IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 24TH DAY OF JULY 2024 / 2ND SRAVANA, 1946

CRL.MC NO. 3996 OF 2015

AGAINST THE ORDER/JUDGMENT DATED IN SC NO.878 OF 2013 OF ADDITIONAL DISTRICT COURT KOZHIKODE-III / II ADDITIONAL MACT, KOZHIKODE

PETITIONER/S:

1 M/S.ETHICARE LABORATORIES
15, INDUSTRIAL ESTATE, DIGIANA, JAMMU-180010,
REPRESENTED BY ITS PROPRIETOR, JASBIR SINGH ANAND,
AGED ABOUT 50 YEARS, S/O.SH.JAGAT SINGH ANAND,
R/O.17 A/B GANDHI NAGAR, JAMMU.

2 JASBIR SINGH ANAND
AGED ABOUT 50 YEARS, S/O.SH.JAGAT SINGH ANAND,
R/O.17 A/B GANDHI NAGAR, JAMMU

BY ADVS.
SRI.M.T.SURESHKUMAR
SMT.BHAVANA VELAYUDHAN
SRI.S.SANAL KUMAR
SRI.S.SREEKUMAR SR.
SMT.SMITHA PHILIPOSE

RESPONDENT/S:

1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA-682031.

2 DRUGS INSPECTOR
OFFICE OF THE ASSISTANT DRUGS CONTROLLER, KOZHIKODE-673 001.

BY ADV ADDL.DIRECTOR GENERAL OF PROSECUTION

OTHER PRESENT:

SMT.NIMA JACOB, PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

Crl.M.C. No. 3996 of 2015

Dated this the 24th day of July, 2024

O R D E R

This Criminal Miscellaneous case is filed by accused Nos. 1 and 2 in Sessions Case No. 878/2013 on the file of the III Additional District and Sessions Judge, Kozhikode. The above case is filed by the Drug Inspector alleging offences punishable under Secs. 18(a)(i) r/w 27(d) of the Drugs and Cosmetics Act.

2. The prosecution case is that on 28.01.2010, the Drug Inspector has drawn a drug sample of ETHIRUB-Iodine Methyl Salicylate ointment Batch No. E0501, Manufacturing date: May, 2009, Expiry Date: April, 2011 manufactured by the 1st accused under Sec. 23 of the Act. When the same was forwarded for analysis, the Government Analyst, Drug Testing Laboratory, Thiruvananthapuram reported that the said

veterinary drug is substandard. Hence , the complaint is filed.

3. Heard the learned counsel for the petitioners and the learned Public Prosecutor.

4. After hearing the learned counsel for the petitioners in length, I think the petitioners can be allowed to file a discharge petition before the trial court and if such a discharge petition is filed, there can be a direction to the Sessions Judge not to insist the presence of the petitioners, till discharge petition is considered. All the contentions raised by the petitioners in this Crl.M.C. are left open and the petitioners are free to agitate the same before the trial court in the discharge petition.

Therefore, this Criminal Miscellaneous case is disposed of in the following manner:

1. The petitioners are free to file a discharge petition before the jurisdictional court within thirty days from the date of receipt of a stamped certified copy of this order, if charge is not framed.

2. Once such a discharge petition is received, the jurisdictional court will consider the same and pass appropriate orders in it, after giving an opportunity of hearing to the petitioners and the Prosecutor concerned, as expeditiously as possible, at any rate, within a period of six weeks from the date of receipt of the discharge petition.

3. If a discharge petition is filed as directed above, the presence of the petitioners shall not be insisted, till final orders are passed in the discharge petition.

4. All the contentions raised by the petitioners in this criminal miscellaneous case are left open and the petitioners are free to agitate the same in the discharge petition.

5. Coercive steps against the petitioners also shall be kept in abeyance, till final orders are passed in the discharge petition, if the same is filed as directed above.

Sd/-

P.V.KUNHIKRISHNAN
JUDGE

SKS

APPENDIX OF CRL.MC 3996/2015

PETITIONER ANNEXURES

ANNEXURE A1 : TRUE COPY OF THE COMPLAINT DATED 19-5-2011

ANNEXURE A2 : TRUE COPY OF THE TEST RESULT LABORATORY PROTOCOL AND FORM 13 CERTIFICATE OF TEST OR ANALYSIS BY GOVERNMENT ANALYSTS DATED 3-6-2010.

ANNEXURE A3 : TRUE COPY OF THE LABEL OF THE DRUG TAKEN BY THE DRUG INSPECTOR DATED NIL.

ANNEXURE A4 : TRUE COPY OF THE LETTER DATED 24-7-2010 ISSUED IN RESPONSE TO FORM 13.

ANNEXURE A5 : TRUE COPY OF THE REPORT OF THE INDUSTRIAL TESTING LABORATORY AND CONSULTING HOUSE DATED 24-7-2010.