



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.09.2023

Coram:

The Hon'ble Mr.Justice V.SIVAGNANAM

**Crl.O.P.No.11923 of 2017
and Crl.M.P.Nos.7826 & 7827 of 2017**

1.M/s.Synockem Pharmaceuticals Ltd.,
Plot No.35-36, Sector – 6A, I.I.E (SIDCUL),
Ranipur (BHEL), Haridwar, Uttarkand – 249 403.
Rep. by its Director Thiru.Abhinav Arora

2.Thiru.Abhinav Arora

...Petitioners

Versus

The State Rep. by
The Drugs Inspector,
Thiruvarur Range,
Office of the Asst. Director of Drugs Control,
Thanjavur Zone, No.2975, Gandhiji Road,
Thanjavur – 01.

...Respondent

This Criminal Original Petition is filed under Section 482 of Cr.P.C praying to call for the records in C.C.No.28 of 2016 on the file of the learned Chief Judicial Magistrate, Thiruvarur and quash the same in the interest of justice.

For Petitioners	:	Mr.A.Nagarajan
For Respondent	:	Mr.L.Baskaran
		Government Advocate (Crl.Side)



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ORDER

This criminal original petition has been filed by the petitioners seeking to quash the complaint in C.C.No.28 of 2016 on the file of the learned Chief Judicial Magistrate, Thiruvarur.

2. The brief facts of the case are as follows:

The 1st petitioner is a company engaged in the business of manufacturing, supplying and distributing pharmaceutical products in India. The 2nd petitioner is the Director of 1st petitioner company. The 1st petitioner company manufactured a drug viz., NUTRIHALE (Ubidecraenone and levocarnitine Liquid) (hereinafter referred to as 'subject drug') for distribution and sale across the territory of India. On 14.09.2015, the respondent/Drugs Inspector visited one M/s.Sree Jayam Medicals situated at Thiruvarur and drew the samples of the subject drug from Batch No.SFN S019, MFG.Date June 2015, EXP.Date November 2016. Thereafter, the respondent/Drugs Inspector divided the sample of subject drug into 4 portions in accordance with the procedure prescribed under



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Section 23 of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as 'Act') and restored the 1st portion of sample with proprietor of M/s.Sree Jayam Medicals, sent the 2nd portion of sample to the Government Analyst for analysis & 3rd portion of sample to the manufacturer of subject drug and retained the 4th portion of sample with him. After testing the 2nd portion of sample, the Government Analyst vide Report dated 02.02.2016 declared that the subject drug is not of standard quality, pursuant to which, the respondent/Drugs Inspector vide Show Cause Memo dated 17.02.2016, called upon the proprietor of M/s.Sree Jayam Medicals to give explanation for having stocked the subject drug for sale and sold the same and also, requested the proprietor of M/s.Sree Jayam Medicals to disclose the name and address of the person from whom he had acquired the subject drug. The respondent/Drugs Inspector enclosed a copy of the said Government Analyst Report along with the said Show Cause Memo. After the receipt of said Show Cause Notice, the proprietor of M/s.Sree Jayam Medicals sent a Letter dated 17.02.2016 to the respondent/Drugs Inspector disclosing that he had purchased 12 bottles (100 ml bottles) of subject drug from one M/s.Thiagu Traders situated at 35-B1, First Floor, T-Agraharam, Thiruvavarur



