



Crl.O.P.No.20104 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.20104 of 2023
and Crl MP Nos.13672 and 13675 of 2023

1.M/s.Adroit Pharmaceuticals (P) Ltd.,
represented by its Managing Director,
Mr.Sanjay Kukreja,
46, Garoba Naiden, Nagpur

2.Sanjay Kukreja,
Managing Director of
M/s.Adroit Pharmaceuticals(P) Ltd.,
46, Garoba Naiden, Nagpur

... Petitioners

Vs.

The Tamil Nadu State represented by
Drugs Inspector, Dharmapuri Range,
Office of the Assistant Director of
Drugs Control, Salem Zone,
No.7, Thiruvalluvar Street,
Subramania Nagar, Salem-5.

... Respondent

Criminal Original Petition under Section 482 of the Criminal Procedure Code praying to set aside the order dated 24.07.2023 passed by the learned District Munsif cum Judicial Magistrate, Pennagaram, in Crl. MP.No.2529 of 2023 in S.T.C.No.247 of 2008 and directing the Lower



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to examine the Government Analyst as a witness in STC.No.247 of 2008.

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For Petitioners : Mr.P.Ramesh Kumar

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioners under Section 311 of Cr.P.C. to summon LW2 viz., the Government Analyst to be examined as a Court witness in Cr.MP.No.2529 of 2023, dated 24.07.2023.

2. Heard Mr.P.Ramesh Kumar, learned counsel for the petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor for respondent.

3. The petitioners are facing trial before the Court below based on the complaint filed by the respondent for various offences under the Drugs and Cosmetics Act, 1940. The case of the prosecution is that the petitioners had sold a Drug which was found to be of non-standard quality and further



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the petitioners have not submitted any documents in this regard.

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4. The complainant was examined as PW1 and the Government Analyst report was also marked under section 294 of Cr.P.C. The case was posted for questioning under Section 313 of Cr.P.C. At that stage, the petitioner filed an application under Section 311 of Cr.P.C. to summon LW2, who is the Government Analyst who had prepared the report. This application came to be dismissed by the Court below and aggrieved by the same, the present petition has been filed before this Court.

5. The Court below had dismissed the application mainly on the ground that the sample was also sent to the Central Drugs Laboratory, Kolkata and a report was also received from the Laboratory and the same has also been marked as Ex.P14 and hence, the Government Analyst report attains finality under Section 25(4) of the Drugs and Cosmetics Act. The Court below came to a conclusion that the report of the Government Analyst can be treated as substantive evidence and there is no reason to call the Government Analyst as the witness in this case and hence, the Court below



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gave a finding that the examination of LW2 as a Court witness is not essential for coming to a just decision in the case.

6. In the considered view of this Court, what is available before the Court below is the Government Analyst report which has been marked as Ex.P3. This report was not marked through the Government Analyst and it was actually marked through PW1 by placing reliance upon section 294 of Cr.P.C. The report that has been marked merely gives the result of the test/analysis that was made by the expert. It is also clear that the sample was also sent to the Central Drugs Laboratories, Kolkata and the report received from the Central Drugs Laboratory was also marked as PW.14. In view of the same, a finality is reached as per Section 25 (4) of the Drugs and Cosmetics Act.

7. The petitioners had filed the application under Section 311 of Cr.P.C. to call the Government Analyst as a Court witness only on the ground that he was one among the list of witnesses as shown in the complaint and the petitioners wants to examine this witness in order to bring



forth the manner in which the test was undertaken and for establishing the defense of the petitioners. The mere marking of the Government Analyst report does not mean that a Government Analyst can never be examined in a given case. In other words, the marking of the report as a exhibit cannot be a ground to dispense with the examination of the expert more particularly when the defense wants to examine such a witness who was not examined on the side of the prosecution. This involves a right given to the accused persons to establish their defense. If this report had been marked through the Government Analyst who was shown as LW2, the petitioners would have examined this witness then and there would not have been any problem. However, the examination of the Government Analyst was dispensed with and the document was marked through PW1 and therefore, the petitioners lost an opportunity to cross examine the Government Analyst. In view of the same, the petitioners must be given one opportunity to examine the Government Analyst on the report that was filed and marked before the Court below as Ex.P3.

8. In the light of the above discussion, the order passed by the



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Court below in Crl.M.P.No.2529 of 2023 dated 24.07.2023, is hereby set aside. The Court below is directed to issue summon to the Government Analyst and fix a date for his examination. It is made clear the examination of the Government Analyst shall be completed on the same day of his appearance. If for any reason, the Government Analyst is not examined on the side of the petitioner on the date of his appearance, the petitioners will lose their right to recall this witnesses in future.

9. In the result, this Criminal Original petition is disposed of with a direction to Court below to complete the proceedings in STC.No.247 of 2008 within a period of three months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petitions are closed.

13.09.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
rjr/rka



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N.ANAND VENKATESH,J

rka/rjr

To

- 1.The District Munsif cum Judicial Magistrate, Pennagaram.
- 2.The Drugs Inspector, Dharmapuri Range,
Office of the Assistant Director of
Drugs Control, Salem Zone,
No.7, Thiruvalluvar Street,
Subramania Nagar, Salem-5.

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