IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.11.2023

Pronounced on : 20.11.2023

CORAM:

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

CRL.O.P.Nos.23142 & 23148 of 2019 and
Crl.M.P.Nos.12138 & 12149 of 2019

Crl.OP.No.23142 of 2019

M/s.Adsila Organics Pvt.Ltd.,
Represented by its person in charge of day to day affairs
Gautam Singh,
Liwaspur Road, Vill,
Bhalgarh 131 021 ... Petitioner

Vs.

State represented by
The Drugs Inspector,
Coimbatore III Range,
O/o the Assistant Director of Drugs Control,
Coimbatore Zone, 219 Race Course Road,
Coimbatore 641 018 ... Respondent

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records in CC.No.718 of 2017 on the file of the learned Judicial Magistrate No.II, Coimbatore and to quash the proceedings.

For Petitioner : Mr.Abdu Kumar Rajarathinam,
Senior Counsel
for Mr.C.Deepak Kumar

For Respondent : Mr.L.Baskaran,
Government Advocate(crl.side)

Crl.OP.No.23148 of 2019

1.Vikas Pruthi
2.NishchalPruthi ... Petitioners

Vs.

State represented by
The Drugs Inspector,
Coimbatore III Range,
O/o the Assistant Director of Drugs Control,
Coimbatore Zone, 219 Race Course Road,
Coimbatore 641 018 ... Respondent

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records in CC.No.718 of 2017 on the file of the learned Judicial Magistrate No.II, Coimbatore and to quash the proceedings.

For Petitioner : Mr.Abdu Kumar Rajarathinam,
Senior Counsel
for Mr.C.Deepak Kumar

For Respondent : Mr.L.Baskaran,
Government Advocate(crl.side)

COMMON ORDER

Both the criminal original petitions have been filed to quash the proceedings in CC.No.718 of 2017 on the file of the learned Judicial Magistrate

No.II, Coimbatore, thereby taken cognizance for the offence punishable under Sections 27(d), 28 and 28A of the Drugs and Cosmetics Act, 1940 as against the petitioners.

2. In both the criminal original petitions, the petitioners are arrayed as A1 to A3. The respondent lodged complaint for the contravention of Sections 18(a)(i), 18A, 18B of the Drugs and Cosmetics Act, 1940 (hereinafter called as 'the Act') punishable under Sections 27(d), 28 and 28A of the Act. There are totally 13 accused. On inspection, from M/s.BVV Pharmaceuticals Coimbatore, the respondent had drawn sample of the drug 'Zipcold-DX' and sent for analysis. It was tested and reported as not of standard quality by the Government Analyst(Drugs), Drugs Testing Laboratory, Chennai. The sample does not conform to label claim with respect to the content of Dextromethorphan Hydrochloride, Chlorpheniramine Maleate and Phenylephrine Hydrochloride. Therefore, show cause notice was issued on 28.04.2017. On receipt of the same, the pharmaceuticals replied that the said drug was purchased from accused 5 to 9. Therefore, another show cause notice was sent to accused 5 to 9. They replied that the said drug was purchased from accused 10 to 13 . They were also issued show cause notice on 08.06.2017. They replied that the said drug was purchased from M/s.Singhal Traders,

Delhi. Accused 1 to 3 failed to furnish any documents / records as required by the respondent. Therefore, they had contravened the provision under Section 18(a)(i) of the Act for having manufactured for sale and sold the subject drug not of standard quality which is punishable under Section 27(d) of the Act. They had also contravened the provision under Section 18B of the Act for having not furnished the records, registers and documents demanded by the complainant which is punishable under Section 28A of the Act. Hence, the complaint. On receipt of the same, the trial court had taken cognizance and issued summons to the accused.

3. Mr.Abdu Kumar Rajarathinam, the learned Senior Counsel appearing for the petitioners submitted that the trial court ought not to have taken cognizance since there are absolutely no material as against the petitioners to take cognizance for the alleged offence. The respondent failed to follow the procedures laid down under the Act and Rules while sending the samples to the Government Analyst. On objection, to confirm its report, the sample was sent to Central Drugs Laboratory. Though the samples were tested on 25.01.2018, the report was sent in Form-2 only on 04.05.2018 i.e. after the life of the drug had already expired. Therefore, the report is not proper and valid and it cannot be relied upon by the prosecution to conclude that the drug

is not of standard quality.

