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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.30273 of 2022
and Crl.M.P Nos.18541 and 18542 of 2022

- 1.Johnson & Johnson Private Limited
Rep.by its Authorized representative
Mr.Ramesh Bhukan,M/45
Lal Bahadur Shastri Marg, Mulund (West)
Mumbai City MH 400080 IN.
- 2.Vikas Chandra Srivastava, A-53
Managing Director,
Johnson & Johnson Private Limited
(Consumer Products Division)
Lal Bahadur Shastri Marg, Mulund (West)
Mumbai City MH 400080 IN.
- 3.Ramesh Bhuban, A/45
Head of Commercial Quality (Pharma)
Johnson & Johnson Private Limited
Lal Bahadur Shastri Marg, Mulund (West)
Mumbai City MH 400080 IN.

.. Petitioners/A4 to A6

.Vs.

The State of Tamil Nadu
Rep.by the Drugs Inspector
T.Nagar Range
O/o.the Assistant Director of Drugs Control
Teynampet, Zone III
Chennai 600 006.

... Respondent



PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to quash the criminal complaint in CC.1047/2022 filed against the petitioners and three others, pending on the file of the learned IV Metropolitan Magistrate, Saidapet, Chennai..

For Petitioners : Mr.R.Parthasarathy
Senior Counsel
for Mr.R.Palaniandavan

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.1047 of 2022, pending on the file of the learned IV Metropolitan Magistrate, Saidapet, Chennai.

2.The petitioners have been arrayed as A4, A5 and A6 and they are facing the criminal complaint filed by the respondent for the alleged offence u/s 18(c) of the Drugs and Cosmetics Act, 1940 (hereinafter referred as “the Act”) r/w Section 65(5)(1)(b) of the Drugs and Cosmetics Rules, 1945 (hereinafter referred as “the Rules”).



3. Heard Mr.R.Parthasarathy, learned Senior Counsel for the petitioners and Mr.A.Gopinath, learned Government Advocate (Crl.Side) appearing on behalf of the respondent.

4. The main ground on which the respondent has lodged the prosecution against the petitioners is captured in the counter filed by the respondent and the same is extracted hereunder:

8. It is submitted that the 1st petitioner raised the following purchase invoices (Table 2) to M/s.Medybiz Pharma Pvt.Ltd. New No.9, Old No.4, 2nd Floor, Rajamannar Street, T.Nagar, Chennai 600 017 mentioning the Drug License number 4765/20B, 4648/21B (invalid)

Table 2

Sl. No. 1	Name of the Drug Imbruvica caps 140 mg 90's pack	B.No.481276	Purchased from Jhonson & Jhonson Pvt.Ltd, Madhavaram	Invoice No.& date 4122002060 24.11.17
2	Remicade 100 mg Inj	HBM94014A	Jhonson & Jhonson Pvt.Ltd, Madhavaram	4122002873 25.01.18
3	Remicade 100 mg Inj	HCM05015	Jhonson & Jhonson Pvt.Ltd, Madhavaram	4122002874 25.01.18
4	Imbruvica caps 140mg 90's pack	481402	Jhonson & Jhonson Pvt.Ltd, Madhavaram	4122002874 25.01.18

The respondent filing the purchase invoices given by the 1st respondent in the type set and it may be treated as part and parcel of this counter. The respondent submits that in our show cause memo Ref no,1024/DI/TNR/2018 Dated 30.3.21 the company to whom drugs were supplied and the invoice number batch no. and details of drugs were



specifically mentioned. Hence it is not correct to say in paras 7&8 of the petition that the petitioners were falsely and improperly arrayed as accused.

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5.It is clear from the above that the petitioners are prosecuted for the reason that they have raised the invoices for a particular address and whereas the drugs were supplied to a different place. Hence, it is contended that the supply of the drugs to a different address other than the one for which the license was given becomes an offence u/s 18(c) of the Act and Rule 65 (5)(1)(b) of the Rules.

6.The short issue that arises for consideration is as to whether the petitioners have supplied the drugs to the address which does not have a license and whether the purchase invoice which was not raised to the licensed premises will tantamount to violation of the Act and Rules warranting the prosecution of the petitioners.

