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Crl OP No.27874 / 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **03.04.2023**
PRONOUNCED ON : **12.04.2023**

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 27874 of 2019
and
Crl.M.P. No. 14861 of 2019

1. M/s.South Indian Surgical Co.,Ltd.,
No.117 / 65, Wallajah Road, Chennai – 2,
Rep., by its Director Mr. Dilip Bajaj

2.Mr. Dilip Bajaj ... Petitioners

Versus

State Rep., by
Drug Inspector,
Park Town Range,
O/o.The Assistant, Director of Drug control,
Zone I, D.M.S. Campus,
259-261, Annasalai,
Teynampet, Chennai – 600 006.

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the
Criminal Procedure Code seeking to call for the entire records in C.C.
No. 1609 of 2019 on the file of the learned XV Metropolitan Magistrate,
George Town and quash the same.



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WEB COPY For Petitioners : Mr. S.R. Rajagopal, Senior Counsel for
Mr. P. Elango, Mr. V. Anilkumar.

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

O R D E R

The petition is to quash the complaint for the offences under Sections 18 (c) and 18 (a) (i) punishable under Section 27 (d) of the Drugs and Cosmetics Act, 1940.

2. It is alleged in the complaint that on 05.02.2014, the Drugs Inspector inspected the premises of one M/s.Surgichem based on the complaint given by the first petitioner herein regarding the purchase and sales of 'Infusion sets' manufactured by M/s.JMS Singapore Co.Ltd., without valid import license. On enquiry, it was found that the JMS infusion sets were purchased by M/s.Surgichem under invoice No.006122 dated 07.01.2014 and the same had been sold to the first petitioner under invoice number S 3427 dated 07.01.2014; that on 07.02.2014, the Drugs Inspector inspected the premises of the first petitioner and found that 389 units of infusion sets manufactured by M/s.JMS Singapore Co.Ltd., were found stocked for sale and the same



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had been purchased from M/s.Surgichem; that the label of the Infusion sets and the outer carton box did not bear any import license number; that thereafter a show cause notice was issued to M/s.Surgichem for contravention of Sections 18(c) of the Drugs and Cosmetics Act, 1940 and 18(a)(i) of the Drugs and Cosmetics Act, 1940; that on 20.05.2014 a show cause notice was issued to the first petitioner for contravention of Section 18 (a)(i) read with 17(b) of the Drugs and Cosmetics Act, 1940; that on 08.06.2015, the first petitioner sent a reply stating that they had purchased infusion sets from M/s.Surgichem only to make a complaint against M/s.Hemant Surgical Industries Ltd., who had imported the subject drug without valid import license; that on perusal of the file, it was found that the petitioner had stocked 389 units of infusion sets which did not have any import license number and hence have contravened Section 18 (a)(i) read with 17 (b) of the Drugs and Cosmetics Act, 1940; that the petitioner is also liable for not maintaining and furnishing the purchase bill for the infusion sets for B.No.131016531 in contravention of Section 18(c) of the Drugs and Cosmetics Act; that the complainant had obtained sanction to prosecute the petitioner for the offences punishable under Section 27 (d) of the Drugs and Cosmetics Act.



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3.Mr. S.R. Rajagopal, learned Senior Counsel for the petitioners

submitted that the impugned complaint is clearly an abuse of process of law. Admittedly, the complainant was aware of the petitioner's possession of the infusion sets only based on their complaint dated 07.01.2014. Even in the complaint dated 07.01.2014, they had stated that they had purchased the infusion sets only to show that the company by name M/s.Hemant Surgical Industries Ltd., had imported the infusion sets from the manufacturer M/s.JMS Singapore Pvt.Ltd., without a valid import license. The said company had sold a portion of the imported fusion sets to a company by name M/s.Universal Surgical Associates who were arraigned as A1 in the impugned complaint. Thereafter the said M/s.Universal Surgical Associates had sold some infusion sets to a company by name M/s.Surgichem. The petitioners bought the infusion sets from M/s.Surgichem. The complainant strangely accuses the petitioners for possessing stocks without a valid import license, when it is their case that they had purchased it only to prove that M/s.Hemant Surgical Industries Ltd., had imported it without valid license. The respondent also erroneously had come to the conclusion that the petitioners did not have a valid purchase bill by citing a typographical error in the purchase order, when it is their own case that the purchase



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was made from M/s.Surgichem. The said M/s.Surgichem was not made an accused. The learned Senior Counsel therefore submitted that the respondent had strangely picked and chosen companies for prosecution which clearly demonstrates their malafide intention.

4.The learned Additional Public Prosecutor appearing for the respondent submitted that when the respondent inspected the petitioner's premises on 07.02.2014, they found 389 infusion sets manufactured by M/s.JMS Singapore Co.Ltd., without valid import license. This is in violation of Section 18(a)(i) of the Drugs and Cosmetics Act. That apart, the invoice produced by the petitioner did not tally with the batch number and hence, it cannot be considered as a valid purchase bill for the infusion sets. This is in violation of Section 18(c) of the Drugs and Cosmetics Act. The learned Additional Public Prosecutor submitted that since there are averments to *prima facie* show that the offences are made out, the points raised by the petitioners have to be adjudicated only before the trial Court. Hence, he prayed for dismissal of the quash petition.