3.1 He further submitted that the petitioners are not in charge of the day to day affairs of the company and no specific allegations made as against the petitioners with regards to their participation in the day to day affairs of the company i.e. manufacturing of the subject drug. The sample was seized and sent to analyst on 22.02.2017. The report shows that the sample of the drug was received by the Government analyst only on 03.03.2017. The respondent accorded sanction under Section 33P of the Act to prosecute the petitioners. The guidelines contemplated under Section 33P of the Act is not at all followed while according sanction. It was accorded in mechanical manner without going into the facts of the case. The sanction letter shows non application of mind. Such sanction merely reproduced whatever was submitted by the respondent has not perused any document at all before granting of sanction. The trial court had taken cognizance in cryptic nature and without applying its mind before issuance of summons. Even according to the respondent, the test was done at the end of the life of the drug. When all the accused have valid licence, the trial court ought not to have taken cognizance. In the complaint, there is no specific role assigned to all the accused persons except the reproduction of Section, sanction authority did not give its finding.

4. The respondent filed counter and Mr.L.Baskaran, the learned Government Advocate(crl.side) appearing for the respondent submitted the test report has clearly stated from the label of the subject not of standard quality drug that the manufacturer of the said drug i.e. the petitioners are held liable for the contraventions. In fact, for the show cause notice, the petitioners replied by their letter dated 01.09.2017 and stated as follows:

They admitted that they do have manufacturing license for the subject drug ZIPCOLD-DX soft gel capsules

They purchased the raw materials used for manufacturing the subject drug from a licensed dealer.

The subject drug was manufactured in their company by expert manufacturing chemist and tested by analytical chemist.

After receiving the Form 13 and 3rd portion of the sample, they have tested their control sample of the subject drug in their laboratory and were of Standard quality.

They adduced test report in Form 13 No 08519-D/2016-17 dated 21.04.2017 of the Govt. Analyst, Drugs Testing Laboratory, Chennai-06

They manufactured the drug in question as per validated manufacturing procedures.

After obtaining the report of CDL and if the sample drug is linked with them they will furnish documents in the show cause memo.

4.1 Further, they have not furnished any documents / particulars demanded by the respondent. The said drug was purchased from M/s.Singhal Traders situated at Delhi. On inspection, it was found that no such firm named M/s.Singhal Traders at New Delhi is existing and a rice merchant shop was existing in that address. No such drug licence has been issued in the name of M/s.Singhal Traders, New Delhi. Therefore, it was proved that the purchase invoice furnished by the petitioners is fictitious that they have acquired the subject drug from M/s.Singhal Traders, New Delhi. The subject drug was manufactured in the petitioners' company and it is found to be not of standard quality. The test report is also confirmed by the Central Drugs Laboratory. Though there was delay in signing the test report, it is nothing but confirming the test report submitted by the State Drugs Laboratory. Therefore, it cannot be said that the said test was conducted after expiry. Though the test was conducted while the drug was very much before the expiry date, the report was only signed later, that too before the expiry of the drug. As per their reply

submitted by the petitioners, they admitted that they are Directors and they are the manufacturers of the subject drug. They also involved in day to day affairs of the Company and as such they are held vicariously liable for the contravention of the said offences.

5. Heard, Mr.Abdukumar Rajarathinam, the learned Senior Counsel appearing for the petitioners and Mr.L.Baskaran, the learned Government Advocate(Crl.side) appearing for the respondent.

6. The following issues arise from the legal submissions made by the learned Senior Counsel appearing for the petitioners:

(i) Whether the petitioners are liable to be punished under the Drugs and cosmetics Act when the complaint itself is bereft of specific overt act as against them?

(ii) Whether the petitioners are vicariously liable to be punished for contravention of Section 18(a)(i), 18A, 18B of the Act when they are not involved in the day to day affairs of the company and manufacturing of the subject drug?

(iii) Whether the test report submitted by the Central

Laboratory belatedly from the testing caused any prejudice to the petitioners?

(iv) Whether the respondent followed the mandatory provisions before launching prosecution?

(v) Whether the sanction authority applied its mind while according sanction to prosecute the petitioners?

(vi) Whether the trial court had applied its mind while taking cognizance for the offences under Section 27(d), 28 and 28A of the Act as against the petitioners?

