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Crl.O.P.(MD)No.18629 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.11.2022

PRONOUNCED ON : 30.06.2023

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P(MD)No.18629 of 2022

and

Crl.M.P.(MD)No.12537 of 2022

Sharmila,
W/o.Dr.T.Periyasamy,
Proprietrix M/s.Dharshini Pharmacy,
No.68-A, Right Side First Room,
Lakshmi Gastro Care and Laproscopy Hospital,
APK Main Road, Meenakshi Nagar,
Villapuram,
Madurai – 625 016. : Petitioner/Accused No.5

-VS-

The State represented by
The Drugs Inspector,
Thirumangalam – II Range,
O/o The Assistant Director of Drugs Control,
Madurai South Street,
No.5, Ramaiah Street,
Shenoy Nagar,
Madurai – 625 020. : Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the case in STC No.4554 of 2022 on the file of the learned Judicial Magistrate No.VI, Madurai and quash the same in so far as the Petitioner/Accused No.5 is concerned.

For Petitioner : Mr.B.Rooban

For Respondent : Mr.R.Meenakshisundaram



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Additional Public Prosecutor

ORDER

This Criminal Original Petition had been filed to quash the complaint in STC No.4554 of 2022 on the file of the learned Judicial Magistrate No.VI, Madurai, in so far as the Petitioner/Accused No.5 is concerned.

2.The brief facts, which are necessary to decide the Criminal Original Petition, are as follows:-

The Petitioner is the Proprietrix of M/s.Dharshini Pharmacy. She is doing business of selling pharmaceutical drugs and pharmaceutical equipments. It is registered with the Respondent Department. She is holding valid license under the Drugs and Cosmetics Acts and Rules. She is neither a manufacturer of drugs nor an agent of any manufacturer for distribution. On 09.03.2021 the officials of the Respondent/Complainant collected a sample of Zucraford-O (Sucralfate and Oxetacaine suspension), Batch No.SOS117, Manufacturing date: February, 2021, Expiry Date: January, 2023, Manufactured by: M/s.Revive Formulations India Private Limited; R.S. No.76/3, Perumal Nagar, Agasampattu Village, Vanur Taluk,



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Tamil Nadu – 605 109. The said manufacturing Company is the first Accused in the complaint and the Director of the said Company is the second Accused. The Petitioner is arrayed as Accused No.5. The officials of the Respondent Department, after collecting sample of Zucraford-O (Sucralfate and Oxetacaine suspension), had sent the sample to Government Analyst, Drugs Testing Laboratory, Chennai for analysis. After analysis, the report stated that the medicine is not of standard quality as defined in the Drugs and Cosmetics Act, 1940 and Rules made under for the reason that the sample does not confirm to label claim with respect to the content of Oxetacaine and the same is in contravention of Section 18(a)(i) of the Drugs and Cosmetics Act, 1940. The Respondent/Complainant had issued show-cause notice to the Petitioner for the alleged offences under Section 18(a)(i) of the Drugs and Cosmetics Act, 1940 and to disclose the name, address and other particulars of the persons from whom she acquired the drugs. Accordingly, the Petitioner had disclosed that she had acquired the drugs from M/s.Gutford Pharmaceuticals, 200/4, First Floor, Pillayar Kovil Street, Second Main Road, Gomathipuram, Madurai -625020. The said Partnership concern is the Accused No.3 and its partner is Accused No.4 in the complaint preferred by the Respondent. The distributor M/s.Gutford Pharmaceuticals



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is also having valid Drug License bearing No.TN-12-20B-00333, TN-12-21B-00333. As per the complaint lodged by the Respondent, the Accused No.1 manufacturer had taken endorsement in their License for manufacturing the subject drug Zucraford-O only in generic name and not in brand name. The same is punishable under Section 18(b) of the Drugs and Cosmetics Act, 1940. For the above show cause memo issued by the Respondent/Complainant to the Petitioner, the Petitioner categorically replied that there is good and positive feedback for the said drugs sold by them and there is no complaint pursuant to the same. In spite of the reply given by the Petitioner, the Respondent/Complainant had filed the subject complaint against this Petitioner for alleged offences under Section 18(a)(i) and 18(b) of the Drugs and Cosmetics Act, 1940 for having stocked for sale and sold a “Not of standard quality” drug without a valid product endorsement in the License of the manufacturer, the Accused 1 and 2 in the complaint.

