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Crl.RC.Nos.646 to 648 & 651 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.04.2024

CORAM:

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

Crl.RC.Nos.646 to 648 & 651 of 2024

and

Crl.MP.Nos.6153, 6155, 6156 & 6159 of 2024

P.Sornalakshmi	...Petitioner in Crl.RC.No.646 of 2024
M.Subbulakshmi	...Petitioner in Crl.RC.No.647 of 2024
A.Nanjundasamy	...Petitioner in Crl.RC.No.648 of 2024
Jayaprakash	...Petitioner in Crl.RC.No.651 of 2024

Vs.

State of Tamil Nadu Rep. By, Drugs Inspector, Tiruppur Range, Office of Assistant Director of Drugs Control, No.219, Race Course Road, Coimbatore-18.	...Respondent in Crl.RC.No.646/2024
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State of Tamil Nadu Rep. By, Drugs Inspector, Udumalpet Range, Office of the Drugs Inspector, Coimbatore South Zone-219, Race Course Road, Coimbatore-18.	...Respondent in Crl.RC.No.647/2024
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State of Tamil Nadu Rep. By,
Drugs Inspector, Tiruppur Range,
Office of Assistant Director of Drugs Control,
Coimbatore South Zone,
219, Race Course Road,
Coimbatore – 18.

...Respondent in Crl.RC.No.648/2024

State of Tamil Nadu Rep. By,
Drugs Inspector, Udumalpet Range,
Office of Assistant Director of Drugs Control,
No.219, Race Course Road,
Coimbatore-18.

...Respondent in Crl.RC.No.651/2024

Prayer in Crl.RC.No.646 of 2024: Petition filed under Section 397 r/w 401 of Code of Criminal Procedure to set aside the order dated 17.03.2023 in PRC.No.38 of 2022 on the file of the Chief Judicial Magistrate at Tiruppur.

Prayer in Crl.RC.No.647 of 2024: Petition filed under Section 397 r/w 401 of Code of Criminal Procedure to set aside the order dated 06.06.2023 in PRC.No.22 of 2023 on the file of the Chief Judicial Magistrate at Tiruppur.

Prayer in Crl.RC.No.648 of 2024: Petition filed under Section 397 r/w 401 of Code of Criminal Procedure to set aside the order dated 11.09.2023 in PRC.No.60 of 2023 on the file of the Chief Judicial Magistrate at Tiruppur.

Prayer in Crl.RC.No.651 of 2024: Petition filed under Section 397 r/w 401 of Code of Criminal Procedure to set aside the order dated 06.06.2023 in PRC.No.23 of 2023 on the file of the Chief Judicial Magistrate at Tiruppur.

In all Crl.RC's.:

For Petitioners : Mr.K.Sudhakar

For Respondent : Mr.A.Gopinath, GA (Crl. Side)



COMMON ORDER

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2. When the matters were taken up for consideration, learned counsel for the petitioners brought to the notice of this Court the order passed by a coordinate Bench of this Court in ***Crl.O.P.No.9010 of 2023 dated 11.01.2024***, wherein similar issue has been considered and orders/clarifications have been passed and, therefore, submits that the benefit of the said order may be given to the petitioners as well.

3. Learned Government Advocate (Crl. Side) appearing for the respondents fairly conceded that the relief sought for is squarely covered by the order passed in ***Crl.O.P.No.9010 of 2023*** and, therefore, similar order may be passed.

4. For better appreciation, the relevant paragraph of the order passed by this Court in Crl.O.P.No.9010 of 2023 dated 11.01.2024 relied upon the learned counsel for the petitioners is extracted hereunder:-



"3. The Court below had taken cognizance of the complaint filed by the respondent for offences under Section 18(c) read with Section 27(d) of the Drugs and Cosmetics Act, 1940 (for short, the Act). After having taken cognizance, the Court below took note of Section 32 of the Act and came to the conclusion that the offences are exclusively triable by a Court of Sessions in view of Section 32(2) of the Act and hence, decided to commit the case before the Court of Sessions. Aggrieved by that, the petitioner is before this Court.