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5.This Court on perusal of the impugned complaint finds that it is an admitted case of the respondent that M/s.Hemant Surgical Company Ltd.,Chennai had purchased JMS infusion sets from M/s.Hemant Surgical Industries Ltd., Mumbai in B.No.131016531. Some infusion sets were subsequently sold to M/s.Universal Surgical Associates under invoice No.006122 dated 07.01.2014. Thereafter, it was sold to M/s.Surgichem and subsequently, sold to the petitioner herein. The complaint states as to how the infusion sets were transferred from one company to the other. The respondent states in the complaint about the inspection made in the premises of M/s.Surgichem and on enquiry they had found that it was purchased from M/s.Universal Surgical Associates. The relevant portion of the complaint reads as follows;

“On enquiry it was found that the sales concern has purchased JMS infusion sets from M/s.Universal Surgical Associates, No.6, Raghunayakulu street, 1 floor, Chennai – 600 003 under invoice no.006122 dated 07/01/2014, Quantity Purchased: 400 units in the Batch No. 1310136531 and the same has been sold to South India Surgical company under invoice No. S 3427 dated 07.01.2014.”



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Since it is a case of the complainant that the petitioner had purchased it from M/s.Surgichem and it is a case of M/s.Surgichem as well that they had sold 400 infusion sets to the first petitioner herein, it cannot be said that the petitioner had not produced proper purchase bill for B.No.131016531, merely because the purchase bill had mistakenly shown a wrong batch number. It is not the case of the respondent that any other infusion sets were found in that premises. The error in the purchase bill has been clarified by the respondent themselves during their inspection and enquiry from M/s.Surgichem. Hence, the offence under Section 18(c) of the Drugs and Cosmetics Act, 1940 is not made out.

6.As regards the offence under Section 18(a)(i) of the Drugs and Cosmetics Act for possessing the products without valid import license, it is seen that the respondent had inspected the premises of M/s.Surgichem only on the basis of the complaint given by the petitioner. The genesis for the prosecution is the complaint of the petitioner which states that they had purchased one carton of infusion sets from M/s.Surgichem to prove that M/s.Hemant Surgical Industries Ltd., Mumbai were in the habit of importing infusion sets from Singapore without valid license. During the enquiry, the respondent found that



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M/s.Surgichem had in fact, bought it from M/s.Universal Surgical Associates and sold it to the petitioner. While so, strangely the petitioner has not chosen to prosecute the said M/s.Surgichem. It is their case in the complaint that on inspection M/s.Surgichem was not found in possession of the said product and hence they were not liable. There is a fallacy in the respondent's case. If the petitioner is liable for stocking goods which did not contain the import license number, M/s.Surgichem would also be liable for making sale of imported goods without valid import license. The prosecution for the reasons best known to them has not chosen to prosecute M/s.Surgichem. Further, it is also seen that no other product other than the 389 infusion sets were found in the premises of the petitioners. The prosecution has not been able to show that the goods were stocked for the purpose of sale. On the other hand, even as per the complaint the enquiry had commenced only on the basis of a complaint of the petitioner in which they have stated that they bought the infusion sets only to expose certain violations of another company. This Court had considered the scope of Section 18 (c) of the Act in the case of ***Dr.S.Selvam Vs. State Rep., by the Drugs Inspector*** reported in ***2011 (2) MWN (Cr.) 380*** wherein this Court had held as follows;



*“12. Therefore, it is well settled that the possession *Simpliciter* would not amount to contravention of Section 18 © of the Act punishable under the Section 27(b)(ii), Drugs and Cosmetics Act, 1940. It contemplates stocking the drugs for the purpose of sale or distribution.*

13. In the present case, it is admitted that the Petitioner is running a nursing home and he was in possession of the drugs, which has been listed by the Complainant. The possession is not denied. Whether it was exhibited for sale is to be considered . In the Complaint, it is stated that the Complainant has found stocks of various drugs in a separate room. There is no allegation that the stocks were exhibited for sale. It is further alleged that one Dr. Subramanian was summoned and he had produced original purchase bills alleged to have been issued by the Petitioner. It is to be noted that there is rivalry between the Petitioner and the landlord and only on his complaint, a Writ Petition was disposed of for the consideration of the representation and subsequent inspection, which led to filing of a case. Therefore, without examining the persons in whose name the receipts issued the validity or truthfulness of the Purchase Bills cannot be established. Admittedly, the Complainant has not



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seized any book of Sales Bills from the premises.”

Thus, the respondent has not shown that the stocks were meant for sale.

Discrepancy in the batch number in the purchase bill as elaborated earlier does not attract the offence under Section 18(c) of the Act in the facts of the instant case.

7. Therefore, for all the above reasons, this Court is of the view that impugned the complaint deserves to be quashed.

8. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

12.04.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. Drug Inspector,
Park Town Range,
O/o. The Assistant, Director of Drug control,



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Zone I, D.M.S. Campus,
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2. The XV Metropolitan Magistrate Court,
George Town, Chennai.
3. The Additional Public Prosecutor,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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Dated:12.04.2023