3.In the complaint, no specific overt act is alleged against the Petitioner herein. The Petitioner had acquired drugs from a duly licensed distributor/dealer and she did not know and could not, with reasonable



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diligence, have ascertained that the drug is in any way contravened the provisions of Section 18 of the Drugs and Cosmetics Act, 1940. It is the further contention of the learned Counsel for the Petitioner that the Petitioner could not ascertain that whether the drug confirm to the label claim and also, the Petitioner could not ascertain whether the manufacturer had obtained endorsement in her license specifically with the name of the drugs that too when the purchase is not directly from the manufacturer. The learned Counsel for the Petitioner invited the attention of this Court to Section 19(3) of the Drugs and Cosmetics Act, 1940 in which it is stated that a person shall not be liable for any contravention of Section 18 of the Drugs and Cosmetics Act, 1940, if he/she is not the manufacturer of the drugs or his/her agent for distribution. The Petitioner as a Proprietrix of a medical store did not know and could not, with reasonable diligence, have ascertained that the drug is in any way contravened the provisions of Section 18 of the Drugs and Cosmetics Act, 1940. The complaint is silent about the overt acts of the Petitioner regarding contravention of any of the provisions of the Act in respect of the drugs seized from the Petitioner. From perusal of the complaint, it can be safely concluded that the Petitioner had been falsely arrayed as Accused.



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4.The learned Counsel for the Petitioner invited the attention of this Court to the unreported ruling of this Court in the case of ***M.Sujatha vs. The State of Tamil Nadu in Crl.O.P.No.412 of 2020, dated 23.09.2020*** this Court was pleased to allow the quash petition for quashing the proceedings in so far as the Petitioner/Proprietrix of the Pharmacy alone by citing Section 19(3) of the Drugs and Cosmetics Act, 1940. Therefore, the learned Counsel for the Petitioner seeks to quash the case filed against the Petitioner in STC No.4554 of 2022 against the Petitioner pending before the Court of the learned Judicial Magistrate No.VI, Madurai.

5.The learned Additional Public Prosecutor appearing for the Respondent vehemently objected to the contention of the learned Counsel for the Petitioner that dealer of drugs cannot be held liable under Section 18 of the Drugs and Cosmetics Act, 1940. It is his further submission that whatever the arguments made by the learned Counsel for the Petitioner are to be treated as valuable defence that can be raised only during trial before the trial Court and not before this Court exercising extraordinary powers under Section 482 of Cr.P.C. It is also his further submission that as per the



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reported ruling of the Hon'ble Supreme Court of India in **1992 Supp (1)**

SCC 335:1992 SCC (cri) 426 in the case of **State of Haryana Vs.**

Bhajanlal, while exercising extraordinary powers by this Court under Section 482 of Cr.P.C., to be used sparingly and not leniently.

6.Point for consideration:

Whether the complaint lodged by the Respondent against the Petitioner in STC No.4554 of 2020 pending before the Court of the learned Judicial Magistrate No.VI, Madurai, is to be quashed as the complaint is not maintainable?

7.It is relevant to extract the provisions of Section 19(3) of the Drugs and Cosmetics Act, 194 which reads as under:

“19(3) A person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall not be liable for a contravention of Section 18 proves —

(a) that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof;

(b) that he did not know and could not, with reasonable diligence, have ascertained that the drug or cosmetic in any way contravened the provisions of that section; and

(c) that the drug or cosmetic, while in his possession was properly stored and remained in the same state as when he acquired it.”



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8.On perusal of the complaint filed by the Respondent it is stated that

A-1 – M/s.Revive Formulations India Private Limited, R.S. No.76/3, Perumal Nagar, Agasampattu Village, Vanur Taluk, Tamil Nadu - 605 109 represented by its authorised signatory-cum-Director Thiru.A.Ramakesu;

A-2 – Thiru.A.Ramakesu, authorised signatory cum Director of 1) M/s.Revive Formulations India Private Limited, R.S. No.76/3, Perumal Nagar, Agasampattu Village, Vanur Taluk, Tamil Nadu - 605 109; A-3 – M/s.Gutford Pharmaceuticals, represented by Thiru.B.Balamurugan situated at 200/4, First Floor, Pillayar Kovil Street, Second Main Road, Gomathipuram, Madurai – 625020 represented by the partner Thiru.B.Balamurugan; A-4 – Thiru.B.Balamurugan, partner on behalf of the firm M/s.Gutford Pharmaceuticals, 204/4, First Floor, Pillayar Kovil Street, Second Main Road, Gomathipuram, Madurai – 625 020; A-5 – Tmt.Sharmila, Proprietrix of M/s.Dharshini Pharmacy, 68A, Right Side First Room, Ground Floor, Lakshmi Gastro Care and Laproscopy Hospital, APK Main Road Meenakshi Nagar, Villapuram, Madurai – 625012, are liable for contravention of Section 18(a)(i) of the Drugs and Cosmetics Act, 1940 for having stocked for sale and sold a “Not of standard quality” drug namely Zucraford-O (Sucralfate and Oxetacaine suspension), Batch



