



CrI.R.C.No.397 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.09.2024
PRONOUNCED ON : 28.10.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.397 of 2024 and
CrI.M.P.No.3650 of 2024

- 1.M/s.Panacea Biotec Ltd,
A-241, Okhla Industrial Area-1,
New Delhi 110 020,
Represented by its authorized representative,
Mr.Balakrishnan Prabhu.
- 2.M.S.Rahman,
Senior General Manager Quality Assurance,
M/s.Panacea Biotec Ltd, A-241, Okhla Industrial Area-1,
New Delhi 110 020.
- 3.M/s.Panacea Biotec Ltd-Delhi (CWH),
Mj 1, Block A&B, J.R.Complex,
No.2, H.C.M.R. Farm House,
Khasra No.11/1, Village Mandoli,
New Delhi 110 093,
Represented by its authorized representative,
Mr.Balakrishnan Prabhu.
- 4.M/s.Panacea Biotec Limited,
Ground Floor 'B' Wing, No:10/4,
Arulayammanpet II Street,
Guindy, Chennai 32,
Represented by its authorized representative, Mr.Balakrishnan Prabhu.



Crl.R.C.No.397 of 2024

5.M.Rathna Kumar,
Power of Attorney,
M/s.Panacea Biotec Limited,
Ground Floor 'B' Wing, No:10/4,
Arulayammanpet II Street,
Guindy, Chennai 32.

6.Bala, Person in Charge,
M/s.Panacea Biotec Limited,
Ground Floor 'B' Wing, No:10/4,
Arulayammanpet II Street,
Guindy, Chennai 32.

... Petitioners

Vs.

The State of Tamil Nadu represented by
P.Nithin Kumar,
Drugs Inspector,
Saidapet Range i/c,
O/o, The Assistant Director of Drugs Control,
Zone III, D.M.S Complex,
259-261, Annasalai,
Teynampet, Chennai-600 006.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records in C.C.No.6686 of 2013 on the file of the IVth Metropolitan Magistrate, Saidapet, Chennai and set aside the impugned order dated 22.12.2023 in Crl.M.P.No.11949 of 2023 in C.C.No.6686 of 2013 on the file of the IVth Metropolitan Magistrate, Saidapet, Chennai and allow this revision petition.



WEB COPY



Crl.R.C.No.397 of 2024

For Petitioners : Mr.N.R.Elango, Senior Counsel for
Mr.Allwin Godwin

For Respondents : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

The petitioners/A1, A3, A5, A7, A8 & A9 have filed a petition under Section 36(A) of The Drugs and Cosmetics Act, 1940 (In short 'The Act') r/w 260(2) and 259 of Cr.P.C in Crl.M.P.No.11949 of 2023 in C.C.No.6686 of 2013 before the learned IV Metropolitan Magistrate, Saidapet, Chennai and the same was dismissed *vide* impugned order, dated 22.12.2023. Against which, the present criminal revision case is filed.

2.The learned Senior Counsel appearing for the petitioner submitted that the 1st petitioner is the manufacturer of the Easyfive TT vaccine with self life of two years from Okhla Facility and got another manufacturing facility for the same product in Baddi, Himachal Pradesh. In the year 2004, manufactured drug 'Easyfive' which is a pentavalent vaccine given to infants. This vaccine provides active immunization against five severe diseases namely Diphtheria, Tetanus, Pertussis, Hepatitis-B and infections



caused by Haemophilus Influenzae type b (Hib). In the year 2007, since PanEra Biotec Private Limited, a sister concern of the 1st petitioner started supplying one of the antigenic components of the product indigenously sourced by the 1st petitioner for manufacturing Easyfive vaccine. In this regard, the manufacturing permission in Form 46 of the Drugs Rules was granted by the Drugs Controller General of India for manufacturing the vaccine. Subsequently, the license to manufacture Easyfive Second Formulation at Okhla Facility as an additional item was granted by the Government of National Capital Territory of Delhi, Drugs Control Department. The NCT Delhi, Drugs Control Department approved the expiry date of Easyfive Second Formulation for two years from the date of manufacturing. The compositions of Easyfive (for export only) and Easyfive TT are the same and this amendment to the Form 28-D was only brought about for the brand name. Hence, by permission, dated 10.09.2010, the Central Drugs Standard Control Organization approved the extension of shelf life of Easyfive Second Formulation from two years to three years with brand name Easyfive. Since the 1st petitioner had already manufactured Easyfive Second Formulation vaccine batches with shelf life of 24 months



