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Crl.O.P.(MD).No.1308

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD).No.1308 of 2022
and
Crl.M.P.(MD).Nos.947 & 949 of 2022

Ajay Bhatia,
Director of
M/s.Laborate Pharmaceuticals India Limited,
Plot No.31, Rajban Road,
Nariwala,
Sirmour,
Himachal Pradesh-173025.

...Petitioner

Vs.

State represented by
the Drugs Inspector,
Tirumangalam II Range,
Office of Assistant Director of Drugs Control,
No.5, Ramaiya Street,
Shenoy Nagar,
Madurai-20.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to quash the proceeding against the petitioner in S.T.C.No. 3756 of 2021 on the file of the learned Judicial Magistrate No.II, Madurai against the petitioner is concerned.



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For Petitioner

: Mr.V.Meenakshisundaram

For R-1

: Mr.S.Ravi,
Additional Public Prosecutor

ORDER

This petition has been filed challenging the proceedings in S.T.C.No.3756 of 2021 before the learned Judicial Magistrate No.II, Madurai.

2. The respondent has filed a private complaint against the Company, its Director and the Vice President of the Company for contravention of Section 18 (a) (i) of the Drugs and Cosmetics Act 1940 (hereinafter referred to as 'the Act') and punishable under Section 27(d) of the Act.

3. The case of the prosecution is that a sample of syrup was drawn for analysis at the premises of M/s. Nalini Traders at Madurai on 29.01.2020 by the Drugs Inspector and it was sent for analysis to the Government Analysis Drug Testing Laboratory, Chennai. After analysis, it was declared that the sample is not of a standard quality as per the Act and Rules. Thereafter, the premises of M/s. Nalini Traders was inspected and at the time of inspection, a show cause memo was issued, for which, a reply was given by M/s. Nalini Traders stating that they had obtained the drug from M/s Sun Medical and Surgicals. A show cause notice was issued to this Company and they gave a reply to the effect that they had obtained the



drug from Accused No.1 Company. Accordingly, a show case notice dated 24.05.2020 was issued to Accused No.1 and ultimately, a reply was given on 07.09.2020 by Accused No.3 raising various grounds and it was also made clear that he is solely responsible for the conduct of the day-to-day business of the Company and for the compliance of the requirements under the Act and Rules.

4. The respondent not being satisfied with the reply received from the accused persons proceeded to file a private complaint.

5. The Director of the Company, who has been added as Accused Nos.2 has filed the present quash petition mainly on the ground that the requirements under Section 34 (2) of the Act has not been satisfied.

6. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent Police.

7. The learned counsel appearing for the petitioner submitted that in the entire complaint there is absolutely no averments as to how and in what manner the petitioner is in-charge and responsible for running the day-to-day affairs of the Company. Therefore, it was contended that the private complaint as against the petitioner is unsustainable.

8. Per contra, the learned Additional Public Prosecutor appearing for the



respondent Police relied upon the judgment of the Hon'ble Apex Court in the case of

Dinesh B.Patel and Others Vs. State of Gujarat and another reported in (2010) 11

SCC 125. He also relied upon the judgment of this Court in the case of ***Laborate***

Pharmaceuticals India Limited Vs. State represented by the Drugs Inspector,

Tondiarpet-II Range, Zone-I, Chennai-600 006 reported in 2016 (2) MWN (Cr.)

535. He also relied upon the judgment of this Court in the case of ***Vikas Rambal,***

Director, Sunrise International Labs Limited Vs. State represented by the Drugs

Inspector, Udumalpat Range, O/o. The Assistant Director of Drug Control,

Coimbatore Zone, 219, Race Course Road, Coimbatore reported in 2022 (3) MWN

(Cr.) 636. He contended that the concept that is applied while interpreting Section

145 of the Negotiable Instruments Act with respect to the role of the Director in

running a Company cannot be applied when it comes to Drugs and Cosmetics Act,

since it involves the public health and it is not a private dispute.

9. In the considered view of this Court, the Hon'ble Apex Court in its latest judgment in the case of ***Lalankumar Singh and Others Vs. The State of Maharastra*** reported in [(2022) SCC Online SC 1383] has categorically held that the complaint has to necessarily contain specific averments insofar as a Director is concerned as to how and in what manner he was in-charge and responsible for running the day-to-day affairs of the Company. The above judgment of the Hon'ble Apex Court was relied upon by me in the case of ***the Crescent Therapeutics Limited***



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and Ors -vs- Union of India reported in *2024 1 MLJ (Crl) 107*.

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10. In the light of the above discussion, insofar as the petitioner (Accused No.2) is concerned, there is non-fulfilment of the requirements under Section 34 (2) of the Act. In view of the same, the criminal prosecution cannot be continued as against the petitioner, since it will amount to abuse of process of law.

11. In the result, the proceedings in S.T.C.No.3756 of 2021 on the file of the learned Judicial Magistrate No.II, Madurai, is quashed insofar as the petitioner is concerned. The Court below can continue with the proceedings as against Accused Nos.1 and 3. The Court below is directed to complete the proceedings in S.T.C.No. 3756 of 2021 on the file of the learned Judicial Magistrate No.II, Madurai, within a period of four months from the date of receipt of a copy of this order.

12. Accordingly, the Criminal Original Petition stands allowed. Consequently, the connected miscellaneous petitions are closed.

26.11.2024

Index : Yes / No
Internet : Yes / No
Speaking Order/Non Speaking Order
TSG



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To
1.The Drugs Inspector,
Tirumangalam II Range,
Office of Assistant Director of Drugs Control,
No.5, Ramaiya Street,
Shenoy Nagar,
Madurai-20.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

N.ANAND VENKATESH, J.



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