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Crl.A.No.759 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.759 of 2017

State represented by
The Public Prosecutor,
High Court, Madras
(In the matter of Drugs Inspector,
Tondiarpet-1 Range, Chennai 06)

...Appellant

vs.

1. M/s. Medplus Pharmacy
Unit of Ritemed Pharma retail Private Limited
Represented by its Director
Mantena Surendranath
No.719, Ground Floor, T.H. Road,
New Washermenpet, Chennai 81.
2. Mantena Surendranath
Director
M/s. Medplus Pharmacy
Unit of Ritemed Pharma retail Private Limited
Represented by its Director Mantena Surendranath
No.719, Ground Floor, T.H. Road,
New Washermenpet, Chennai 81.
3. P. Srinivas
Director M/s. Medplus Pharmacy
Unit of Ritemed Pharma retail Private Limited
Represented by its Director Mantena Surendranath
No.719, Ground Floor, T.H. Road,
New Washermenpet, Chennai 81.



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4. M. Paramesham Kasthuri
Authorised signatory of M/s. Medplus Pharmacy
Unit of Ritemed Pharma retail Private Limited
Represented by its Director Mantena Surendranath
No.719, Ground Floor, T.H. Road,
New Washermenpet, Chennai 81.

5. A. Ramachandran
Person incharge of M/s. Medplus Pharmacy
Unit of Ritemed Pharma retail Private Limited
Represented by its Director Mantena Surendranath
No.719, Ground Floor, T.H. Road,
New Washermenpet, Chennai 81.

...Respondents

PRAYER: Criminal Appeal filed under Section 378 of Criminal Procedure Code, 1973, against the judgment and orders dated 19.12.2016 passed by the XV Metropolitan Magistrate, George Town, Chennai, in C.C.No.646 of 2015.

For Appellant : Mr.S. Rajakumar
Additional Public Prosecutor.
For Respondents : Mr. M. Mohammed Rafi

JUDGMENT

Challenging the order of acquittal passed by the learned XV Metropolitan Magistrate, George Town, Chennai, in C.C.No.646 of 2015, the present Criminal Appeal is filed by the prosecution.



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2. The case of the prosecution in a nutshell is as follows:

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2.1. Based on a complaint given by one T. Mathevan Pillay, residing in B.B. Royak Apartments, No.12, Andal Avenue, II Street, Thiru Vi Ka Nagar, Chennai, to the Drug Inspector, against M/s.MedPlus Pharmacy, Chennai 81, Tmt. P. Sankarai (P.W.1), the then Drug Inspector, Tondiarpet I range, conducted an enquiry on 21.01.2012 and recorded his statement.

2.2. Thereafter, she conducted an inspection on 03.04.2012 in one of the shops of the accused at Door No.719, Ground Floor, T.H. Road, New Wahermanpet, Chennai in the presence of A. Ramachandran (A5), who was in charge of M/s. Medplus Pharmacy, an Unit of Ritemed Pharma retail Private Limited.

2.3. According to P.W.1, Ritemed Pharma retail Private Limited had been granted drug licenses in Forms 20, 21, 20B and 21B, all dated 20.12.2010 and they are valid upto 19.12.2015. During her inspection P.W.1 found that the registered pharmacist who had endorsed his signature on the drug licence was not present in the premises. Inspection of various records also showed that certain drugs were supplied without



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the prior supervision of registered pharmacist for the period from 29.03.2012 to 03.04.2012. On further scrutiny of computer printouts of Prescription Register, it was found that the Prescription Register was maintained and signed upto Bill No.20111202156025396 dated 27.03.2012. The supply of drugs on prescription from Bill No.20111202156025398 dated 28.03.2012 to Bill No.20121302156000223 dated 02.04.2012, though were entered in the prescription Register, the registered pharmacist has not signed on it. Furthermore, no entries were made in the Register from Bill No.20121302156000225 dated 03.04.2012 to Bill No.20121302156000235 dated 03.04.2012. The verification of carbon copies of the sales records and physical stocks showed that certain drugs were sold without raising any sales bills.