7. There are totally 13 accused, in which the petitioners are arrayed as A1 to A3. The first accused is the company represented by its Directors i.e. 2nd and 3rd accused. The second and third accused are the Directors of the first accused company. The drug called 'Zipcold-DX' was drawn by the respondent from the fourth accused pharmaceuticals and sent for analysis under Form 18 on 22.02.2017. As per the test report, the drug was not of standard quality by the Government Analyst, Drugs Testing Laboratory, Chennai by the report dated 21.04.2017 for the reason that the sample does not conform to label claim with respect to the content of Dextromethorphan Hydrobromide – 5.89

mg(58.90%), Chlorpheniramine Maleate – 1.20mg (60%) and Phenylephrine Hydrochloride – 2.27 mg (45.40%). Therefore, show cause notice was issued to the fourth accused. On its reply, revealed that they purchased the said drug from the accused 5 to 9. They were also issued show cause notice and they replied that the subject drug was purchased from accused 10 to 13. They were issued show cause notice and on receipt of the reply, revealed that the subject drug was purchased from M/s.Singhal Traders. Once again, show cause notice was sent to M/s.Singhal Traders, Delhi and no reply was received from the said M/s.Singhal Traders. After collection of materials, the respondent accorded sanction to prosecute the petitioners. The petitioners also failed to furnish records, registers and documents as demanded by the respondent. Admittedly, the petitioners are company and its Directors.

8. The learned Senior Counsel specifically contended that accused 2 & 3 were never involved in day to day affairs of the Company and its manufacturing of the subject drug. In this regard, he relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Lalankumar Singh and others Vs. State of Maharashtra*** reported in ***2022 LiveLaw(SC) 833.*** It is arising out of the Drugs and Cosmetics Act and dealing with the issue of

prosecution as against the Directors of the manufacturers with the aid of Section 34(1) of the Act. It is held that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises if at the material time he was in charge of and was also responsible to the company for the conduct of its business. Simply because a person is a director of the company it does not necessarily mean that he fulfils both the above requirements so as to make him liable. Conversely, without being a director a person can be in charge of and responsible to the company for the conduct of its business. On perusal of complaint, except bald and vague allegations as against accused 2 & 3, there is no other allegation to indicate even prima facie that they were in charge of the company and also responsible to the company for the conduct of its business. The person in charge of a business means that the person should be in overall control of the day to day business and the manufacture should be done under his management. Section 34 of the Act deals with the offence by companies. It is relevant to extract the provision under Section 34 (1) & (2) of the Act hereunder:

"34. Offences by companies—

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the

company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

9. In the case on hand, it is not in dispute that the first accused is a company and accused 2 and 3 are Directors of the first accused company. There are no specific allegations that they participated in the day to day affairs of the company. From the plain reading of the provisions under Section 34, it is clear that when an offence has been committed by a company every person

who at the time of offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the offence. In fact, for the offence by company, to bring its responsible person in charge of the company, it shall be necessary to be alleged that they were in charge of and responsible for the conduct of the company.

10. In the case of ***Pepsi Co Oncia Holding Pvt. Ltd Vs. Food Inspector*** reported in ***2011 (1) SCC 176***, the Hon'ble Supreme Court of India held as follows:

> *"...50...It is now well established that in a complaint against a company and its Directors, the complainant has to indicate in the complaint itself as to whether the Directors concerned were either in charge off or responsible to the company for its day to day management, or whether they were responsible to the company for the conduct of its business. A merely bald statement that a person was a Director of the company against which certain allegations had been made is not sufficient to make such a Director liable to in the absence of any specific allegations regarding his role in the management of the company".*

11. On perusal of records, revealed that one of the Directors i.e. the second petitioner in Crl.OP.No.23148 of 2019 filed affidavit before the Assistant State Drugs Controller, Food & Drug Administration, Haryana stating that the second and third accused are the Directors of the first accused company. Analytical Chemist is Ms.Farida Malik and Manufacturing Chemist is Mr.Sandeep Kumar. The second accused is the authorised signatory of the firm. Mr.Sandeep Kumar shall be over all in-charge cum person responsible for day to day conduct and control of business of the first accused. Neither the second and the third accused of the first accused company shall be responsible person of the first accused company for day to day conduct and control of business of the firm under the provisions of Drugs and Cosmetics Act and Rules. Likewise, the said Sandeep Kumar also filed an affidavit before the Assistant State Drugs Controller, Food and Drug Adminstration, Haryana deposing that he is approved as Manufacturing Chemist and he shall be overall in charge cum person responsible for day to day conduct and control of business of the first accused company. The Directors of the first accused shall not be responsible for day to day conduct and control of business of the first accused company.