– 610 001 under Invoice No.56714 dated 18.07.2015. Hence, the respondent/Drugs Inspector vide Show Cause Memo dated 29.02.2015, called upon the said M/s.Thiagu Traders to give explanation for having stocked the subject drug for sale and sold the same and also, requested to disclose the name and address of the person from whom it had acquired the subject drug. After receiving the said Show Cause Memo, M/s.Thiagu Traders sent a Letter dated 01.03.2016 to the respondent/Drugs Inspector disclosing that he had acquired the subject drug from M/s.Sri Balajee Pharmaa Distributors, 18-22 Othapatti Park Road, TB Main Road, Madurai – 625 010 under Invoice No.BPD/1516/IPM/BPV/40373 dated 30.06.2015. Thereafter, the respondent/Drugs Inspector vide Show Cause Memo dated 07.03.2016, called upon the said M/s.Sri Balajee Pharmaa Distributors to give explanation for having stocked the subject drug for sale and sold the same and also, requested to disclose the name and address of the person from whom it had acquired the subject drug. After receiving the said Show Cause Memo, M/s.Sri Balajee Pharmaa Distributors sent a Letter dated 10.03.2016 to the respondent/Drugs Inspector stating that he had acquired the subject drug from M/s.Fourrts (India) Laboratories Pvt. Ltd., (Vibrant



Division) Plot No.1, Fourrts Avenue, Annai Indira Nagar, Okkiyam, Thoraipakkam, Chennai – 600 097. So, the respondent/Drugs Inspector vide Show Cause Memo dated 17.03.2016, called upon the said M/s.Fourrts India Laboratories Pvt. Ltd. to disclose the name and address of the person from whom they had acquired the subject drug. In response to the said Show Cause Memo, M/s.Fourrts India Laboratories Pvt. Ltd. sent a letter to the respondent/Drugs Inspector disclosing that he had purchased 9,800 bottles (100 ml bottles) of subject drug from the 1st petitioner company under Invoice No.SP-1149/15-16 dated 05.06.2015.

2.1. Finally, the respondent/Drugs Inspector sent a Show Cause Memo dated 13.05.2016 along with a copy of the Government Analyst Report dated 02.02.2016 to the 1st petitioner company and called upon them to give explanation for having manufactured and sold the drug which is not of standard quality. After the receipt of Show Cause Memo dated 13.05.2016, the 1st petitioner company sent a Reply Letter dated 11.06.2016 to the respondent/Drugs Inspector stating that they are holding the manufacturing license in Form 25 bearing License No.19/UA/2005 and in



Form 28 bearing License No.17/UA/SC/P-2005. Further, the 1st petitioner company had stated in its reply that on receipt of Show Cause Memo dated 13.05.2016, they analyzed their control sample of the subject drug in their lab as well as outside lab and found that the subject drug is of standard quality. That apart, the 1st petitioner company had enclosed the documents/particulars called for by the respondent/Drugs Inspector in Show Cause Memo dated 13.05.2016.

2.2. However, the respondent/Drugs Inspector found that the reply sent by the 1st petitioner company is not satisfactory. Hence, the respondent/Drugs Inspector submitted a proposal dated 08.07.2016 to the Director of Drugs Control, Tamil Nadu through the Assistant Director of Drugs Control, Thanjavur Zone at Thanjavur, in order to obtain sanction to prosecute the petitioners for contravention of Section 18(a)(1) of the Act. The Director of Drugs Control, Tamil Nadu vide order dated 05.10.2016 accorded sanction to the respondent/Drugs Inspector to proceed against the petitioners, pursuant to which, the respondent/Drugs Inspector filed the complaint before the Chief Judicial Magistrate Court, Thiruvarur seeking to



punish the petitioners under Section 27(d) of the Act, for having manufactured and sold the subject drug which is not of standard quality.

The said complaint was taken on file in C.C.No.28 of 2016 and the same is pending trial before the Court below. Hence, the aggrieved petitioners have filed the present petition before this Court.