2.4 A. Ramachandran (A5), the person incharge of Medplus Pharmacy, an Unit of Ritemed Pharma retail Private Limited, was requested by P.W.1 to produce certain Records and Registers in original for verification as per the provisions of Drugs and Cosmetics Rules. Accordingly he produced the Records and Registers and photocopies of relevant pages were taken by P.W.1 .



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2.5. Subsequently Tmt. Punitha (P.W.2) took charge as the Drug Inspector on 23.07.2013 as per G.O. (4D) No.20 Health and Family Welfare (M1) Department dated 12.07.2013. She perused the entire file and issued show cause notices to the accused on 09.02.2015 and 13.02.2015 (Ex.P12 to Ex.P14). A. Ramachandran (A5), an authorised signatory of Ritemed Pharma retail Private Limited, sent a reply dated 24.02.2015 (Ex.P16) to the Drug Inspector, Tondiarpet-I Range, Zone-I, Teynampet, Chennai, which reads thus:

"Madam,

Sub: Drugs - Drugs and Cosmetic Act 1940 and the rules made there under- Inspection conducted at M/s MedPlus Pharmacy, unit of Ritemed Phama Retail Pvt Ltd. No.719, Ground Floor, T.H Road, New Washermenpet, Chennai 81 - Certain Contraventions noticed-show cause notice-Explanation requested-regarding.

Ref 1. Your Office Ref No 329/2011/ADDC/Z1 dt. 22.02. 2011 of the complaint letter received.

2. Letter Of 21.01.2012 of the Complainant.

3 Inspection conducted on 03.04.2012.

4 Memo Dt. 03.04.2015 for production of records us 22(1) (cca)

5 Statement Dt. 03.04.2012 the person incharge



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With reference to your above show cause notice we would like to state as under:

- 1. Optival Health Solutions Private Limited is operating around 1200 outlets across all over India under the brand 'Medplus Pharmacy serving over millions of customers per day across India.*
- 2. In Chennai, we are operating more than 100 retail outlets in Chennai, Tamil Nadu holding a valid drug licenses from Drug Control Department.*
- 3. With reference to Point No 2 of the memo, the details of the supply of Drugs without the personal supervision of the registered Pharmacist for the period from 29-03-2012 to 03- 04-2014 and on 03-04-2012, as stated in the table in Memo, the registered pharmacist has to go on emergency work and hence the drugs on that date were sold on emergency basis.*
- 4. With reference to Point No. 3 of the Memo, we are maintaining the prescription register as per the Drugs and Cosmetics Act, but due to the heavy rush of the customers/patients, though the drugs were sold under the supervision of the registered pharmacist, the prescription register was not signed on that date by the registered pharmacist. Even the entries in the Bills from Bill No 20121302156000225 dated 03/04/2012 to Bill No.*



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20121302156000235 were not entered.

- 5. with reference to Point No.4, we wish to inform you that all retail outlets are equipped with online billing facility wherein any drug cannot be sold or recorded unless the details required under the Drugs and Cosmetic Act 1940 and rules thereunder were entered into the system. Further, unless and until all the required fields are entered, the system will not even generate an invoice for sale of drugs. Please find attached the sales bills for the medicines listed in table.*

As directed in the memo, please find attached the Purchase documents for the medicines sold by retail as in the table.

We further state that while your good office had pointed out certain deficiencies towards incorporating particulars in the register, your good office may also appreciate the fact that these instances are not regular in nature and all employees working in retail outlets exercises due care and diligence while entering particulars of drugs, pharmaceuticals products, Doctor's name patient's name etc at the time of sale of prescription drugs.

Furthermore, our Company clearly mandates full compliance of all the requirements of the act and rules thereunder at the time of sale of drugs to any customers. Also necessary instructions were also passed on to the retail outlets employees to ensure strict adherence.