12. Likewise, Ms.Farida Malik also filed affidavit before the Assistant

State Drugs Controller, Food & Drug Administration, Haryana thereby deposed that she is working as Analytical Chemist of the first accused company. Accordingly, the first accused company was issued licence under Form 25 and 28 as contemplated under Rule 70 of Drugs and Cosmetic Rules, to manufacture for sale (or for distribution of Drugs other than those specified in schedule C, C(1) and X and as per the licence dated 17.08.2015, the first accused company is licensed to manufacture the drugs being drugs other than those specified in Schedule C, C(I) and X to the Drugs and Cosmetics Rules, 1945. The said Sandeep Kumar is approved Manufacturing Chemist and Ms.Farida Malik is approved Analytical Chemist. Mr.Ramesh Pandey is Quality Assurance Personnel. In view of the specific provision under the Act dealing with the offences by company which fixes the responsibility and the responsible person of the company for conduct of its business, by making bald and vague allegations, the second and third accused cannot be prosecuted on vague allegations that they are being the Directors of the first accused company. Therefore, only the responsible person of the company as well as the company alone shall be deemed to be guilty of the offence and shall be liable to be proceeded with.

13. As per Section 33P of the Act, the Government issued guidelines

to be followed by the State. The grant of sanction is mandatory requirement as per the circular to the Principal / Health Secretaries of States. The guidelines which are mandatory to follow while according sanction are not followed in this case. On perusal of the sanction letter issued by the Director of Drugs Control is clear that non application of mind and such sanction merely reproduced whatever was submitted by the respondent, that too without perusal of documents before according sanction. It is just a reproduction of the recommendation of the respondent. It must be with application of mind and not in a mechanical manner. The guidelines were issued by Ministry of Health and Family Welfare, Government of India dated 26.11.2010 after considering the representation made by various Drug Manufacturers Association in misuse of power by enforcement Agencies in the States and Union Territories in terms of harassment of genuine manufacturers by initiating prosecution. It prepared guidelines for taking action on samples of drugs declared spurious or not of standard quality in the light of enhanced penalties under the Drugs and Cosmetics (Amendment) Act, 2008 in consultation with Drug Manufacturers Associations. As per Section 33P of the Act, the Central Government may give such directions to any State Government as may appear to the Central Government to be necessary for carrying into executions in the State any of the provisions of this Act or any role or order made thereunder.

14. As per guidelines, if the drug is not of standard quality, it is coming under category B. In the case of not of standard quality reports because of minor defects arising out of variations from the prescribed standards or contraventions of other provisions of chapter IV of the Act, administrative measures including suspension / cancellation or compounding offences may be resorted to. Prosecution may only be launched where it is justifiably felt that above measures would not meet the ends of justice. The State Drug Control Departments shall constitute screening committees comprising of atleast three senior officers not below the level of Assistant Drugs Controllers or equivalent to examine the investigation reports of the cases where prosecutions are proposed to be launched. The committee may submit written opinion on the investigation reports regarding their feasibility of taking legal action. The criminal intent or gross negligence should be taken into consideration while recommending actions like prosecution, etc. Care should be taken that charges framed are not based on inappropriate provisions which may be difficult to prove in the court of law in the absence of proper justification or evidence. Cases of failing in assay, brand name disputes and non renewal of manufacturing licence in time should be examined on their merits before recommending prosecution in such cases. In the case on hand, the Government

Analyst, Testing Lab, Chennai report states as follows:

Analysis Done	Result of Analysis	Label Claim
Nature of packing and quantity of the sample received	Received 10 blister strips containing 10 soft gelatin capsules each and kept in an original carton	1x10x10 soft gelatin capsules
Description	Red colour Soft gelatin capsules	Soft gelatin capsules
Identification	Answers the identification test for Dextromethorphan Hydrobromide Chlorpheniramine Maleate and Phenylephrine Hydrochloride	
Uniformity of weight and disintegration	Conform to IP specification	
Essay		
Estimation of	Each capsule of average weight is found to contain	Each capsule purports to contain
Dextromethorphan Hydrobromide	5.89mg(58.90%)	10mg
Chlorpheniramine Maleate	1.20mg(60%)	2mg
Phenylaphrine Hydrochloride	2.27mg(45.40%)	5mg (Limit:90% to 110% of Label claim)

In the opinion of the undersigned, the sample referred to above as not of standard quality as defined in the Drugs and Cosmetics Act, 1940 and rules thereunder for the reason given below.

