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Crl.O.P.No.34036 of 2019

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED : 17.04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P. No. 34036 of 2019

and

Crl.M.P. No. 18798 & 18799 of 2019

1. Naresh Jain

2. Dr.Ajay Acharya

... petitioners

Vs.

State represented by Drugs Inspector

Perambur Range,

O/o.The Assistant Director of Drugs Control,

Zone I, DMS Campus, Chennai – 600 006.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the proceedings in C.C.No.2383 of 2015 on the file of X Metropolitan Magistrate, Egmore, Chennai pending disposal and quash the same as against the petitioners.



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For petitioners : Mr. A.V.Arun
For Respondent : Mr. A.Damodaran
Additional Public Prosecutor

ORDER

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

2. It is alleged in the complaint that the Drugs Inspector on inspection seized the sample of Meplexin Dry Syrup on 28.01.2014. After complying with the provisions of Section 23 (4) of the Act, the sample was sent for analysis to the Government Analyst. It was reported that the sample was “*not of standard quality*”. Thereafter, the petitioners had filed an application before the learned Magistrate to send the sample to the Central Drugs Laboratory, Kolkata along with the sample given to them in terms of Section 23 (4) of Act. The Central Drugs Laboratory, Kolkata had found that the sample which



was given to the petitioners was of standard quality and the sample which was produced before the Magistrate was not standard quality. It is further alleged in the complaint that the Act does not provide for sending the sample that was in possession of the petitioners for analysis by Central Drugs Laboratory, Kolkata. Since the sample that was produced before the learned Magistrate was found to be “*not of standard quality*”, the accused are liable for the offences.

3. The learned counsel for the petitioners would submit that since the Central Drugs Laboratory, Kolkata has found that the sample that was given to the petitioners were of standard quality, the impugned complaint stating that the drug was not of standard quality is not maintainable.

4. The learned Additional Public Prosecutor would submit that the Act does not contemplate sending the portion of sample of the petitioners for analysis by the Central Drugs Laboratory. Section 25(4) only contemplates that the sample sent to the learned Magistrate must



be sent for analysis by the Central Drugs Laboratory.

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5. This Court, on perusal of the impugned complaint and on hearing the submissions of the learned counsel for the petitioners and the Additional Public Prosecutor finds that the points raised by the petitioners are factual in nature. The claim of the petitioners that since the Central Drugs Laboratory, Kolkata has reported that the sample sent to the petitioners was of standard quality and hence the petitioners are not guilty cannot be adjudicated in the instant quash petition. It is the case of the respondent that the seal containing the sample sent to the petitioner was opened; that the Act does not contemplate sending the sample given to the petitioner for analysis to the Central Drugs Laboratory; and that sample produced before the learned Magistrate was found to be *“not of standard quality”*. These are disputed questions of fact. Hence, this Court is not inclined to entertain the quash petition. However, the petitioners are at liberty to raise all their points before the learned Magistrate. The presence of the petitioners before the Trial Court is dispensed with unless the learned X



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Metropolitan Magistrate, Egmore, Chennai, consider their presence is necessary for the progress of the Trial.

6. With the above observation, the petition is dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

17.04.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation :Yes/No
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To

The X Metropolitan Magistrate,
Egmore,
Chennai.



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SUNDER MOHAN. J,

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