7.It is seen from records that a show cause notice has been issued by the respondent dated 30.03.2021. In the show cause notice, the very same ground was put against the petitioners. The petitioners gave a reply for the show cause notice dated 20.04.2021. In the reply, the petitioners had taken the following stand:



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4. *Medybiz used to operate a warehouse for storage of drugs at the following location New No.9. Old No 4, 2nd Floor Rajamannar Street, T Nagar Chennai-17 which was covered by whole sale license in Form 20-B bearing no. 4765/M III/20B issued by the Asst. Director of Drugs Control, State of TN. (First Licensed Premise)". The whole sale license of First Licensed Premise of Medybiz was renewed in 2015 and was valid until 15.07.2020*

5. *Sometime in 2017. Medybiz changed its warehouse address to the following location 8/28, Maduraiveeram kovil street. T Nagar, Chennai 17 for which it also received whole sale license in Form 20-B bearing no 5823/M 11/208 issued by the Asst. Director of Drugs Control State of TN. ("Second Licensed Premise")*

6. *It is important to note here that when Medybiz shifted from First Licensed Premise to Second Licensed Premise, J&J started delivering above mentioned medicines to Medybiz at Second Licensed Premise only. It did not deliver medicines to First Licensed Premises at all after Medybiz had shifted from that premise.*

7. *Medybiz, in its letter dated May 10, 2020 addressed to the Additional Director of Drugs, State of T.N. herewith annexed as Annexure-1, has confirmed that all the above medicines were received at the Second Licensed Premise. In fact, Medybiz has clarified that the said medicines could not have been delivered by J&J at the First Licensed Premise as there is a third-party boutique being operated out of that premises*

8. *Moreover, from the Show Cause Notice, it appears Shri Thiru Rajesh Kumar, the then Drugs Inspector, found records pertaining to Second*



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Licensed Premises which indicate that the above medicines were stocked and sold by Medybiz at the Second Licensed Premises. This clearly establishes that the J&J supplied medicines to Medybiz and at Second Licensed Premises only.

9. Since the whole sale license of First Licensed Premise was valid until 15.07.2020, J&J had inadvertently mentioned the First Licensed Premise details on the invoice for sale the abovementioned drugs to Medybiz. However, as mentioned earlier, since Medybiz was operating out of Second Licensed Premises, J&J delivered the afore mentioned drugs to Medybiz and at the Second Licensed Premises only. The inadvertent human error was rectified by J&J on discovery and subsequently all drugs were sold to Medybiz and delivered to Second Licensed Premise only.

10. The inadvertent human error was rectified by J&J on discovery and subsequently all drugs were sold to Medybiz and delivered to Second Licensed Premise only.

8. It is clear from the above that the petitioners have given a clear reply and they have specifically stated that the drugs were in fact delivered only to the licensed premises and the invoice that was raised containing the old address was an inadvertent mistake.

9. The above stand taken by the petitioners in the reply notice was not even considered by the respondent before filing the complaint. This Court dealt



the show cause notice and the same was not considered at the time of filing the complaint and it was held as follows:

*18.The petitioners have given a detailed reply for the Show Cause Notice issued by the respondent. This reply has not been taken into consideration either at the time of granting sanction or at the time of filing of the complaint. This Court has already held that where a reply has been given to the Show Cause Notice, the said reply has to be considered and dealt with at the time of filing of the complaint, failing which, the complaint itself becomes unsustainable on the ground of non application of mind. Useful reference can be made to the judgment of this Court in **K.Masthan Rao .Vs. State, rep. by Inspector of Factories, First Circle, Vellore** reported in **2014 (3) MWN (Cr.) 86**. The relevant portions of the judgment is extracted hereunder:*

"27. As pointed out earlier, the form 3A intimating notice of change of Deputy Chief Engineer, minutes of the Canteen Advisory Committee meeting, minutes of Safety Committee meeting, the report of examination of cranes, ropes, etc., building stability certificate were all forwarded to the respondent/complainant as well as the head of department. Thereafter, on 28.09.2012, another representation was made enclosing copy of the building stability certificate issued by the competent person and simultaneously requesting the Chief Inspector of Factories to nominate recognised persons for signing them stability certificate. Despite all these factual submissions, the complaints have been filed by the respondent verbatim repeating the allegations made in the show cause notice. Surprisingly, there is no reference to the explanations submitted by the petitioners and as to how the petitioners have not complied with the deficiencies pointed out, as to how the same stand rectified and such other matters. In the show cause



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notice dated 09.04.2012, it has been stated that on 22.03.2012, an inspection was conducted in the factory and the deficiencies, which were noticed in the course of inspection, were listed out as serial nos. 1 to 16 and the petitioners were called upon to explain as to why, prosecution should not be initiated against them by giving them seven days time to submit their explanation in writing, failure to avail the opportunity would be considered that there is no explanation to offer and without further notice, action would be taken. Therefore, the respondent/complainant being a statutory authority having provided for an opportunity to the petitioner to show cause ought to have considered the correctness of the propriety of the explanations offered.

