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Crl.O.P.No.15913 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

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THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

Crl.O.P.No.15913 of 2024

and

Crl.M.P.Nos.9706 & 9708 of 2024

Shri.Singana Obul Reddy,
Director of Apollo Pharmacies Limited

... Petitioner

Vs.

The State of Tamil Nadu rep.by its
Drugs Inspector ,
Tirupattur Range,
O/o.the Assistant Director of Drugs Control,
Vellore Zone,
No.1/50, 6th Street, Thiru Vi Ka Nagar,
Rangapuram, Vellore-9

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to call for the records pertaining to the impugned complaint instituted by the respondent in C.C.No.104 of 2023, pending on the file of the learned Judicial Magistrate-1, Tirupattur and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.Nithyaesh Nataraj
for Mr.Anirudh A Sriram

For Respondent : Mr.K.M.D.Muhilan
Government Advocate (Crl.Side)



CrI.O.P.No.15913 of 2024

ORDER

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2. The sum and substance of the complaint is that on a surprise check conducted along with NIB, CID, Vellore in the premises of M/s.Apollo Pharmacy, a unit of Apollo Pharmacies Limited, Vaniyambadi, the following defects were found:-

“1.Certain drugs were sold without the personal supervision of the Registered Pharmacist endorsed in the license.

2.The prescription register was not properly maintained

3.Tramazac 2 ml ampoule was sold in retail without a cash or credit memo.

4.Tramazac 2 ml ampoule was sold without prescription of a Registered Medical Practitioner.”



CrI.O.P.No.15913 of 2024

3. On perusal of the records, the inspection team found that

drugs were sold without supervision of the registered pharmacist. The prescription register was not properly maintained and without prescription of registered medical practitioner, drugs were sold. Pursuant to this inspection, show cause notice was issued to the petitioner's company and the pharmacy, which was subjected to inspection. This petitioner who is the Director of the company, has not responded to the show cause notice and the remainder which followed. Earlier he approached this Court to quash the complaint and the same was dismissed on the ground that the plea raised to quash the complaint are all factual in nature and therefore, same has to be decided only in the course of the trial. Second quash petition is now filed on the question of law and the counsel appearing for the petitioner submits that the dismissal of the first quash petition shall not be an impediment for the accused to file the second quash petition on a different set of facts pertaining to question of law. In this quash petition, it is contended that under Section 34 of the Drugs and Cosmetics Act, this petitioner cannot be held vicariously liable, since there is no averment in the complaint how this petitioner as a Director is responsible for the day to day affairs of the company. In support of the submissions, the learned counsel also relies



Crl.O.P.No.15913 of 2024

upon the judgment of the Hon'ble Supreme Court in ***Lalankumar Singh***

Vs. State of Maharashtra reported in ***2022 SCC online SC 1383***.

4. The learned Government Advocate (Crl.Side) appearing for the State submits that the surprise check conducted on 28.12.2021 in the business premises of the M/s.Apollo Pharmacy, Vaniyambadi resulted in grave violation of the Drugs and Cosmetics Act, which has led to filing of the complaint by the Drug Inspector and the same has been taken cognizance by the Judicial Magistrate, Tirupattur in C.C.No.104 of 2023. The complaint specifically states that this petitioner was issued show cause memo dated 19.05.2022 and the remainder dated 07.06.2022 calling upon him to explain about the contravention of the act by one of his licensee, but the petitioner failed to reply. The response of the company through its DGM was not satisfactory and therefore, after obtaining sanction for prosecution, the complaint been filed against the Director of M/s.Apollo Pharmacies Pvt. Ltd./the petitioner herein and the person incharge of the unit.

5. The contention of the learned counsel appearing for the petitioner is that on behalf of the petitioner and the company reply been



CrI.O.P.No.15913 of 2024

given to the show cause notice through DGM and it is stated by the company that the franchise given to the 3rd accused had been revoked for violation of Drugs and Cosmetics Act by the retailer and no stretch of imagination could be mulcted on the company or its Director.

Section 34 of the Drugs and Cosmetics Act reads as below:-

“34. Offences by companies:- (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is



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CrI.O.P.No.15913 of 2024

proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.”

6. In the said Act, a special Act which prescribes punishment under the vicarious liability . The purpose of fixing the person in charge of the company is to prevent sale of drug without following the mandate of law. The retailer, the 3rd respondent is the agent of the 1st respondent company to which the petitioner herein is the Director. Therefore, he falls squarely within the scope and ambit of Section 34 of Drugs and Cosmetics Act. The complaint indicates that he is the person responsible for the day to day conduct of the business and show cause notice also caused to him to explain why action should not be taken for the violation. The silence of the petitioner to the show cause notice speaks volume. After taking cognizance of the complaint, it is too late for the petitioner to take a plea that he is not responsible for the day to day affairs of the company. Therefore, this Court is of the view that this quash petition is



CrI.O.P.No.15913 of 2024

not sustainable under law as well as on facts. Hence this Criminal Original Petition is dismissed. Consequently, the connected Criminal Miscellaneous Petitions are also dismissed.

7. The learned counsel for the petitioner seeks leave of this Court to direct the Judicial Magistrate to dispense with the personal appearance of the petitioner.

8. If any petition is filed by the accused to dispensed with his personal appearance, the trial Court shall consider it in accordance with law and appropriate order be passed. The personal appearance may be insisted only in the case of necessity for identification or questioning or Judgement or for any other such purpose.

09.07.2024

Index : Yes/No
Neutral Citation : Yes/No
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Dr.G.JAYACHANDRAN,J.

rpl

To

1. The Judicial Magistrate-1, Tirupattur



CrI.O.P.No.15913 of 2024

2.The Drugs Inspector ,
Tirupattur Range,
O/o.the Assistant Director of Drugs Control,
Vellore Zone,
No.1/50, 6th Street, Thiru Vi Ka Nagar,
Rangapuram, Vellore-9

3.The Public Prosecutor,
High Court of Madras,
Chennai.

CrI.O.P.No.15913 of 2024

09.07.2024