic doctor with MBBS., MD (Psychiatry) degree. Based on the complaint given by the Senior Drug Inspector, Velachery Region, incharge of Thiruvannamiyur Range, the 4<sup>th</sup> Metropolitan Magistrate at Saidapet had taken cognizance of offences under Section 18(c) of the Drugs and Cosmetics Act against the petitioner in C.C.No:988/2022, which is sought to be quashed in this petition filed under Section 482 of Cr.P.C.

2. On 11.07.2018, the premises of the petitioner was inspected by the Drug Inspector and during the inspection allopathic medicines were found stocked and sold without valid license. 76 items of drugs were found stocked and from its MRP, the value of the drugs assessed as Rs.90,340/-. From out of 76 items, samples drawn from the following two drugs were sent for analysis.

(A) Dulotin 10 tablets I.P. 10 mg 4 x 6 x N0 Nos.

(B) Clonax 0.5 tablets 0.5 mg 4 x 10 x 10 Nos.



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**3.** After getting sanction to prosecute from the Director of Drugs Control, complaint presented against the petitioner for offence under section 18 (c) of Drugs and Cosmetics Act, 1940 for having stocked the Drugs for sale and sold without having valid Drug license, which is punishable under Section 27 (b) (ii) of the Act.

**4.** The petitioner seeks quash of the complaint on the ground that the tablets seized from his clinic was meant for the patients who need the tablet for their depression. Under section 42 of the PHARMACY Act, 1948, a medical practitioner shall dispense drugs for his own patient or for the patient of other medical practitioner for which no drug licence is required. Even under the Drugs and Cosmetics Act, 1940 and the rules framed thereunder, a Registered Medical Practitioner is exempted from having license for drugs supplied to his own patients.

**5.** The Learned Senior Counsel for the petitioner referring Rules 123 of the Drugs and Cosmetics Rules, 1945 and Schedule K of the Rules along with section 42 of the Pharmacy Act, 1948 submitted that the petitioner had drugs meant for his own patient's supply and not for sale on commercial basis



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across counter. Hence Section 18 (c) of the Drugs and cosmetics Act, will not get attracted. If such small quantity kept by the medical practitioner is found faulted and prosecuted, the needy patients who suffer depression, will be put to hardship of exposure. Being a specialised drug meant for depression, at times some of the drugs may not be easily available across the counter in all pharmacy. There is also danger of patient discontinuing the medicine for its non-availability and that may lead to relapse of the illness.

6. Per contra, the Learned Government Advocate (Crl.Side) for the State submitted that Section 18 (c) of the Drugs and Cosmetics Act, prohibits drugs stocked for sale without license. Admittedly, in this case the petitioner had stocked drugs in his clinic and maintaining sale register. During the inspection, drugs worth Rs 90,340/- were seized and the petitioner was asked to give his explanation for possessing and dispensing drug without license. For exemption under clause 5 of Schedule K, the petitioner ought to have complied the conditions mentioned in clause (a) and (b) in clause 5 of Schedule K. He cannot sell the drugs keeping a shop or sell across the counter and issue sale bills.



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7. The drug seized from the petitioner is worth about Rs.90,340/-. It cannot be pleaded that it is small quantity of drug kept for the patients. The large quantity of drugs found in possession of the petitioner leaves no doubt that he stocked the drug for commercial purpose. Section 18 (c) of the Act prohibits stocking and sale of drugs without license. Section 27 prescribes punishment for violating Section 18 (c). The large quantity of drug seized and the sale bills recovered *prima-facie* prove that the petitioner has violated Section 18 (c) and cannot be protected under Rule 123 of Drugs and cosmetics Act or Section 42 of the Pharmacy Act.

8. Heard the learned counsels.

9. The petitioner is a Registered Medical Practitioner. He is entitled to prescribe allopathic medicines. Under Section 42 of the Pharmacy Act, it is also permitted to dispense medicine for his patients for which, he need not have a pharmacy licences. However, the Act does not permit a medical practitioner to stock and trade allopathy medicine without proper license. In this case, the Drug Inspector has seized about 74 items of drugs worth Rs.90,340/-. The petitioner been maintaining purchase register, sale bills and stock register.



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When the petitioner received the show cause notice, he had admitted that he had been selling drugs in his clinic and soon he will obtain drug license.

10. To buttress his submissions the Learned senior counsel for the petitioner rely upon the judgment of the Hon'ble Supreme Court rendered in ***S.Athilakshmi -vs- State, rep. by Drug Inspector*** reported in **2023/INSC/237**. The facts of the case cited is almost similar to this case except the fact that the petitioner in the case cited was a "Dermatologist" whereas, in this case the petitioner is a specialist in "Psychiatry". For both these illness, there may be patients who are shy to get their medicine across counter in pharmacy. If the stock kept is of small quantity and meant for his own patients, the dictum laid in the *Athilakshmi case* cited supra will squarely apply.

11. In this case, the value of the drug seized from the petitioner is worth about Rs.90,340/-. The documents seized during search indicates that the petitioner has been maintaining proper account for the purchase of drug as well as sale of it. The perusal of sale bills discloses the name of the patient and the value of the drug sold. The value ranges from few hundreds to few thousands of rupees.



**12.** The observation of the Hon'ble Supreme Court in the *Athilakshmi*

*case* cited supra is that, “it is not the case of the prosecution that the petitioner has opened a shop and selling drugs. She as a specialist in Dermatology been having stock of medicine meant for her patients in her consulting room. The Director of Drugs Control and the High Court lost sight of these fact and the Schedule K of the Rules which is part of the Act.”

**13.** On perusal of the complaint and the documents relied by the complainant, there is no allegation that the petitioner was selling the drugs which he kept in stock through open shop or through selling counter to attract Section 18 (c) of the Drugs and Cosmetics Act. Also, there is no averment that those drugs are not meant for the patients of the petitioner, but for sale to outsiders. There is also no allegation that the stock is of commercial nature. Contrarily, the sale bills which mentions the patient name and the value indicates that the petitioner had stock of these drugs for dispensing to his patient and not for outsiders. Also it appears that the drugs are very costly and for some patients, the monthly dose of tablets cost about Rs.4,500/-. In the light of the above fact, this Court is of the view that the dictum of *Athilakshmi case* cited supra squarely applies to this petitioner and hence the petition to quash



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C.C.No.988 of 2018 is allowed.

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**14.** Accordingly, this Criminal Original Petition No.22483 of 2022 is allowed. Consequently, the connected Criminal Miscellaneous Petition is closed. C.C.No.988 of 2018 on the file of IV Metropolitan Magistrate Court, Saidapet stands quashed.

29.11.2023

Index :Yes/No.  
Internet :Yes/No.  
Speaking order/non speaking order  
rpl

To:-

- 1.The IV Metropolitan Magistrate Court, Saidapet, Chennai
- 2.TheSenior Drugs Inspector,  
Velachery Range Incharge,  
Thiruvanmiyur Range incharge,  
O/o.Assistant Director of Drugs Control  
Zone III,  
Chennai-600 006.
- 3.The Public Prosecutor, High Court of Madras, Chennai.



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**Dr.G.JAYACHANDRAN,J.**

rpl

Pre delivery Order made in  
Crl.O.P.No.22483 of 2022  
and  
Crl.M.P.No.14460 of 2022

29.11.2023