3. The learned counsel for the petitioners submitted that in the present case, the petitioners' valuable statutory rights under Sections 25(3) & 25(4) of the Act have been deprived. As per Section 25(3) of the Act, within 28 days from the receipt of Government Analyst Report, a person from whom a drug has been seized for analysis or testing can write a Letter to the Drugs Inspector that he intends to adduce evidence to controvert the report of the Government Analyst and on receipt of such letter, the Drugs Inspector is obliged to inform the Magistrate to send the sample of the seized drug to the Director of Central Drugs Laboratory for fresh testing under Section 25(4) of the Act. It is to be noted that the expiry date of the subject Drug is November 2016. Though the 1st petitioner company vide Letter dated 11.06.2016 conveyed their intention of adducing evidence in



contravention of the Government Analyst Report dated 02.02.2016, to the respondent/Drugs Inspector before the expiry date of the subject drug, without considering the same, the respondent/Drugs Inspector had filed the complaint on 22.11.2016. Therefore, the learned counsel prayed this Court to quash the complaint filed by the respondent/Drugs Inspector in C.C.No.28 of 2016 before the Chief Judicial Magistrate Court, Thiruvarur. In support of his submissions, the learned counsel placed reliance on the following judgments:

(i) In the case of ***Medipol Pharmaceutical India Pvt. Ltd. Vs. Post Graduate Institute of Medical Education and Research and Another*** reported in ***(2021) 11 SCC 339***, the Hon'ble Supreme Court has held as follows:

“13. Though the aforesaid judgments pertain to criminal prosecutions under the Drugs and Cosmetics Act, the Prevention of Food Adulteration Act and the Insecticides Act, yet, they lay down that a valuable right is granted to a person who is sought to be penalised under these Acts to have a sample tested by the Government Analyst that is found against such person, to be tested by a superior or appellate authority, namely, the Central Drugs Laboratory. These judgments lay down that if owing to delay which is predominantly attributable to the State or any of its entities, owing to which an article which deteriorates



with time is tested as not containing the requisite standard, any prosecution or penalty inflictible by virtue of such sample being tested, cannot then be sustained. We have seen that on the facts of this case, the sample drawn and analysed by the Government Analyst was delayed for a considerable period resulting in the sample being drawn towards the end of its shelf life. Even insofar as the samples sent to the Central Drugs Laboratory, there was a considerable delay which resulted in the sample being sent and tested 8 months beyond the shelf life of the product in this case. It is thus clear that the valuable right granted by Section 25 of the Drugs and Cosmetics Act kicks in on the facts of this case, which would necessarily render any penalty based upon the said analysis of the sample as void.”

(ii) In the case of ***Indchemic Health Specialities Pvt. Ltd., Vs. Union of India*** reported in ***LAWS (MANIP) 2019-3-7***, the High Court of Manipur held as hereunder:

“(40.) Tested on the above principles laid down by the Hon'ble Supreme Court, in the present case, the petitioners have adduced evidence to controvert the report of the Government Analyst. And therefore, the requirement of Under Section 25(3) and 25(4) is satisfied. The consequence is that the prosecution ought to have sent the report to the Government drug laboratory for test by the competent authority, namely, the director or his duly authorized person specified in rule 3 and 6 r/w. Form 2 extracted above. The failure to place the report in controversion before the Court, is a violation of provision of law. The breach will entitle the petitioners in this case to plead for quashing the proceedings which is inherently defective. RESULT.



(41.) *In view of the above legal analysis, this Court has no other option except to conclude that the petitioners accused have been deprived of their valuable right under Section 25(4) of the Act though they have exercised their option in terms of Section 25(3) of the Drugs and Cosmetics Act, 1940. A denial of such right deprives the petitioners accused of their right to effective defence and the proceedings against the petitioners would be a mere formality, because the test report of the Government analyst which is controverted by the petitioners based on the analytical report of the Government approved analyst remains uncontroverted. The requirement of Section 25(3) has been complied by the petitioners and the department has breached the mandate of Section 25(4). Hence, the proceeding in the criminal complaint case is not lawfully justified and therefore, deserves to be quashed.*

(42.) *As a result, the proceeding in Criminal (C) Case No.284 of 2016 before the Court of Chief Judicial Magistrate Imphal West stands quashed.”*

Further, the learned counsel for the petitioners submitted that the 1st petitioner company is situated at Haridwar, Uttarkhand and the 2nd petitioner (Director of 1st petitioner company) is also a resident of Haridwar, Uttarkhand State and hence, the personal appearance of the 2nd petitioner before the trial Court may be dispensed with.