only and the amendment with different brand names of the Easyfive Second Formulation approved, there was necessity for the 1st petitioner to relabel the existing vials with an extended shelf life period of three years with brand name Easyfive-TT for domestic supply. The relabeling which was permitted could not be done immediately due to some disturbance in the export and market condition. Further there was no specification how the relabelling to be done and some medicine was found in the 1st petitioner's godown in Chennai by the respondent herein who alleged it had violated the Drugs Act and thereafter a case has been launched for the above said offence punishable under Section 27(d) of the Act.

3.He further submitted that the petitioners presumed that the case against them is being tried as warrant case under the Code of Criminal Procedure since the cognizance order, dated 26.12.2013 misinformed the accused as if the present case is taken on file for an offence punishable under Section 27(a) of the Act and later only it was verified and found that it was under Section 27(d) of the Act. He further submitted that initial questioning under Section 251 of Cr.P.C does not specifically call upon the



accused plea of guilty or if he has any defence to make. The previous

Presiding Officer recorded the chief examination and cross examination of the prosecution witnesses PW1 to PW5 and thereafter the petitioner filed a petition under Section 311 Cr.P.C to recall PW1 to PW3 after change of counsel in the Trial Court. The assumption of the petitioner that the petitioner will be provided another opportunity to recall PW4 and PW5 and to cross examine all witnesses in detail as provided under Section 246 Cr.P.C hence, the petitioner restricted the defence under the pretext that opportunity to cross examine the witnesses shall be available to them at post charge evidence stage. He further submitted that the case has been numbered as Calender Case and not as a Summary Trial Case hence, the petitioners assumed that the case is tried as a warrant trial under Chapter XIX of Cr.P.C. The petitioners on the above presumption formulated the cross examination to the extent of confronting and challenging the proposed charges that would be framed in exercise of power under Section 246 of Cr.P.C that were essential to file a discharge petition under Section 245 Cr.P.C. On conclusion of evidence when the trial Court posted the case for questioning under Section 313 Cr.P.C, by adjudication order, dated



16.06.2023 and not for framing of charges under Section 246 Cr.P.C then only the petitioners came to know that the Trial Court is trying the case as summary case and not as a warrant case. He further submitted that as per Section 36A of the Act r/w Section 260(2) of Cr.P.C it is during the course of summary trial if it appears to the Magistrate that the nature of the case is such that it is undesirable to try it summarily, then the Magistrate shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided in the Code of Criminal Procedure.

4.He further submitted that as per second proviso to Section 36A of the Act, a sentence of imprisonment of over one year might be passed or for any other reason where it is undesirable to try the case summarily. The complaint against the petitioners is now projected for offence punishable between 1-2 years and in such case, trial in the mode of a warrant case is highly desirable. In the present case, several rights and liabilities of the parties covered are required to be conclusively settled and established by this Court. In view of the presumptive clauses and special rules of evidence embodied in the provisions of the Act, the accused face substantial



evidentiary burden to establish and rebut material facts. The basic right as per law that whenever the defence is shouldered with evidentiary burden, effective opportunity for cross examination shall be liberally extended. Only on foreseeing such contingencies, Chapter XIX-B of the Code of Criminal Procedure confers the accused with a dual right of cross examination in warrant cases before framing of charges under Section 244 Cr.P.C and after framing of charges under Section 246 of Cr.P.C.

