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Crl.R.C.No.595 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**Crl.R.C.No.595 of 2024
and Crl.M.P.No.5510 of 2024**

S.Viswanthan

... Petitioner

Vs.

State of Tamil Nadu represented by,
Drugs Inspector, Udumalpet Range,
Office of the Assistant Director of Drugs Control,
No.219, Race Course Road,
Coimbatore-18.
Respondent

...

Prayer:

Criminal Revision Case filed under Section 397 r/w. 401 of Criminal Procedure Code, seeking to set aside the order dated 21.03.2023 in P.R.C.No.41 of 2022 on the file of the Chief Judicial Magistrate, Tiruppur.

For Petitioner : Mr.K.Sudhakar

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



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ORDER

The criminal revision case has been filed seeking to set aside the order dated 21.03.2023 passed in P.R.C.No.41 of 2022 on the file of Chief Judicial Magistrate at Tiruppur.

2. The learned counsel for the petitioner submitted that the respondent/ Inspector was appointed under Section 21 of the Drugs and Cosmetics Act, 1940 and filed a private complaint (as per Section 32(1) of the Drugs and Cosmetics Act, 1940) before the trial Court against the petitioner, who is the Proprietrix of M/s.Sri Ganapathy Medicals alleging that the Pharmacy was functioning in contravention of Rules 65(3)(1) and 65(4)(3)(i) of the Drugs and Cosmetics Rules, 1945 before the Chief Judicial Magistrate, Tiruppur and as such the petitioner is alleged to have committed offence under Section 27(d) r/w. 18(c) of the Drugs and Cosmetics Act, 1940. The trial Court committed the case/ the accused to the Sessions Court, Tiruppur under Section 209 of Cr.P.C. to stand it/ her trial for the alleged offences under Section 27(d) r/w. 18(c) [02 count] of the Drugs and



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Cosmetics Act, 1940. Challenging the same, the present revision has been filed.

3.The learned counsel for the petitioner further submitted that as per Section 36 – A of the Drugs and Cosmetics Act, 1940, all the offences (except the offence triable by the Special Court under Section 36 -AB or Court of Session) under this Act, punishable with imprisonment for a term not exceeding three years, other than an offence under clause (b) of sub-section (1) of section 33I, shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of Section 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial, however, in the present case, all the offences foisted against the petitioner is punishable upto a maximum imprisonment of two years and it can only be tried by a Judicial Magistrate and not by Sessions Court and further submitted that only if the punishment is above three years, it can be tried by a Sessions Court.

4.The learned counsel for the petitioner further submitted



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that this Court vide order dated 25.07.2023 made in Crl.O.P.No.13125 of 2022 [Shri Sanjay Thanvi Vs. Union of India, Rep. by its Drug Inspector] has made it clear that the cases which falls within the scope of Section 36A will be tried only by the notified Judicial Magistrate of first class or by any Metropolitan Magistrate and it does not require any committal to the Sessions Court and further submitted that the impugned order is contrary to the order of this Court dated 25.07.2023 made in Crl.O.P.No.13125 of 2022 and is not sustainable one. Hence, this Court may set aside the impugned order and issue direction to the trial Court to conduct the trial and conclude the same.

5.The learned Government Advocate (Crl. Side) did not dispute the facts submitted by the learned counsel for the petitioner.

6.It is useful to extract the relevant provision of the Drugs and Cosmetics Act, 1940, hereunder:

[36A. Certain offences to be tried summarily. —Notwithstanding anything contained in the Code of Criminal Procedure,



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1973, all offences (except the offences triable by the Special Court under Section 36-AB or Court of Session) under this Act], punishable with imprisonment for a term not exceeding three years, other than an offence under clause (b) of sub-section (1) of section 33-I, shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of section 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the



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Magistrate shall, after hearing the parties, record an order to that effect and thereafter recall any witness who has been examined and proceed to hear or rehear the case in the manner provided by the said Code.]”

7.It is also useful to extract hereunder the relevant portion of the order of this Court dated 25.07.2023 made in Crl.O.P.No.13125 of 2022:

“It is quite apparent from the above provision that Section 36A is one exception to Section 32(2) of the Act. Whatever offences fall within the scope of Section 36A can be dealt with by means of summary proceedings by the Judicial Magistrate of first class especially empowered by the State Government or by any Metropolitan Magistrate. Paragraph 15 of the order does not deal with cases of this nature and it is made clear that the cases which falls within the scope of Section 36A will be tried only by the notified Judicial Magistrate of first class or by any Metropolitan Magistrate and it does not require any committal to the Sessions Court.”

8.The offences foisted against the petitioner is punishable



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upto a maximum imprisonment of two years and it can only be tried by a Judicial Magistrate and not by Sessions Court. Only if the punishment is above three years, it can be tried by a Sessions Court. Hence, the impugned committal proceedings is non-est in law and is liable to be set aside and accordingly, the same is set aside. The trial Court is directed to take the case on its file, conduct trial and conclude the same in accordance with law.

9.This revision is disposed of on the above terms.
Consequently, the connected miscellaneous petition is closed.

09.07.2024

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

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Tiruppur.

2.Drugs Inspector, Udumalpet Range,
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M.DHANDAPANI,J.

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