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Criminal Original Petition No.3 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Criminal Original Petition No.3 of 2024

&

Crl.M.P.No.12 of 2024

- 1.M/s.Helax Health Care Private Limited,
Khasa No.410, Vill-Karondi,
Roorkee-247667, Distt-Haridwar (U.K),
represented by its Director Mr.Shiv Gupta
- 2.Shiv Gupta, Director of M/s.Helax Health Care Private Limited,
Khasa No.410, Vill-Karondi,
Roorkee-247667, Distt-Haridwar (U.K).
- 3.Harsh Gupta, Director of M/s.Helax Health Care Private Limited,
Khasa No.410, Vill-Karondi,
Roorkee-247667, Distt-Haridwar (U.K).
- 4.Alakniranja Mishra
Technical Director cum person responsible
for the conduct of the business of
M/s.Helax Health Care Private Limited,
Khasra No.410, Vill-Karondi,
Roorkee-247667, Distt-Haridwar (U.K).
5. Vipul Sachdeva, Proprietor of



Criminal Original Petition No.3 of 2024

M/s.Medics Lifecare,
386, Solanipuram,
Roorkee- 247667, Uttarakhand.

... Petitioners

Vs.

The State of Tamil Nadu represented by
The Drugs Inspector, Thiruvarur Range,
Office of the Asst. Director of Drugs Control,
Thanjavur Zone, No.2975, Gandhiji Road,
Thanjavur – 613 001.
(C.C.No.77 of 2023)

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the records relating to the complaint in C.C.No.77 of 2023, filed by the Drugs Inspector, Thiruvarur Range, Office of the Asst. Director of Drugs Control, Thanjavur Zone, No.2975, Gandhiji Road, Thanjavur – 613 001, pending before the Chief Judicial Magistrate, Thiruvarur and to quash the same.

For Petitioners : Mr.K.Ramanraj

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER



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On consent given by either side, the main petition itself is taken up for final hearing.

2. The respondent filed a private complaint against A1 to A5 for the alleged contravention of Section 18(a)(i) r/w Section 17(c), Section 18(b) and Section 18(a)(i) of the Drugs and Cosmetics Act, 1940 [hereinafter referred to as 'the Act'] r/w Rule 84 (E) of the Drug Rules, 1945, for having manufactured and sold a drug, which is not of standard quality and which was also a misbranded drug and for not having furnished the records, which are punishable u/s.27(d) and 28(A) of the Act.

3. The case of the prosecution is that an inspection was conducted by the Drugs Inspector in a medical shop. During the course of inspection, paracetamol tablets were taken as sample and one portion was handed over to the owner of the shop and the other portion was sent for analysis to the Government Analyst. On analysis, the Government Analyst found that the sample does not conform to the specifications and it is not of standard



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quality and it has also been misbranded. In the light of this report, show cause notices were sent to various suppliers including A1 and A5. A1 and A5 gave their reply.

4. The third portion of the sample that was seized was sent to the first petitioner (A1) on 09.06.2022. The second portion of the sample was sent to the Central Drugs Laboratory for analysis u/s.25(4) of the Act. On receipt of the analyst report, it was found that the sample does not conform to the specification and it was found to be not of standard quality and it was also misbranded. Hence, the proposal for prosecution was submitted to the Director of Drugs Control, Chennai and sanction to prosecute was obtained through the sanction order dated 21.04.2023. Pursuant to the same, a complaint came to be filed as against five accused persons.

5. Heard Mr.K.Ramanraj, learned counsel for petitioners and Mr.A.Damodaran, learned Additional Public Prosecutor, appearing for respondent.

6. The main ground that was urged by learned counsel for petitioners



is that there is absolutely no allegation against A2 and A3 in this case. Even in the complaint, the contravention has been put against A1, A4 and A5 and not against A2 and A3. Learned counsel, therefore, contended that the complaint as against A2 and A3 does not specify the ingredients u/s.34 of the Act and the same is liable to be quashed. To substantiate his submissions, learned counsel also relied upon the judgment of this Court in CrI.O.P.No.23629 of 2016, dated 21.01.2022.