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No.SOS117, Manufacturing date: February, 2021, Expiry Date: January, 2023, Manufactured by: M/s.Revive Formulations India Private Limited; R.S. No.76/3, Perumal Nagar, Agasampattu Village, Vanur Taluk, Tamil Nadu – 605 109, Marketed by: Gutford Pharmaceuticals, Reg. Office: 2/99A, Chinammanagar, Thaiyur, Kelambakkam, Chennai – 600 003, which is punishable under Section 27(d) of the said Act and had stated that for having stocked for sale and sold the above mentioned subject drug namely Zucraford-O (Sucralfate and Oxetacaine suspension) without a valid product endorsement in the licence, which has been manufactured by M/s.Revive Formulations India Pvt., Ltd., R.S.No.76/3, Perumal Nagar, Agasampattu Village, Vanur Taluk, Tamil Nadu – 605 109 in contravention of the provisions of the Act which is punishable under Section 27(d) of the Act. On perusal of these words, the explanation in those words does not attract offence against the Petitioner. The Petitioner being retailer selling the drugs, she is not aware of the lable where the contents of the medicine stated in the lable is correct or not. The Petitioner cannot confirm or verify in the usual course of her business.

9.The ruling cited by the learned Counsel for the Petitioner in



Crl.O.P.no.412 of 2020, dated 23.09.2020 is based on the reported ruling of this Court in ***P.Sukumar -vs- State, represented by Senior Drugs Inspector, Salem Zone, Salem*** reported in ***2009 SCC OnLine 1644*** wherein it was held as follows:

“12. Therefore, it is crystal clear from the allegations and averments contained in the impugned complaint that the petitioner A6 is a licensed shop owner viz. M/s. Sukumar Medicals and he has purchased the drugs namely, Teenmox Capsules, seized from his shop, from its manufacturer/A1 and even the Firm (A-1) is also a licensed firm for manufacturing drugs.

13. At this juncture it is relevant to refer [section 19\(3\)](#) of the Act:

“19.Pleas— (1).....

(2).....

(3) A person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall not be liable for a contravention of section 18 if he proves —

(a) that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof;

(b) that he did not know and could not, with reasonable diligence, have ascertained that the drug or cosmetic in any way contravened the provisions of that section; and

(c) that the drug or cosmetic, while in his possession was properly stored and remained in the same state as when he acquired it.”

14. A reading of the said provision makes it crystal clear that a person shall not be liable for any contravention of [section 18](#) of the Act if he is not the manufacturer of a Drug and Cosmetic or shall be for the distribution thereof, if he proves -



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(a) that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof;

(b) that he is not having knowledge about the contravention of any provisions of the Act in respect of a particular drug or cosmetic; and

(c) that the said drug or cosmetic was properly stored and remained in the same state while such drug was in his possession.

15. As far as the case on hand is concerned, it is the admitted case of the prosecution that even as per the allegations contained in the complaint, the petitioner/A-6 has acquired the said drugs, Teenmox capsules, from the licensed manufacturer/A-1, namely, Teen Pharmaceuticals.

16. There is absolutely no allegation in the complaint to the effect that the petitioner was having any knowledge about the contravention of any provisions of the Act in respect of the drugs seized from his shop and in the complaint it is categorically stated that the petitioner/A-6 through his reply dated 28.05.2004 to the show-cause notice stated that he has purchased the said drugs from the licensed manufacturer M/s.Teen Pharmaceuticals under proper invoice and he has stored the said drugs properly and he could not find that the said drug is substandard and spurious in nature”

10.In the light of the above reported decision, the Petitioner cannot be proceeded against by invoking Section 18 of the Drugs and Cosmetics Act, 1940, since the involvement of the offence are not attracted against the Petitioner who is the retailer who had purchased the medicine from distributor of the manufacturer. The manufacturer being M/s.Revive Formulations India Private Limited and the distributor is M/s.Gutford Pharmaceuticals, the Petitioner is neither a manufacturer nor distributor.



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Therefore, she cannot be held liable for having stocked for sale and sold a “Not of standard quality” which is beyond her due diligence.

11.In the light of the above discussion, the point for consideration is answered in favour of the Petitioner and against the Respondent/Prosecution. The complaint lodged by the Respondent against the Petitioner in STC No.4554 of 2020 pending before the Court of the learned Judicial Magistrate No.VI, Madurai, is to be quashed as the complaint is not maintainable.

In the result, **this Criminal Original Petition is allowed.** The complaint in S.T.C.No4554 of 2022 pending on the file of the learned Judicial Magistrate No.VI, Madurai, is quashed in so far as the Petitioner/Accused No.5 is concerned. Consequently, the connected miscellaneous petition is closed.

Index :Yes/No
Internet : Yes/No
SRM

30.06.2023



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To

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- 1.The Judicial Magistrate No.VI,
Madurai.
- 2.The Drugs Inspector,
Thirumangalam – II Range,
O/o The Assistant Director of Drugs Control,
Madurai South Street, No.5, Ramaiah Street,
Shenoy Nagar, Madurai – 625 020.
- 3.The Additional Public Prosecutor,
Madurai Bench of the Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

SRM

Order made in
CRL.O.P(MD)No.18629 of 2022

30.06.2023