4. The learned counsel appearing for the respondent contended that



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after the receipt of Show Cause Memo dated 13.05.2016, the 1st petitioner company sent a Reply Letter dated 11.06.2016 to the respondent/Drugs Inspector, wherein, the 1st petitioner company had stated that they analyzed their control sample of the subject drug in their lab as well as outside lab and found that the subject drug is of standard quality and hence, the further proceedings in this regard may be dropped. Apart from that, in the said letter, the 1st petitioner company had not stated anything about their intention to adduce evidence in contravention of the Government Analyst Report dated 02.02.2016. Therefore, the learned counsel contended that the Letter dated 11.06.2016 sent by the 1st petitioner cannot be considered as a letter sent under Section 25(3) of the Act and also, it cannot be said that the petitioners' valuable statutory rights under Sections 25(3) & 25(4) of the Act have been deprived. In support of his contentions, the learned counsel placed reliance on the judgment passed by the Hon'ble Supreme Court in the case of ***State of Haryana Vs. Brij Lal Mittal & Ors. dated 30.04.1998***, wherein, it had held as follows:

“7. At the risk of petition, we wish to emphasis that the right to get the sample examined by the Central Drugs Laboratory through the Court before which the prosecution is launched arises only after the



person concerned notifies in writing the Inspector or the Court concerned (here the latter clause did not apply for the prosecution was set to be initiated) within twenty eight days from the receipt of the copy of the report of the Government Analyst that he intends to adduce evidence in controversion of the report. The complaint and its accompaniments (which include correspondences that took place the Inspector and the manufacturers) clearly disclose that on February 19, 1991 the Inspector served the original copies of the Analyst's report upon the Managing Director of the manufacturers along with two letters asking for their comments. They further disclose that receiving no reply from the manufacturers the Inspector against wrote a letter on March 6, 1991 directing them to reply to his letters dated February 19, 1991 and asked whether they wanted to take benefit of the provisions of Section 25(3) of the Act. In spite thereof the manufacturers did not exercise their right (much less within 28 days from the date of the receipt of the report of the Government Analyst i.e., February 19, 1991); and, on the contrary, in their letter dated April 8, 1991 annexed to the complaint), sent in response to the letter dated March 6, 1991, asserted, that their quality control department examined and tested samples of the two drugs and found that they complied with the test of sterility. It must, therefore, be said that consequent upon their failure to notify the Inspector that they intended to adduce evidence in controversion of the report within 28 days, not only the right of the manufactures to get the sample tested by the Central Drugs Laboratory through the Court concerned stood extinguished but the report of the Government Analyst also became conclusive evidence under Sub-Section (3). The delay in filing the complaint till the expiry of the shelf life of the drugs could not, therefore, have been made a ground by the High Court to quash the prosecution. It



will not be out of place to mention that the manufacturers' right under Sub-Section (3) expired four months before the expiry of the shelf life of the drugs. In view of the above discussion, the reasoning of the High Court for quashing the prosecution against the three respondents not at all be sustained."

Ultimately, the learned counsel prayed for dismissal of this petition.

5. Heard the learned counsel on either side and perused the materials placed before this Court.

6. From a perusal of the materials on record, it is seen that the petitioners herein are A1 & A2 in C.C.No.28 of 2016 on the file of the learned Chief Judicial Magistrate, Thiruvavur. On 14.09.2015, the respondent/Drugs Inspector visited one M/s.Sree Jayam Medicals situated at Thiruvavur and drew the samples of the subject drug manufactured by the 1st petitioner company. Thereafter, the respondent/Drugs Inspector divided the sample of subject drug into 4 portions and sent one of the portions of sample to the Government Analyst for analysis. After testing the sample of subject drug, the Government Analyst vide Report dated 02.02.2016 declared that the subject drug is not of standard quality. Hence, the