4. In the instant case, the petitioner is facing charges for an offence under Section 27(d) of the Act, which is punishable with a maximum imprisonment of two years and with fine. This offence comes within the scope of Section 36A of the Act. However, the Court below came to the conclusion that by virtue of Section 32 of the Act, the case should be tried only by the Court of Sessions.

5. Such a finding rendered by the Court below is not sustainable in view of the clarifications issued in the recent judgment rendered by me in Crl.O.P.No.13125 of 2022 dated 04.1.2024 wherein the relevant portions read thus :

"3. Chapter IV of the Act covers the provisions which provides for the Courts which can take cognizance of the offence and deal with the case. Section 32 of the Act deals with cognizance of offences and Section 32(2) of the Act is extracted hereunder:

32.Cognizance of offences.



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..
(2) Save as otherwise provided in this Act, no Court inferior to that of a Court of Session try an offence punishable under this Chapter.

4. It is clear from the above provision that no Court inferior to that of a Court of Session can try any offence punishable under Chapter IV, save as otherwise provided in the Act. This would mean that if there is any other provision under the Act which enables some other Court to try the offence, Section 32(2) of the Act will have to yield to that provision.

5. The other provisions which have to be taken into consideration are Sections 36A and 36AB. Section 36A deals with certain offences which can be tried summarily. This provision was brought in through an amendment made by Act 68 of 1982 which came into effect from 01.02.1983. The provision itself start with a non-obstante clause and its states that the offences punishable with imprisonment for a term not exceeding three years, other than an offence under Clause(b) of Sub-section (1) of 33-I, can be tried in a summary manner by a Judicial Magistrate of the first class especially empowered in this regard by the State Government or by a Metropolitan Magistrate. The provision also makes it clear that the Magistrate Court must follow the provisions of Sections 262 to 265 of Cr.P.C., while conducting the summary proceedings.

6. 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



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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.

7. The Second category which is also an exception to Section 32(2) of the Act are those cases which are falling under Section 36AB. This provision was brought into force through Act 26 of 2008 w.e.f., 10.08.2009. There are certain specified offences relating to adulterated drugs or spurious drugs which can be tried before the Special Courts. Such Special Courts must be constituted / designated by a notification by the Central Government or the State Government in consultation with the Chief Justice of the High Court. Wherever, such Special Court is constituted and the offences contemplated under Section 36AB is committed, it can be tried only before the Special Court.

8. To make it more clearer, only those cases which do not fall within the scope of Section 36A and Section 36AB, will come within the scope of Section 32(2) of the Act. Only such cases can be tried by the Court of Sessions as contemplated under Section 32(2) of the Act. This clarification will sufficiently take care of the prevailing confusion and a copy of this order shall be marked to the Principal District Judges across the State of Tamil Nadu. The cases shall be taken cognizance by the concerned Courts in line with the clarification issued in this order."

6. In light of the above clarifications issued in the said order dated 04.1.2024, this criminal original petition is allowed and the order passed by the learned Chief Judicial Magistrate, Tiruvallur dated 27.2.2023 is hereby set aside. The matter shall be tried in line with Section 36A of the Act and the proceedings shall be completed by the learned Chief Judicial Magistrate as expeditiously



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as possible. Consequently, the connected Miscellaneous petition is closed.”

5. In light of the above, following the aforesaid decision, these criminal revision petitions are allowed and the orders passed by the learned Chief Judicial Magistrate, Tiruvallur in the respective P.R.C's are hereby set aside in line with the order passed in the aforesaid decision. However, it is open to the respondents to proceed in the matter against the petitioners in the manner known to law, as provided for in the aforesaid decision. Consequently, the connected Miscellaneous petitions are closed.

05.04.2024

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Index : Yes/No

Speaking order : Yes/No

NCC : Yes/No

To

1. The Chief Judicial Magistrate,
Tiruppur.

2. The Public Prosecutor
High Court, Madras.

M.DHANDAPANI, J.

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