



Crl.O.P.No.18921 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :28.08.2024

Pronounced on :04.09.2024

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.No.18921 of 2024

and

Crl.M.P.Nos.11172 and 11173 of 2024

K.Sumathi

.. Petitioner/Accused 2

/versus/

State represented by

The Drugs Inspector, Saidapet Range,
O/o The Assistant Director of Drugs Control,
Zone III,DMS Campus, Anna Salai,
Tenampet, Chennai-6.

.. Respondent

Criminal Original Petition has been filed under Section 528 of BNSS,to call for the records in C.C.No.599 of 2024 pending trial on the file of Metropolitan Magistrate-VI, Saidapet and quash the same.

For Petitioner :Mr.R.C.Paul Kanagaraj

For Respondent :Mr.S.Udayakumar
Govt.Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed to quash the complaint laid by the Drug Inspector, in C.C.No.599 of 2024 taken on file by the VI Metropolitan Magistrate, Saidapet, Chennai.

2. On 30/09/2021, the Drug Inspector of Saidapet Range had



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conducted inspection of M/s Pradhan Mandri Bharthiya Janaushadhi Kendra, No:25/IB, New No:51, Ground Floor, West Jones Road, Saidapet West. At the time of inspection, the proprietor Mr.Kalidass and the registered Pharmacist Dhanalakshmi were not present. However, the person-in-charge Tmt.Sumathi, W/o Kalidass was selling drugs without personal supervision of the pharmacist. On further verification of records, purchase bills for the drugs, sale statement, prescription register and stock on hand of certain drugs found not maintained.

3. For the contravention of Section 18 (c) of the Drugs and Cosmetics Act, notice issued to the Proprietor Kalidass and then, the impugned complaint filed against Kalidass, the Proprietor and his wife Sumathi person in charge.

4. The Learned Counsel appearing for the petitioner Sumathi (A-2) submitted that, the petitioner is a home maker and not the person in charge of the shop. Since her husband had an urgent work, she was asked to come to the shop and look after, till his arrival. At the time of inspection, she had no idea for what the inspection and why she was



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asked to sign in the papers prepared by the Inspector. She had not sold any drugs as alleged. The bill Nos.7853 and 7856 were created on the direction of the complainant.

5. The Learned Counsel further states that, the petitioner is not involved in the affairs of the shop and she has given her reply to the show cause notice stating she is not person in charge of the shop and her husband Kalidass is the Proprietor and in-charge of the shop. In fact, her husband has given suitable reply for the show cause notice regarding maintenance of records and also produced the same to the complainant. Therefore, the petitioner being the wife of the Proprietor and her mere presence in the shop, will not make her liable for any prosecution under the Drugs and Cosmetics Act. The allegations of contravention are all answerable only by A-1, the Proprietor of the shop and not by his wife who was present temporarily in the shop.

6. In response to the petition, the respondent/complainant had filed the counter wherein it is stated that, on the day of inspection, Accused A1 was not there at the shop, Accused A2 was present and



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Registered Pharmacist Dhanalakshmi, 11848 A1, was not attended the shop. Before commencing the inspection, the respondent asked the Accused A2 to summon the Accused A1 to be present for the inspection. Accused A2 informed the respondent that since her husband is the District President-South Chennai of a well-recognized National Political Party, he could not attend the shop as well as inspection. Further she conveyed that she only was taking care of the shop and she would provide the details required for inspection. However, the respondent asked Accused A2 to connect Accused A1 through phone call to confirm the same, as Accused A1 is the proprietor of the shop. Accused A2 too conveyed/established the same thing over the phone. Therefore, the respondent carried out the inspection in the presence of Accused A2, as both Accused A1 and Accused A2 established that Accused A2 is managing the purchase and sale activities of drugs on behalf of/with the consent of Accused A1.

7. It is further contended by the respondent that this petitioner had effected sale of certain drugs from Bill Nos:7853 and 7856 dated 30/09/2021 without the personal supervision of the pharmacist. According to the complainant, it is contravention of Section 18 (c) r/w



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Rule 65 (2) of the Drugs and Cosmetics Act, 1940 and the Rules 1945 punishable under Section 27 (d) of the said Act.

8.The details of the drug so sold is mentioned in Table I of the counter and it reads as below:-

Table 1

Details of few examples of sales without the personal supervision of Pharmacist on the day of inspection

<i>S. No.</i>	<i>Invoice No.& Date</i>	<i>Name of the drug sold</i>	<i>Qty Sold</i>
1	7853 & 30.09.2021	Rosuvastatin 5 mg tab Tamsulosin prolonged release capules Atenlol Tab 25 mg	3 strips 2 strips 3 strips
2	7856 & 30.09.2021	Glimepiride 1 mg and Metformin	6 strips

9. From the complaint, this Court finds that the allegation against the petitioner is that she was present at the medical shop and found, she has sold the drugs mentioned above without the supervision of the pharmacist. Except this allegation, all other allegation /contravention



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are attributable only to A-1, the Proprietor.

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10. Though in the counter, it is stated that A-1 admitted to the Inspector over phone that A-1 has consented A-2 to administer the shop, however, the said statement is denied by A-2 in writing immediately after receipt of the show cause notice. There is no document placed along with the complaint to show A-2 was in-charge of the shop. Mere presence of A-2 at the time of inspection may not be sufficient to prosecute her. There is no material placed along with the complaint to show, the drugs mentioned in the bill No 7853 and 7856 dated 30/09/2021 were sold by the petitioner. It is the presumption of the complainant that these two sales might have been done by the petitioner in the absence of pharmacist, since at the time of inspection, only the petitioner was present and the pharmacist Dhanalakshmi was not present. Such a presumption cannot be drawn for a sale alleged to have done at a prior point of time to the inspection. The best practise for any Inspector should be, to conduct a test purchase paying the price for the goods and then, lay the complaint if any contravention.



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11. Having not placed any *prima facie* material against this petitioner to substantiate, contravention of Section 18 (c) of the Drugs and Cosmetics Act, this Criminal Original Petition stands allowed. The complaint in C.C. No.599/2024 on the file of the VI Metropolitan Magistrate, Saidapet, Chennai as against this petitioner (A-2) alone stands quashed. Consequently, connected Miscellaneous Petitions are closed.

04.09.2024

Index:yes
Neutral Citation:yes/no
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To:

- 1.The Metropolitan Magistrate-VI, Saidapet.
- 2.The Drugs Inspector, Saidapet Range,
O/o The Assistant Director of Drugs Control,
Zone III,DMS Campus, Anna Salai,



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Tenampet, Chennai-6.

3.The Public Prosecutor, High Court,Madras.

DR.G.JAYACHANDRAN,J.

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delivery Order made in
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