respondent/Drugs Inspector sent a Show Cause Memo dated 13.05.2016 along with a copy of the Government Analyst Report dated 02.02.2016 to the 1st petitioner company and called upon them to give explanation for having manufactured and sold the drug which is not of standard quality. It is also seen that after the receipt of Show Cause Memo dated 13.05.2016, the 1st petitioner company sent a Reply Letter dated 11.06.2016 to the respondent/Drugs Inspector stating that on receipt of Show Cause Memo dated 13.05.2016, they analyzed their control sample of the subject drug in their lab as well as outside lab and found that the subject drug is of standard quality and hence, the further proceedings in this regard may be dropped. However, the respondent/Drugs Inspector submitted a proposal dated 08.07.2016 to the Director of Drugs Control, Tamil Nadu, for obtaining the sanction to prosecute the petitioners for contravention of Section 18(a)(1) of the Act. The Director of Drugs Control, Tamil Nadu vide order dated 05.10.2016 accorded sanction to the respondent/Drugs Inspector to proceed against the petitioners, pursuant to which, the respondent/Drugs Inspector filed the complaint before the Chief Judicial Magistrate Court, Thiruvavarur seeking to punish the petitioners under Section 27(d) of the Act, for having



manufactured and sold the subject drug which is not of standard quality.

Hence, the present petition.

7. The main contention of the learned counsel for petitioners is that after the receipt of Show Cause Notice dated 13.05.2016 as well as a copy of the Government Analyst Report dated 02.02.2016, the 1st petitioner company vide Letter dated 11.06.2016 conveyed their intention to adduce evidence in contravention of the said Government Analyst Report to the respondent/Drugs Inspector. However, without considering the said Letter, the respondent/Drugs Inspector had filed the complaint against them. Since the respondent/Drugs Inspector did not afford an opportunity to the petitioners to send the sample of subject drug to the Central Drugs Laboratory for fresh testing, their valuable statutory rights under Sections 25(3) & 25(4) of the Act have been deprived.

8. Before going to discuss about the judgments relied by the learned counsel for the petitioners, it is pertinent to extract Sections 25(3) & 25(4) of the Act hereunder:



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“25. Reports of Government Analysts -

(1)

(2)

(3) *Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence to the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken or the person whose name, address and other particulars have been disclosed under Section 18-A has, within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report.*

(4) *Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused, cause the sample of the drug or cosmetic produced before the Magistrate under sub-section (4) of Section 23 to be sent for test or analysis to the said laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.”*

A reading of Section 25(3) makes it clear that unless the person from whom the sample was taken, within 28 days from the receipt of a report



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signed by a Government Analyst, has sent a writing to the Inspector that he intends to adduce evidence to controvert the report of the Government Analyst, it would be deemed to be conclusive evidence of the quality of the drug. Further, Section 25(4) states that where a person has notified his intention of adducing evidence to controvert the report of the Government Analyst, the Court on the request of the complainant or the accused or on its own motion, send the sample of the disputed drug to the Director of Central Drugs Laboratory, for fresh testing.

9. In the case of *Medipol Pharmaceutical India Pvt. Ltd. Vs. Post Graduate Institute of Medical Education and Research and Another* reported in *(2021) 11 SCC 339*, the expiry date of the subject good is April 2018. The Drug Inspector drew the samples of subject good on 29.11.2017 and the same were received by the Government Analyst on 26.12.2017. The Government Analyst's Report dated 27.03.2018 was completely incorrect. Since the unexplained delay on the part of the Drug Authorities and the respondent resulting in the samples being tested late, the appellant's valuable right under Sections 25(3) & 25(4) of the Act has been violated.



Hence, the Hon'ble Supreme Court has allowed the appeal.

