



Crl.O.P.No.3796 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.3796 of 2022
and
Crl.M.P.Nos.1818 & 1820 of 2022

J.Vinodh,
Proprietor,
M/s. Yours Med Corp.

... Petitioner

Versus

State of Tamil Nadu
rep. by Drugs Inspector,
Ambattur II Range,
O/o. the Asst. Director of Drugs Control,
Zone IV, Chennai-600 006.

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in S.C.No. 130 of 2019 on the file of I Addl. District and Sessions Judge, Thiruvallur and quash the same in so far as the petitioner/2nd accused is concerned.



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For Petitioner : Mr.K.J.Parthasarathy
For Respondent : Mr.S.Vinoth Kumar,
Govt. Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed seeking to quash the complaint in S.C. No. 130 of 2019 on the file of I Addl. District and Sessions Judge, Thiruvallur.

2. Heard both sides.

3. The petitioner is ranked as A2 in the complaint in S.C.No.130 of 2019 filed under Sec.36 AB of the Drugs and Cosmetic Act, 1940 for contravention of Sec.18(a)(i) read with Sec. 17B(c), 17B(d), 18(b) and Sec.18-A of Drugs and Cosmetics Act, 1940. The learned counsel for petitioner would submit that as a retailer, the petitioner borrowed the alleged drugs from A3, who is the manufacturer of drugs and he sold the same to the distributor/A1. To purchase those drugs, he is having valid license and as a retailer, he sold the drugs to A3, except that, he is not intended to sell the alleged non-standard quality drugs, but he was



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falsely implicated in this case by the prosecution. Therefore, he prayed to quash the complaint filed against the petitioner. In support of his contentions, the learned counsel relied on the order passed by this Court against A1 in ***Crl. O.P. No. 412 of 2020, dated 23.09.2020***. He has also relied another order passed by this court in ***Crl.O.P.(MD) No. 18629 of 2022, dated 30.06.2023***. He has further relied on the judgment rendered by this court reported in ***2009 (1) MWN (Cr.) 342*** in the case of ***P.Sukumar vs. State, rep. by Senior Drugs Inspector, Salem Zone, Salem***, wherein it was held in para 13 to 15 as follows :-

“13. At this juncture, it is relevant to refer Sec.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 Sec.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 Sec.18 of the Act if he is not the manufacturer of a Drug and Cosmetic Act if he is not the manufacturer of a Drug and Cosmetic or his agent for the distribution thereof, if he proves----

- (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 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/A6 has



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acquired the said drugs, Teenmox capsules, from the licensed manufacturer/A1 viz., Teen Pharmaceuticals.”

By relying the aforesaid authorities, the learned counsel for petitioner would submit that the petitioner is not liable for contravention of Sec.18(a)(i) read with Sec. 17B(c), 17B(d), 18(b) and Sec.18-A of Drugs and Cosmetics Act, 1940. If he is not a manufacturer of drugs nor he is agent for the distribution, he is only a licensed retailer and he has simply purchased the medicine and sold to the distributor/A1. Furthermore, the learned counsel would submit that since the complaint initiated against A1 was quashed by this court, he prayed to quash the complaint initiated against the petitioner.

4. By way of reply, the learned Government Advocate (Criminal side) appearing for respondent would submit that as per investigation, it was revealed that through whatsapp message, he purchased the alleged medicine from A1, who is said to be a manufacturer of codeine syrup i.e.



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Record plus cough syrup and the investigation also revealed that the address indicated in the label of the said drug said to have belonged to M/s.Romen Pharma Pvt. Ltd., but during investigation, it is revealed that the said firm is not in existence and it is fictitious one. Now the alleged firm M/s. Romen Pharma Pvt.Ltd. is not in existence and A3, the alleged manufacturer M/s. Naivedhya Enterprises also not produced any record to show that he purchased the said medicine. Hence, he prayed not to quash the complaint initiated against the petitioner.

5. It is an admitted fact that the said non-standard drugs was purchased by this petitioner as a retailer from the manufacturer/A1. Now, he pleads that as he is not a manufacturer, there is no contravention of Sec.18(a)(i) read with Sec. 17B(c), 17B(d), 18(b) and Sec.18-A of Drugs and Cosmetics Act, 1940 on his part and so, he was falsely implicated in this case. Accordingly, he prayed to quash the proceedings. As rightly pointed out by the learned Government Advocate that as per Sec.19(3) of the Act reads as follows :-



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“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 Sec.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.”

So, as per Sec.19(3) of Drugs and Cosmetics Act, 1940, it requires that if a person pleads that he is not involved in contravention of Sec.18 of Drugs and Cosmetics Act, 1940, he must prove that he acquired from a



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duly licensed manufacturer, distributor or dealer thereof.

6. Admittedly, as discussed above, A3, who claimed himself as a manufacturer of alleged medicine, but investigation reveals that there is no firm in existence absolutely. Therefore, the petitioner must prove that he had applied due diligence before purchasing the said medicine. But, that question was simply passed on by the petitioner's counsel, however, there is no proof that he has applied due diligence under Sec.19(3) Drugs and Cosmetics Act, 1940 reads as follows:-

“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 Sec.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



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*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.”*

Furthermore, the learned counsel for petitioner would submit that the purchase invoice dated 01.11.2016 would show that he purchased the medicine with proper invoice, but the prosecution erroneously gave a finding that he has not produced any bills to purchase the medicine. So, on considering all the aforesaid facts, the purchasing of medicine alone is not a criteria, the purchaser of medicine also must have applied due diligence to purchase the same, since because it involves with the life of human being. But, admittedly, A3 purchased the said medicine from one M/s.Romen Pharma Ltd., from whom the petitioner purchased the medicine. Moreover, mere possession of invoice and bills is not sufficient to prove his due diligence, but he should prove that he applied the due diligence for purchase of medicine as required under Sec. 19(3) of the Act. Therefore, I am not inclined to quash the complaint initiated against the petitioner. The ratio laid down by this court in the authorities relied on by the petitioner's counsel in (1) ***Crl. O.P. No. 412 of 2020***,



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dated 23.09.2020, (2) Crl.O.P.(MD) No. 18629 of 2022, dated 30.06.2023 and (3) 2009 (1) MWN (Cr.) 342 in the case of P.Sukumar vs. State, rep. by Senior Drugs Inspector, Salem Zone, Salem are not applicable to be facts of the instant case. Accordingly, this Criminal Original Petition is dismissed as no merit. Consequently, connected Criminal Miscellaneous Petitions are closed.

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Index: Yes/No
Internet: Yes/No
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To

1. Drugs Inspector,
Ambattur II Range,
O/o. the Asst. Director of Drugs Control,
Zone IV, Chennai-600 006.
2. The Public Prosecutor,
High Court, Madras.



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T.V.THAMILSELVI, J.

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