*28. In terms of **Rule 102 of the Tamil Nadu Factory Rules, 1950**, the Occupier, Owner or Manager of a factory shall furnish information to an inspector for the purpose of satisfying himself whether any of the provisions of the Act have been complied with or whether any order of the Inspector has been carried out and any demand of such information, if made during the course of an inspection, shall be complied with forthwith or if made in writing, shall be complied with within seven days of receipt thereof. Thus, the rule contemplates an opportunity for compliance. If the respondent/complainant has pointed out certain contraventions and if the contraventions exist, the contravener is bound to comply with within seven days. The case on hand is slightly different in the sense that the petitioners have submitted their explanations showing cause in respect of the allegations made in the show cause notice. In such circumstances, the respondent/complainant cannot ignore the reply to the show cause notice and proceed to lodge the complaint, as if he has not received any reply.*

29. As noticed above, there is no reference to the reply submitted by the petitioner. The complaint



was signed by the respondent on 20.06.2012 and filed before the Court on 21.06.2012, presumably not in full form and appears to have been returned and re-presented on 30.09.2013. In the interregnum, the petitioner has been given the replies dated 16.04.2012 and 31.05.2012. That apart, the further explanations dated 12.07.2012 and 28.09.2012, were submitted much prior to the date on which, the complaint was re-presented i.e., on 30.09.2013. There is no explanation forthcoming as to why the complaint which was presented on 21.07.2012 was returned and as to why the complaint was re-presented after more than one year. Therefore, this Court has no hesitation to hold that the complaint is vitiated on account of total non-application of mind”.

10.It is clear from the above that where a reply given to the show cause notice is not considered at the time of filing of the complaint, the complaint itself will become unsustainable. That is exactly what has happened in the present case also. After the reply was given by the petitioners, the respondent did not even verify as to whether the drugs were supplied to the licensed premises and straightway assumed that it was supplied only to a non-licensed premises based on the invoice that was raised. Thereafter, the complaint was filed before the Court below. On this ground alone, the complaint filed against the petitioners is liable to be interfered by this Court.

11.This Court also had an occasion to dealt with an issue where such

<https://www.mhcsupplyw.com> supply was made to a person holding a license and whereas the person was



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carrying on with the business in a different premises. In CrI.OP.No.30405 of 2022, dated 10.07.2023, this Court has held as follows:

12. A reading of the relevant Rules and the Forms shows that the manufacture for sale or distribution of drugs can be made by those persons, who possess a licence subject to the conditions applicable to the licence. In so far as condition No.3(ii) under Form 20B is concerned, no sale of any drug shall be made to a person not holding the requisite licence to sell, stock or exhibit for sale or distribute the drug.

13. The specific allegation that has been made against the petitioners is that they had sold the drug to M/s.Oxiad (India) Gases (P) Limited, which did not possess a licence to run the unit at Royapettah and in fact, they had a licence to run the unit only at Tiruchirapalli.

14. Rule 65(5) of the Rules prescribes the procedure to be adopted for supply of a drug. What has to be ensured at the time of supply of the drug is that the person or the entity, to whom it is supplied, must possess a licence.

15. M/s.Linde India Limited and M/s.TN Oxygen (P) Limited satisfied themselves with regard to the fact that M/s.Oxiad (India) Gases (P) Limited had a valid licence. It is not possible for these two entities to follow up with



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M/s.Oxiad (India) Gases (P) Limited and see as to where all the drugs are being supplied/sold by them. That is not definitely within the control of these two entities.

16. If M/s.Oxiad (India) Gases (P) Limited had sold the drugs in areas, for which, they do not possess licence, that cannot be put against M/s.Linde India Limited and M/s.TN Oxygen (P) Limited and they cannot be prosecuted by initiating penal action.

12.This Could held that at the time of supply of the drugs, it must only be seen if a person to whom it is supplied holds a valid license. If the person to whom it is supplied later on supplies or sells them in areas where they do not possess license, that cannot be put against the manufacturer who does not have control over the subsequent supplier.

13.In the instant case, the petitioners have supplied the drugs only to a licensed premises and have confirmed the same even in the reply notice. In view of the same, the continuation of the prosecution against the petitioners are the alleged contravention of the Act and Rules, will amount to abuse of process of Court, which requires interference of this Court in exercise of its jurisdiction u/s 482 of Cr.PC.



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14. In the light of the above discussion, the proceedings in C.C.No.1047/2022, on the file of the IV Metropolitan Magistrate, Saidapet, Chennai, is hereby quashed only insofar as the petitioners are concerned. The Court below shall proceed further to deal with the complaint against the other accused persons in accordance with law and complete the proceedings within a period of three months from the date of receipt of copy of this order.

15. This criminal original petition is allowed in the above terms. Consequently, connected miscellaneous petitions are closed.

26.07.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
KP



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To

1.IV Metropolitan Magistrate
Saidapet, Chennai.

2.The Drugs Inspector
The State of Tamil Nadu
T.Nagar Range
O/o.the Assistant Director of Drugs Control
Teynampet, Zone III
Chennai 600 006.

3.The Public Prosecutor,
High Court of Madras,
Madras.



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N. ANAND VENKATESH., J.

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