Furthermore as desired by your good office, we are furnishing



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the following details:

a. Director's details:

1.	Name	Mr.P.Srinivas
	Age	46 years
	Father's Name	Mr.Sri Ram
	Address	H.No.11-6-56, Survey No.257 & 258/1 Opp: IDPL Railway Siding Road (Moosapet) Kukatpally, Hyderabad 500 037
	Designation	Director
2	Name	Dr. Surendranath Mantena
	Age	46
	Father's name	Mr.M.Satyanarayana Raju
	Address	H.No.11-6-56, Survey No.257 & 258/1 Opp: IDPL Railway Siding Road (Moosapet) Kukatpally, Hyderabad 500 037

b. Details of person responsible for day to day affairs of the company.

Name	Paramesham Kasturi
Residential address	Flat No.U, 2nd Floor, J.S. Towers Periya Panicherry, Kundrathur Road, Chennai 600 122.
Designation	GM - Operations.

c. Certified copy of the resolution nominating the Authorised signatory of Company.

5. Xerox copies of Drug licences in respect of the outlet.

We request you to kindly take the above explanations into consideration and request your good office to close this issue.



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Yours Sincerely,

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for Ritemed Pharma Retails Private Limited

Authorised Signatory"

2.6. P.W.2, after getting sanction for prosecution on 26.03.2015 (Ex.P17), filed a private complaint before the XV Metropolitan Magistrate, George Town, Chennai, in C.C.No.646 of 2015, against the accused for contravening the provisions of 18(c) of the Drugs and Cosmetics Act, 1940 read with Rule 65(2), 65(3)(1), 65(4)(3)(i) & 65(4)(4) of the Drugs and Cosmetics Rules, 1945.

2.7. The learned XV Metropolitan Magistrate, George Town, Chennai, took cognizance of the offences and issued summons to the accused under Section 204 Cr.P.C. On the appearance of the accused, the copies of the case records were furnished to them under Section 207 Cr.P.C.

2.8. In order to bring home the guilt of the accused, the prosecution examined 2 witnesses and marked 19 documents.



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2.9. When the appellants were questioned with regard to the incriminating circumstances appearing in evidence against them under Section 313 Cr.PC, they denied of having committed any offence. However, they did not examine any witness on their side.

2.10. The learned trial court judge after analysing the oral and documentary evidence on record, framed the following two issues:

- i. Whether the prosecution has proved its case?
- ii. If so, whether the accused are liable for punishment under Section 27(d) of Drugs and Cosmetic Act?

The learned trial court Judge found point No.1 in favour of the prosecution and had held as follows:

"Therefore, as far as the charges leveled against the accused are concerned the complainant side properly placed the documents and also corroborative oral evidences. Therefore, accordingly point No.1 is answered in favour of the complainant."

However, while dealing with point No.2, the trial court had held that P.Srinivas (A3) became the Director of the firm on 09.03.2013 as per Form 32 and therefore, A3 cannot be held responsible for the offence that



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took place on 03.04.2012. According to him, show cause notice was not also issued to all the accused and there is no clear and categorical accusation and substantial proof that all the accused are vicariously liable for the offence committed by the 1st accused company. He therefore, acquitted all the accused for the offence under Section 27(d) of Drugs and Cosmetics Act 1940 under Section 255(1) of Cr.P.C.

2.11. Aggrieved over the order of acquittal passed by the trial court, the State has filed the present appeal.

3. Heard Mr.S. Rajakumar, learned Additional Public Prosecutor for the appellant and Mr. M. Mohammed Rafi, learned counsel appearing for the respondents.

4. Section 34 of the Drugs and Cosmetics Act which deals with offences by Companies reads as under:

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



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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 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.