15. The report of the Government Analyst is not satisfied with the petitioners. Therefore, another sample was sent to Central Drug Laboratory for the purpose of analysis. As per the report on Form-2, the sample was put on testing on 23.01.2018 and the test was completed on 25.01.2018. However, the report was prepared in Form-2 only on 04.05.2018 i.e. after lapse of three months and 10 days. It was prepared after the life time of the drug since the drug already expired. The respondent failed to explain for the delay of three

months and 10 days for preparation of test report though the alleged drug was tested between 23.01.2018 to 25.01.2018. It is fatal to the case of the prosecution since it causes grave prejudice to the petitioners. When the drug is tested at the end of its life time, the result will bound to varying due to improper storage by the Drugs Inspector and laboratory for such a long time. Therefore, the report prepared will cease to have any evidenciary value and the impugned complaint cannot be sustained as against the petitioners. These facts are not considered by the sanction authority while according sanction. Sanctioning Authority failed to follow the guidelines issued by the Union of India. Further, the prosecution is the last resort against the accused. In this regard, the learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Spentex Industries Limited Vs. Commissioner of Central Excise and Other***s reported in ***(2016) 1 SCC 780***, wherein it is held as follows:

> *24. As mentioned above, Rule 18 is enabling provision which authorises the Central Government to issue a notification for grant of these rebates. Exercising powers under this Rule, the Central Government has issued necessary notifications for rebate in respect of both the duties, i.e., on intermediate product as well as on the final product. Further, and which is more significant, these notifications providing*

detailed procedure for claiming such rebates contemplate a situation where excise duty may have been paid both on the excisable goods and on material used in the manufacture of those goods and enables the exporter to claim rebate on both the duties. This kind of procedure and format of prescribed Forms, already described above, becomes a clincher insofar as understanding of the Government of Rule 18 of the Rules is concerned.

25. It is to be borne in mind that it is the Central Government which has framed the Rules as well as issued the notifications. If the Central Government itself is of the opinion that the rebate is to be allowed on both the forms of excise duties the government is bound thereby and the rule in-question has to interpreted in accord with this understanding of the rule maker itself. Law in this respect is well settled and, therefore, it is not necessary to burden this judgment by quoting from various decisions. Our purpose would be served by referring to one such decision in the case of R & B Falcon (A) Pty Ltd. v. Commissioner of Income Tax[1] wherein interpretation given by the Central Board of Direct Taxes (CBDT) to a particular provision was held binding on the tax authorities. The Court explained this principle in the following manner:

"33. CBDT has the requisite jurisdiction to interpret the provisions of the Income Tax Act. The interpretation of the

CBDT being in the realm of executive construction, should ordinarily be held to be binding, save and except where it violates any provisions of law or is contrary to any judgment rendered by the courts. The reason for giving effect to such executive construction is not only same as contemporaneous which would come within the purview of the maxim temporania caste pesto, even in certain situation a representation made by an authority like Minister presenting the Bill before Parliament may also be found bound thereby.

34. Rules of executive construction in a situation of this nature may also be applied. Where a representation is made by the maker of legislation at the time of introduction of the Bill or construction thereupon is put by the executive upon its coming into force, the same carries a great weight.

35. In this regard, we may refer to the decision of the House of Lords in R. (Westminster City Council) v. National Asylum Support Service (2002) 1 WLR 2956 : (2002) 4 All ER 654 (HL) and its interpretation of the decision in Pepper v. Hart 1993 AC 593 : (1992) 3 WLR 1032 : (1993) 1 All ER 42 (HL) on the question of "executive estoppel". In the former decision, Lord Steyn stated: (WLR p. 2959, para 6)

"6. If exceptionally there is found in the Explanatory Notes a clear assurance by the executive to Parliament about the meaning of a clause, or the circumstances in which a power will or will not be used, that assurance may in principle be

admitted against the executive in proceedings in which the executive places a contrary contention before a court."

