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Crl.O.P.No.22845 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2023

CORAM:

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

Crl.O.P.No.22845 of 2021
and
Crl.M.P.No. 12477 of 2021

K. Ramlal Jain Petitioner

Vs

Union of India,
Rep.by D.Hemalatha,
Drug Inspector,
Central Drugs Standard Control Organization,
South Zone, 2nd Floor, Sastri Bhavan Annexe,
Chennai – 600 006. Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records connected with C.C.No.25 of 2019 on the file of the III Additional Sessions Judge, City Civil Court, Chennai and quash the same.

For Petitioner : Mr.N.R.Elango,
Senior Counsel
for S.Baskaran

For Respondent : Mr.L.Infant Dinesh
Central Government Standing Counsel

ORDER



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This Criminal Original Petition has been filed to quash the proceedings in C.C.No.25 of 2019 on the file of the III Additional Sessions Judge, City Civil Court, Chennai.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The respondent filed a complaint for the offence punishable under Section 13(1)(a) read with Section 9(B)(e) and Section 10(bb) of Drugs and Cosmetics Act 1940 and Section 467 of IPC. The crux of the complaint is that the petitioner is a proprietor of M/s.Kawrlal and Co., and he is engaged in import and sale of drugs. He had licence to sell the drugs in Form 20B and Form 21B issued by the Tamil Nadu State Licensing Authority. He was issued with a licence to import Transexamic Acid IP, manufactured by M/s.Shanghai Xiandai Hasen (Shangqiu) Pharmaceutical Co. Ltd., No.166, Xinging Road, Industrial Agglomeration Area, Liangyuan District, Shaugqiy City, Henan Province, China. Under the Drugs and Cosmetics Act any drug can be imported only from the registered sources by an importer, possessing a valid import license for the same, from the Office of the Drugs Controller



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General.

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4. Accordingly, the petitioner, under the invoice, imported 6000 Kgs Tranexamic Acid BP 2013 from Chinese Trader M/s.Jiangsu International Eco & Tech Cooperation Group Ltd., filed the bill dated 22.09.2016. It was referred by the customs authority to the Assistant Drug Controller, Chennai, for opinion on their compliance with the requirements of Drugs and Cosmetics Act. After scrutiny of the referred Bill of Entry produced by the petitioner, the following was found “(i) mismatch of batch numbers in invoice of the imported consignment with certificate of analysis of confirmation declaration (ii) certificate of analysis do not have report number, report date, e-mail ID of the manufacturer and (3) imported consignment was from the Chinese Trader”. As the consignment was supplied by a Chinese trader, whether the drugs was manufactured by M/s.Shanghai Xiandai Hasen (Shangqiu) Pharmaceutical Co. Ltd, was to be verified through e-mail/fax as per the CDSCO guidance documents of Zonal & Sub-Zonal and Port Officers. The Assistant Drugs Controller, Chennai, informed the Drug Controller General and forwarded a copy of Form 41 issued to Indian Agent M/s.Eastern Chemicals Pvt. Ltd., Mumbai and manufacturer e-



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mail ID as per data available with import division of DCG (I) office on 24.10.2016 with a direction to verify and confirm the authenticity of consignment.

5. Receipt of the e-mail of the manufacturer from China intimated that

(i) The referred batches of Tranexamic Acid were not manufactured by them and they have stopped supplying of Tranexamic Acid to Indian Market for several months.

(ii) They did not sell Tranexamic Acid to M/s.Jiangsu International Eco & Tech Cooperation Group Ltd, China and they were not issued with any sale Invoice and confirmation declaration.

(iii) Their batch numbering system having only one format of nine numerical is 123456789 as approved by the DCG(I) as per their registration documents but not alphabet with numerical YFHG160401 and these referred batches were not manufactured by them.

(iv) The sale Invoice received, in mail, mentioning the Chinese firm name was different from their company name.

6. Thereafter, the Assistant Drugs Controller (India),



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conducted the physical examination of the imported drug and observed that the label found on all the 240 drums were not labeled with name and address of the manufacturer, import license number and name and address of the importer as required under Rule 96 of Drugs and Cosmetics Act. The Indian agent M/s.Eastern Chemicals Pvt Ltd., Mumbai also confirmed the above fact through their letter dated 12.12.2016 and stated that the manufacturer M/s.Shanghai Xiandai Hasen (Shangqiu) Pharmaceutical Co. Ltd, China, had already closed manufacturing of Tranexamic Acid from 28.05.2016 and also have not shipped any material to the market. Hence, the complaint.

7. The basis of allegations of commission of offences are only by e-mail communications from the personal e-mail account of the respondent/complainant. The learned Senior counsel relied upon the provision under Section 166-A of Cr.P.C. He further submitted that in this case, though the offences related to foreign country, no CBI enquiry was ordered. He relied upon the Judgment of this Court in Crl.O.P.No.16915 and 16955 of 2014 and this Court held as follows :-

“6. Be that as it may, this Court finds it unnecessary to consider further the facts of the case and would confine itself to the question of law. For easy



understanding, Section 166-A Cr.P.C. is extracted hereunder :

“166-A. Letter of request to competent authority for investigation in a country or place outside India –

(1) Notwithstanding anything contained in this code, if, in the course of an investigation into an offence, an application is made by the investigating officer or any officer superior in rank to the investigating officer that evidence may be available in a country or place outside India, any Criminal Court may issue letter of request to a Court or an authority in that country or place competent to deal with such request to examine orally any person supposed to be acquainted with the facts and circumstances of the case and to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing which may be in his possession pertaining to the case and to forward all the evidence so taken or collected or the authenticated copies thereof or the things so collected to the Court issuing such letter.

(2) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.

(3) Every statement recorded or document or



thing received under Sub-section (1) shall be deemed to be the evidence collected during the course of investigation under this Chapter.”

7. *While the proper investigating agency has informed inability to proceed u/s.166-A Cr.P.C., this Court finds that preference of complaint by respondent would serve no purpose whatsoever, particularly as records reveal that communications between respondent/complainant and answering China company are merely e-mails which bear no digital signature thereby making unavailable the presumption as to electronic records and electronic signatures u/s.85-B of the Indian Evidence Act and in the list of witnesses informed by respondent/complainant, person/s, who had authored e-mails addressed to respondent/complainant, understandably, have not been cited as witnesses.”*

8. The above case is squarely applicable to the case on hand. On this point alone, this Court is inclined to quash the proceedings.

9. Accordingly, the proceedings in C.C.No.25 of 2019 on the file of the III Additional Sessions Judge, City Civil Court, Chennai, is hereby quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.



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Internet: Yes

Index : Yes/No

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To

1. The III Additional Sessions Judge,
City Civil Court, Chennai.

2. The Drug Inspector,
Union of India,
Central Drugs Standard Control Organization,
South Zone, 2nd Floor, Sastri Bhavan Annexe,
Chennai – 600 006.

3. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN, J

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