Explanation - For the purposes of this section -

- *(a) "company" means a body corporate, and includes a firm or other association of individuals; and*
- *(b) "director" in relation to a firm means a partner in the firm.*

A bare perusal of Section 34 of the Act makes it clear that if the offence is committed by the Company, in addition to the company, the other categories of persons enumerated therein can also be prosecuted, if it is shown that such person was in charge of and was responsible to the company for the conduct of the business of the company. Therefore, to



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prosecute the other categories of persons as enumerated under Section 34 of the Act, the condition precedent is that such person must have been in charge of, and was responsible to the Company for the conduct of the business of the Company. For that purpose, there should be specific averments made in the complaint. In the instant case, the authorised signatory of Ritemed Pharma retail Private Limited in his reply dated 24.02.2015 had admitted that Mantena Surendranath (A2), P.Srinivas (A3) are the directors of the 1st accused company. Nowhere in the reply dated 24.02.2015, it is stated that P.Srinivas was not in charge of the affairs of the company on the date of the commission of offence. The accused did not also file any records to prove that A3 became the Director of the Company only on 09.03.2013. Though the photostat copy of Form 32 is found in the records, the accused did not take steps to mark the said document as an exhibit. The trial court judge had acquitted A3 mainly on the ground that he was not in charge of the affairs of the company on the date of occurrence, merely relying on an unmarked document. Furthermore, the trial court judge had also acquitted the other accused on the ground that the notices sent to the other accused was received only by A2 and therefore it has to be construed that no showcause notice was served on A3 and A4. It was also held by the trial



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court that the prosecution has not established that the offence was committed with the knowledge of A1 and A2.

5. Mr. M. Mohammed Rafi, learned counsel for the respondents contended that though the inspection was conducted on 03.04.2012, showcause notice was issued only on 09.02.2015 and thus there is a delay of almost three years in sending the showcause notice, which vitiates the case of the prosecution. In the instant case, the authorised signatory of the 1st accused company had admitted in his reply notice (Ex.P16) dated 24.02.2015 as follows:

"----

3. With reference to Point No 2 of the memo, the details of the supply of Drugs without the personal supervision of the registered Pharmacist for the period from 29-03-2012 to 03- 04-2014 and on 03-04-2012, as stated in the table in Memo, the registered pharmacist has to go on emergency work and hence the drugs on that date were sold on emergency basis.

4. With reference to Point No. 3 of the Memo, we are maintaining the prescription register as per the Drugs and Cosmetics Act, but due to the heavy rush of the customers/patients, though the drugs were sold under the supervision of the registered pharmacist, the prescription register was not signed on that date by the registered



pharmacist. Even the entries in the Bills from Bill No 20121302156000225 dated 03/04/2012 to Bill No. 20121302156000235 were not entered.

5. with reference to Point No.4, we wish to inform you that all retail outlets are equipped with online billing facility wherein any drug cannot be sold or recorded unless the details required under the Drugs and Cosmetic Act 1940 and rules thereunder were entered into the system. Further, unless and until all the required fields are entered, the system will not even generate an invoice for sale of drugs. Please find attached the sales bills for the medicines listed in table."

Therefore, it cannot be stated that the accused are prejudiced by the delay in issuance of showcause notice. It is also pertinent to point out that the trial court had held that the prosecution had proved all the charges. The trial court acquitted the accused only on technical grounds and also based on an unmarked document as stated above.

6. In the result,

- i. The appeal stands disposed of and the judgment and orders dated 19.12.2016 passed by the learned XV Metropolitan Magistrate, George Town, Chennai, in C.C.No.646 of 2015, is set aside.
- ii. The case is remitted back to the trial court with a direction to the



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trial court to give reasonable opportunity to both the prosecution as well as the defence to substantiate their respective contentions.

The trial court shall dispose of the case within three months from the date of receipt of a copy of this order/uploading of this order.

- iii. The case should be posted on day to basis.
- iv. The accused 1 to 5 shall appear before the trial court on 15.07.2024, failing which the trial court shall take necessary steps to secure the presence of the accused.

13.06.2024

bga
Index : yes/no
Speaking /Non speaking Order

R.HEMALATHA, J.

bga

To



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1. The XV Metropolitan Magistrate, George Town, Chennai
2. The Public Prosecutor, High Court, Madras.
3. The Section Officer, Criminal Section, High Court, Madras

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