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10. In the case of *Indchemic Health Specialities Pvt. Ltd., Vs. Union of India* reported in *LAWS (MANIP) 2019-3-7*, though the appellants have exercised their option in terms of Section 25(3) of the Act, they have been deprived of their valuable right under Section 25(4) of the Act. Hence, the Hon'ble Apex Court has quashed the criminal complaint against the appellants.

11. In the present case, after the receipt of Show Cause Memo from the respondent/Drug Inspector, the 1st petitioner company sent a Letter dated 11.06.2016 to the respondent/Drug Inspector, but, in the said letter, the 1st petitioner company did not express their intention to adduce evidence in contravention of the said Government Analyst Report dated 02.02.2016. So, it cannot be said that the petitioners' valuable rights under Sections 25(3) & 25(4) have been deprived. Hence, the judgments relied by the learned counsel for the petitioners would not apply to the case on hand.



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12. In the above circumstances, it would not be appropriate to quash the complaint in C.C.No.28 of 2016 on the file of the learned Chief Judicial Magistrate, Thiruvavur.

13. At this juncture, it is pertinent to point out that the Hon'ble Supreme Court has discussed in detail about the inherent powers of the High Courts under Section 482 Cr.P.C in the following cases:

(i) *R.P.Kapur Vs. The State of Punjab* reported in *AIR 1960 SC 866*

(ii) *State of Haryana & Ors. Vs. Ch.Bhajan Lal & Ors.* reported in *AIR 1992 SC 604*

(iii) *M/s.Neeharika Infrastructure Pvt. Limited Vs. State of Maharashtra & Ors.* reported in *2021 SCC Online SC 315*

13.1. In the case of *R.P.Kapur Vs. The State of Punjab* reported in *AIR 1960 SC 866*, the Hon'ble Supreme Court has held as follows:

“6. It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of



any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do



constitute offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.”

13.2. Further, in the case of ***State of Haryana & Ors. Vs. Ch.Bhajan Lal & Ors.*** reported in ***AIR 1992 SC 604***, the Hon'ble Supreme Court issued seven guidelines to be followed by the High Courts in the exercise of its inherent power vested by Section 482 Cr.P.C to quash the FIR/complaint, which are as follows:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable



offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”



13.3. Similarly, in the case of *M/s.Neeharika Infrastructure Pvt.*

Limited Vs. State of Maharashtra & Ors. reported in **2021 SCC Online SC**

315, the Hon'ble Apex Court has observed as follows:

“80., our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the *Constitution of India* and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the *Constitution of India*, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the *Code of Criminal Procedure* contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).



v) *While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*

vi) *Criminal proceedings ought not to be scuttled at the initial stage;*

vii) *Quashing of a complaint/FIR should be an exception rather than an ordinary rule;*

viii) *Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;*

ix) *The functions of the judiciary and the police are complementary, not overlapping;*

x) *Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*

xi) *Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*

xii) *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating*



officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim



order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”

14. It is to be noted that the present case does not meet the parameters laid down by the Hon'ble Supreme Court in the decisions cited *supra*. Further, I do not find any merit in the present case.



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15. For the foregoing reasons, this criminal original petition is dismissed. However, the personal appearance of 2nd petitioner before the trial Court is dispensed with on condition that he shall appear before the Court of Chief Judicial Magistrate, Thiruvarur, as and when required for further proceedings. Consequently, connected miscellaneous petitions are closed.

05.09.2023

mrr

Index: Yes/No

Speaking Order (or) Non-Speaking Order

To

1.The Chief Judicial Magistrate,
Thiruvarur.

2.The Drugs Inspector,
Thiruvarur Range,
Office of the Asst. Director of Drugs Control,
Thanjavur Zone,
No.2975, Gandhiji Road,
Thanjavur – 01.

3.The Public Prosecutor,
High Court, Madras.

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V.SIVAGNANAM, J.

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Crl.O.P.No.11923 of 2017

05.09.2023