36. A similar interpretation was rendered by Lord Hope of Craighead in Wilson v. First County Trust Ltd. (No. 2) (2004) 1 AC 816 : (2003) 3 WLR 568 : (2003) 4 All ER 97 (HL), wherein it was stated: (WLR p. 600, para

113) "113. ...As I understand it [Pepper v. Hart 1993 AC 593 : (1992) 3 WLR 1032 : (1993) 1 All ER 42 (HL), it recognised a limited exception to the general rule that resort to Hansard was inadmissible. Its purpose is to prevent the executive seeking to place a meaning on words used in legislation which is different from that which ministers attributed to those words when promoting the legislation in Parliament."

37. For a detailed analysis of the rule of executive estoppel useful reference may be to the article authored by Francis Bennion entitled "Executive Estoppel: Pepper v. Hart Revisited", published in Public Law, Spring 2007, p. 1 which throws a new light on the subject-matter."

16. Therefore, the rule of 'executive estoppel' clearly applies to the case on hand. It has to be seen that when the Central Government issued guidelines to constitute screening committees to examine the investigation report of the cases where prosecutions are proposed to be launched, cases of

failing in assay, brand name disputes and non renewal of manufacture licence in time should be examined on their merits before recommending prosecution in such cases. In the case on hand, admittedly no screening committee was constituted and no examination was done by the screening committee before initiation of prosecution. The enhanced penalties making offence cognizable and non bailable cannot be misused in terms of harassment of genuine manufacturers.

17. The learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Anuradha Bhasin Vs. Union of India and others*** reported in ***(2020) 3 SCC 637***, wherein it is held as follows:

> *57. The proportionality principle, can be easily summarized by Lord Diplock's aphorism 'you must not use a steam hammer to crack a nut, if a nutcracker would do?' [refer to R v. Goldsmith, [1983] 1 7Lucia Zedner, Securing Liberty in the Face of Terror: Reflections from Criminal Justice, (2005) 32 Journal of Law and Society 510. WLR 151, 155 (Diplock J)]. In other words, proportionality is all about means and ends.*
>
> *60. The doctrine of proportionality is not foreign to the Indian Constitution, considering the use of the word 'reasonable' under Article 19 of the Constitution. In a*

catena of judgments, this Court has held "reasonable restrictions" are indispensable for the realisation of freedoms enshrined under Article 19, as they are what ensure that enjoyment of rights is not arbitrary or excessive, so as to affect public interest. This Court, while sitting in a Constitution Bench in one of its earliest judgments in Chintaman Rao v. State of Madhya Pradesh, AIR 1951 SC 118 interpreted limitations on personal liberty, and the balancing thereof, as follows:

"7. The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality." (emphasis supplied)

This Court, in State of Madras v. V.G. Row, AIR 1952 SC 196, while laying down the test of reasonableness, held that:

> *15. ... It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict….*

18. Further, the Hon'ble Supreme Court of India held that while determining the rights under Article 19(1)(g) of Constitution, discussed the doctrine of proportionality that the Court must in considering the validity of the impugned law imposing a prohibition on the carrying on of a business or profession, attempt an evaluation of its direct and immediate impact upon the fundamental rights of the citizens affected thereby and the larger public interest sought to be ensured in the light of the object sought to be achieved, the necessity to restrict the citizen's freedom, the possibility of achieving the object by imposing a less drastic restraint, or that a less drastic restriction may ensure the object intended to be achieved.

19. Further, on perusal of records, the trial court had taken cognizance mechanically stating that 'records perused and taken cognizance under Sections 27(d), 28, 28A of the Drugs and Cosmetics Act' and issued summons to the accused. Therefore, the initiation of prosecution as against the petitioners is disproportionate for the contravention committed by the petitioners.

20. In view of the above, the initiation of prosecution against the petitioners cannot be sustained and it is liable to be quashed. Accordingly, the entire proceedings in CC.No.718 of 2017 on the file of the learned Judicial Magistrate No.II, Coimbatore is quashed as against the petitioners alone and both the criminal original petitions are allowed. Consequently, connected miscellaneous petitions are closed.

20.11.2023

Index :Yes/No
Internet : Yes/No
Speaking order/non-speaking order
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To

1.The learned Judicial Magistrate No.II,
Coimbatore
2.The Drugs Inspector,
Coimbatore III Range,
O/o the Assistant Director of Drugs Control,
Coimbatore Zone, 219 Race Course Road,
Coimbatore 641 018
3.The Government Advocate,
High Court of Madras

G.K.ILANTHIRAIYAN, J.

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CRL.O.P.Nos.23142 & 23148 of 2019

20.11.2023