7. Learned counsel for petitioners further submitted that even insofar as the other accused persons are concerned, the second portion of the sample was sent to the Central Drugs Laboratory only on 05.04.2023, whereas, samples were taken as early as on 27.01.2022. The expiry date of the sample was April 2023, whereas, the analysis report was received from the Central Drug Laboratory only on 10.05.2023 much beyond the expiry date of the sample. Therefore, it was contended that the complaint itself is not sustainable and the entire proceedings are vitiated.

8. *Per contra*, learned Additional Public Prosecutor appearing on



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behalf of respondents submitted that A2 and A3 were admittedly the directors of the company (A1) and this is a case which involves selling a drug which was found not of standard quality and was also misbranded. Therefore, learned Additional Public Prosecutor submitted that A2 and A3 must necessarily face the prosecution.

9. Insofar as the other ground raised by learned counsel for petitioner, learned Additional Public Prosecutor submitted that the analysis was done by the Central Drugs Laboratory between 24.04.2023 and 28.04.2023, which is well within the shelf life of the drug and therefore, the report cannot be faulted just because the report was received on 20.05.2023 beyond the shelf life period. Learned Additional Public Prosecutor submitted that this case involves serious allegations of a drug being sold which is not of a standard quality and which is also misbranded. Therefore, it is contended that the accused persons must necessarily face the prosecution and requested this Court to dismiss the present petition.

10. This Court has carefully considered the rival submissions and the



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materials available on record.

11. The first contention that was raised on the side of petitioners is that there is absolutely no allegation whatsoever against A2 and A3 and the requirements u/s.34 of the Act has not been complied with. This Court has carefully gone into the entire allegations made in the complaint. Except for stating that A2 and A3 were the directors of A1 company at the time of manufacturing of the drug, there is not even a single allegation against these two accused persons in the entire complaint. That apart, even insofar as the contravention of the provisions of the Act, it is only alleged as against A1, A4 and A5. In the considered view of this Court, vicarious liability cannot be fastened against A2 and A3 automatically without fulfilling the requirements u/s.34 of the Act. There must be some allegation in the complaint to the effect that A2 and A3 were responsible for the conduct of the business of the company or were in charge of the day-to-day affairs of the company during the relevant point of time. In this case, A4 has been added as an accused mainly on the ground that he was a technical director, who was responsible



for the conduct of the business of A1 company. In view of the same, without any specific allegation made against A2 and A3 in the complaint, the criminal proceedings cannot proceed further against them and it will clearly amount to abuse of process of Court. Useful reference can also be made to the judgment of the Apex Court in ***Lalankumar Singh & others v. State of Maharashtra [2022 SCC OnLine SC 1383]***.

12. Insofar as the other ground that was raised by learned counsel for petitioner to the effect that the report itself was received from the Central Laboratory after the shelf life of the drug. This ground requires factual determination based on evidence. This, in view of the fact that analysis of the drug had taken place between 24.04.2023 and 28.04.2023, which is well within the shelf life of the drug. In any event, this Court does not want to render a finding on this issue. It is left open to the other petitioners viz., A1, A4 and A5 to raise all the grounds before the Court below.

In the light of the above discussion, this Criminal Original Petition is partly allowed and the proceedings as against A2 and A3 alone is quashed.



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Insofar as A1, A4 and A5, they have to face the proceedings and it is left open to them to raise all the grounds before the Court below. These accused persons will be permitted to appear through their counsel and they will appear before the Court below as and when required and at the time of questioning u/s.313 Cr.P.C. and at the time of final judgment. Learned counsel appearing on behalf of these accused persons shall cross-examine the witnesses on the same day when they are examined in chief without taking any adjournment and delaying the proceedings. Consequently, connected miscellaneous petition is closed.

04.01.2024

Index : Yes/No
Speaking Order/Non-speaking Order
Neutral Citation : Yes/No
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Criminal Original Petition No.3 of 2024

N.ANAND VENKATESH, J

gm

To

- 1.The Chief Judicial Magistrate,
Thiruvarur.
- 2.The Drugs Inspector, Thiruvarur Range
Office of the Assistant Director of Drugs Control
Thanjavur Zone, No.2975, Gandhiji Road
Thanjavur – 613 001
- 3.The Public Prosecutor,
High Court of Madras.

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