5.He further submitted that the impugned order passed without considering import of Section 36A of the Act which mandates all offences punishable for a term not exceeding three years shall be tried in a summary way. The Trial Court in the impugned order stated that the case has been tried as summons case whereas Section 36A of the Act mandates that the present case should have been tried as a summary case. He further submitted that if taken that the above case is tried as summons case and not as summary case as per Section 36A of the Act, the Magistrate ought to have converted the summons case into warrant case in terms of Section 259 Cr.P.C r/w second proviso to Section 36A of the Act given the peculiar facts



and circumstances of the case. He further submitted that as per second proviso to Section 36A of the Act, there is no order passed by the Trial Court and no opportunity of hearing was provided to the accused for conversion of the case from summary trial to summons case trial, hence the petitioners are highly prejudiced since they are not aware that the present case is tried as a summons case. The Trial Court failed to consider that if the present case is converted as warrant case, the petitioners will have the right to be discharged under Section 245 Cr.P.C and the petitioners are now forced to face the ordeal of trial without any basis or materials against the petitioners. Apart from it, if the present case is converted to warrant trial, the petitioners would be able to avail their right to cross examine the prosecution witnesses again as under Section 246 Cr.P.C. The petitioners opportunity to cross examine the witnesses at post charge framing now denied. In view of the above, the impugned order seeks to overright the mandatory provisions of the Act and has been passed without application of mind, hence deserves to be set aside by this Court.



WEB COPY

6. In support of his submissions, the learned Senior Counsel for the petitioner relied on the decision of this Court in the case of ***“K.Ramalakshmi v. V.Swarnalatha*** reported in ***2014 1 MWN Crl. DC 362***” wherein this Court in a Negotiable Instruments Act case referred to Section 143 which is akin to Section 36A of the Act and submitted that the summary procedure in terms of Section 143 of the Negotiable Instruments Act while trying an offence under Section 138 of the Negotiable Instruments Act by applying the ingredients Sections 262 to 265 of Cr.P.C and further in the course of trial if the nature of the case is one where sentence of imprisonment exceeding a year may have to be awarded or for any other reason it is untenable to try as summary case, then option is always available to the Judicial Magistrates to hear the parties and pass an order to that effect and later to recall any witnesses and to proceed either to hear or rehear the case, as per the procedure envisaged in Trial of Summary Cases viewed in that perspective. Taking such a view the order passed by the Trial Court in that case was set aside directing the Magistrate to adhere to the relevant provisions in strict sense.



WEB COPY

7.The learned Additional Public Prosecutor appearing for the respondent Police filed counter and submitted that a complaint has been filed against M/s.Panacea Biotech Limited for the contravention of i)Section 18(a)(i) r/w Section 17(c) punishable under the Section 27 of the Act and ii)Section 18(c) r/w the Rule 78(k) r/w the Rule 96(vii) r/w Schedule P punishable under the Section 27(d) of the Act and Rule made thereunder against A1 & A3, and for the contravention of i)Section 18(a)(i) r/w Section 17(c) punishable under Section 27(d) of the Act and ii)Section 18(b) r/w the Rule 96(vii) r/w Schedule P punishable under the Section 27(d) of the Act and Rule made thereunder against A5, A7 to A9 before the Trial Court and C.C.No.6686 of 2013 assigned. M/s.Panacea Biotech Limited, Okhla Industrial Area-1, New Delhi and their two other licensed premise at Village Mandoli in New Delhi and at Guindy in Chennai, arrayed as A1, A5 and A7 respectively. He further submitted that the accused by filing barrage of petitions successfully dragging on the proceedings from the year 2013 onwards. Earlier, the petitioners filed Crl.O.P.Nos.19360 & 19361 of 2014 before this Court seeking to quash the proceedings and thereafter the case was put on cold storage and finally this Court by order, dated 17.02.2020



recording the plea of the petitioners to complete the trial as early as possible without delay disposed the petitions.

