



Crl.O.P.No.9010 of 2023

In the High Court of Judicature at Madras

Dated : 11.1.2024

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Original Petition No.9010 of 2023
& Crl.M.P.Nos.5840 & 5841 of 2023

1.M/s.Kwality Pharmaceuticals
Ltd., rep.by its Managing
Director Mr.Ramesh Arora

2.Mr.Ramesh Arora, Managing
Director of M/s.Kwality
Pharmaceuticals Ltd.

...Petitioners

Vs

State rep.by the Drugs
Inspector, Tiruttani Range,
Office of the Assistant Director
of Drugs Control, Thiruvallur
Zone, 201, I Floor, J.N.Road,
Thiruvallur-1.

...Respondent

PETITION under Section 482 of the Criminal Procedure Code
praying to set aside the committal proceedings initiated by docket
order dated 27.2.2023 passed by the learned Chief Judicial Magistrate,
Tiruvallur converting C.C.No.7 of 2018 into P.R.C.No.12 of 2023.

For Petitioners : Mr.P.Ramesh Kumar
For Respondent : Mr.A.Gopinath, GA (Crl.Side)



Crl.O.P.No.9010 of 2023

ORDER

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This is a petition filed by the petitioners challenging the docket order passed by the Court below dated 27.2.2023 committing the case to the Court of Sessions.

2. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.Side) appearing for the respondent.

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 petitioners are before this Court.

4. In the instant case, the petitioners are 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



Crl.O.P.No.9010 of 2023

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.

..

(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



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Crl.O.P.No.9010 of 2023

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 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



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Crl.O.P.No.9010 of 2023

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 as possible. Consequently, the connected Crl.M.Ps are closed.

11.1.2024



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Crl.O.P.No.9010 of 2023

N.ANAND VENKATESH,J

RS

To

- 1.The Chief Judicial Magistrate,
Tiruvallur.
- 2.The the Drugs Inspector, Tiruttani Range,
Office of the Assistant Director of Drugs
Control, Thiruvallur Zone, 201, I Floor,
J.N.Road, Thiruvallur-1.
- 3.The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.9010 of 2023
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