8.He further submitted that the Drug Inspector (PW1) during inspection, found the petitioners stocked drug Easyfive TT Batch two labels. The label affixed under the outer label bearing two different expiry dates and thereby contravened Act punishable under Section 27(d) of the Act. According to the petitioners, they had two endorsements, one in the name of Easyfive vaccine for export only (with shelf life period of two years) and another in the name of Easyfive TT vaccine for domestic supplies with shelf life of two years. The petitioners obtained NOC from DCGI for extension of shelf life from 24 months to 36 months for Easyfive vaccine for export purpose only. No such permission granted from DCGI for Easyfive TT for domestic supplies but a label affixed with extension period, letter dated 25.04.2013 sent to DCGI seeking details. On 10.05.2013, DCGI informed that the petitioners were not granted permission for relabeling of Easyfive vaccine for domestic use and only for export purpose extension period granted. Thereafter, show cause memos issued to the petitioners,



reply received, not satisfied, after getting sanction order from the Director of Drugs Control, Tamil Nadu complaint filed. The complaint taken on file as C.C.No.6686 of 2013 and the petitioners were initially questioned under Section 251 Cr.P.C. Finding that the petitioners are facing trial as summons case, no discharge petition filed. The petitioners invoking Section 482 Cr.P.C filed quash petitions in Crl.O.P.Nos.19360 & 19361 of 2014 before this Court and this Court *vide* order, dated 17.02.2020 disposed the quash petitions with direction to complete the trial within a period of three months. Thereafter, PW1 to PW5 examined and cross examined in detail by the petitioners. On closure of evidence on the prosecution side, the case was posted for questioning under Section 313 Cr.P.C on 18.03.2022. On the request of the petitioners, the case adjourned to 25.03.2022 and 08.04.2022. Thereafter, the petitioners filed a petition under Section 311 Cr.P.C in Crl.M.P.No.6765 of 2022 on 22.04.2022 to recall PW1 to PW3 citing change of Counsel. Despite objections by the prosecution, recall petition allowed. Again PW1 to PW3 further cross examined in detail and thereafter the case was posted for questioning the accused under Section 313 Cr.P.C on 16.06.2023. On the request of the petitioners, the case adjourned to



07.07.2023 and 21.07.2023. At that stage, the petition in Crl.M.P.No.11949 of 2023 filed on 21.07.2023. After elaborate arguments, the petition was dismissed by a detailed order on 22.12.2023. Challenging the same, the present criminal revision case filed which is devoid of merits and liable to the dismissed.

9.It is further submitted that the petitioners are defended by a counsel of their choice, participated in the trial right on receipt of summons, appeared before the Trial Court, received copies, formulated defence and cross examined the witnesses PW1 to PW5 in detail. The petitioners filed quash petitions before this Court in Crl.O.P.Nos.19360 & 19361 of 2014. Nowhere earlier before this Court or before the Trial Court, the present plea that the petitioners assumed and presumed that the case is being tried under warrant procedure, not made. For the first time at the penultimate stage of trial when the petitioners were called to answer under Section 313 Cr.P.C questioning, the present petition under Section 36(A) of the Drugs Act r/w 260(2) and 259 of Cr.P.C filed which is not sustainable, hence prayed for dismissal.



WEB COPY

10.Considering the rival submissions and on perusal of the materials, it is seen that the petitioners are prosecuted and facing trial as per Chapter XX Section 251 Cr.P.C. It is the substance of accusation to be stated. It is not required in summons case to frame formal charge. In this case, the Trial Court following Section 254 Cr.P.C proceeded to hear the prosecution, recorded the evidence produced in support of the prosecution, permitted the petitioners to cross examine the witnesses and recorded the defence case. At this stage, it is too late for the petitioners to contest that they assumed, they are being tried under the private complaint warrant procedure is not proper.

11.The complaint is filed under Section 200 Cr.P.C. Since the complainant is a public servant, as per proviso(a) the complaint preferred. The Trial Court finding there are sufficient ground for proceeding against the petitioners, issued summons under Section 204 Cr.P.C. The accused on receipt of summons appeared before the Trial Court knowing no application for dismissal of the complaint and filing of discharge petition, available and



impermissible. Finding the remedy lies in invoking Section 482 Cr.P.C which the petitioners had rightly invoked in Crl.O.P.Nos.19360 & 19361 of 2014. Finding the tide against them, the petitioners in the quash petitions restricted their prayer to complete the trial in C.C.No.6686 of 2013 without delay.

12.The petitioners are facing trial for offence punishable under Section 27(d) of the Act, the punishment prescribed is that it shall not be less than one year but may extend to two years and with fine. In usual course, it is to be tried as summons case. In view of Section 36-A of the Act which is a non obstante provision, all offences punishable for a term not exceeding three years other than offence under clause(b) of Sub-Section(1) of Section 33-I shall be tried in a summary way. Further second Proviso to Section 36-A is clear that at the time of commencement or in course of a summary trial, the Magistrate considering the nature of the case and for any other reason, if it is undesirable to try the case summarily, shall proceed in the manner provided under the Criminal Procedure Code. So far as the case in hand is concerned, the Magistrate at the time of commencement of trial,



made clear the case is tried as summons case. The petitioners on their appearance, copies furnished, substances of accusation put to them and recorded. When the trial was to commence, the petitioners well aware they are being prosecuted under summons case procedure. For that reason, they filed quash petitions invoking Section 482 Cr.P.C in Crl.O.P.Nos.19360 & 19361 of 2014 and were able to hold the trial for years paralyzing the case. This Court by order, dated 17.02.2020 disposed both the quash petitions directing the Trial Court to complete the trial within a period of three months. Thereafter, the trial proceeded PW1 to PW5 examined and cross examined, thereafter the petitioners filed petition under Section 311 Cr.P.C to recall witnesses for the reason new counsel engaged. Despite objections by the prosecution, the witnesses recalled and further cross examined. When the case posted for 313 Cr.P.C questioning, an indigenous ground raised claiming the petitioners presumed, assumed as though they are being prosecuted following Chapter XIX-B Cr.P.C. The petitioners' conduct in dragging the case and the trajectory of the case from the year 2013 will clearly prove that this petition is nothing but yet another ploy to further stall the trial for another decade or so. The citation referred by the petitioners is



Crl.R.C.No.397 of 2024

not applicable to the case on hand. In that case, during midway of trial the conversion of the case from summary proceedings to summons case adopted. But in the present case right from the inception it is proceeded as summons case. The petitioners heard, witnesses examined following Section 138 of the Indian Evidence Act. The witnesses had gone through the fire of cross examination. The second proviso to Section 36A of the Act duly complied. Hence, there can be no complaint of denial of right or any prejudice.

13.It is settled position that ignorance of law is not a defence, more so when the petitioners are defended by able Advocates throughout. In view of the above, the impugned order, dated 22.12.2023 in Crl.M.P.No.11949 of 2023 in C.C.No.6686 of 2013 passed by the learned IV Metropolitan Magistrate, Saidapet, Chennai is a well reasoned one which needs no interference. Accordingly, this Criminal Revision Case stands dismissed.



Crl.R.C.No.397 of 2024

WEB COPY

14.The Trial Court is reminded of this Court order in Crl.O.P.Nos.19360 & 19361 of 2014 wherein on the request of the petitioners, time limit fixed for completion of trial. The same to be followed and the trial to be completed without further delay. Consequently, connected criminal miscellaneous petition is closed.

28.10.2024

Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

vv2

To

1.The IV Metropolitan Magistrate,
Saidapet, Chennai.

2.The Drugs Inspector,
Saidapet Range i/c,
O/o, The Assistant Director of Drugs Control,
Zone III, D.M.S Complex,
259-261, Annasalai,
Teynampet, Chennai-600 006.

3.The Public Prosecutor,
Madras High Court.



WEB COPY



Crl.R.C.No.397 of 2024

M.NIRMAL KUMAR, J.

vv2

Crl.R.C.No.397 of 2024

28.10.2024