



CrI.O.P.(MD)Nos.9147 of 2021 and 9156 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	11.11.2024
Delivered on	18.11.2024

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.(MD) Nos.9147 of 2021 and 9156 of 2021

and

CrI.M.P.(MD) No.4685 of 2021

CrI.O.P.(MD) No.9147 of 2021

1.M/s.Group Pharmaceuticals Ltd.,
Plot No.41, Nasigeren Village,
Kasabahobli, Industrial Area,
Malur – 563 130, India
rep. by its Managing Director
Mr.Sunil Attavar.
2.Mr.Sunil Attavar

... Petitioners/
Accused Nos.1 & 2

Vs.

1.The State Rep. by
Rep. by Drugs Inspector,
Karur Range,
Office of the Assistant Director
of Drugs Control,
Trichy Zone, Trichy – 18.

... Respondent/Complainant



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CrI.O.P.(MD) No.9156 of 2021

1.Mr.K.S.Kallelur Rahman

2.Mr.S.Mohammed Halith

3.Mr.P.Jayakumar

4.M/s.Group Pharmaceuticals Ltd.,
299, Sydenhams Road,
Apprao Garden, Choolai,
Chennai – 600 112.
rep. by its Managing Director
Mr.Sunil Attavar

5.Mr.Sunil Attavar

6.Mr.Lalithkumar Chordia

7.Mr.S.Vikas Bothra

... Petitioners/
Accused Nos.3 to 9

Vs.

1.The State Rep. by
Rep. by Drugs Inspector,
Karur Range,
Office of the Assistant Director
of Drugs Control,
Trichy Zone, Trichy – 18.

... Respondent/Complainant

COMMON PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the entire records in S.T.C.No.713 of 2020 pending on the file of Judicial Magistrate No.1, Karur and quash the same as against the petitioners.



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For Petitioners : Mr.K.P.S.Palanivel Rajan
Senior Counsel
for Mr.P.Ramesh Kumar
(in both petitions)

For Respondent : Mr.S.Ravi
Additional Public Prosecutor
(in both petitions)

COMMON ORDER

These petitions have been filed by A1 to A9 to quash the proceedings pending in S.T.C.No.713 of 2020 on the file of the learned Judicial Magistrate No.1, Karur.

2. Heard Mr.K.P.S.Palanivel Rajan, learned Senior Counsel appearing for the petitioner and Mr.S.Ravi, learned Additional Public Prosecutor appearing on behalf of the respondent.

3. A1 is a company involved in the manufacture of 'Hand Disinfectant'. An inspection was made and the sample was taken for analysis by the Drugs Inspector. It was sent for analysis to the Government Analyst. On analysis, it was reported as “not of standard quality” since the sample does not confirm to the label claim with respect to the content of isopropyl alcohol (79.64%) and chlorhexidine gluconate



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(80.08%) and it also contained methanol (4.89%) and ethanol (1.99%), which is not claimed on the label. A show cause notice was issued along with the Government Analyst report in Form – 13 dated 31.07.2023 for which A1 submitted a reply on 25.08.2020. The company did not express its intention to controvert the Government Analyst's report within 28 days on the receipt of the copy of the report as per Section 25(3) of 'the Drugs and Cosmetics Act, 1940' (hereinafter referred to as 'the Act'). The company also did not express its intention to send the samples to the Central Drugs Testing Laboratory as per Section 25(4) of the Act. In view of the same, the private complaints came to be filed against the accused persons.

4. Insofar as A1 and A2 are concerned, they are said to have committed offences under Sections 18(a)(i) read with Section 17-A(e) of the Act since ethanol and methanol were present in the disinfectant. That apart, A1 and A2 did not furnish the particulars as per Section 18-B of the Act along with the true copy of the drug licences held by them and did not produce the endorsement copy of the subject drug and thereby, contravened Section 18(c) of the Act read with Rule 74 read with



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Condition No.3 of Form – 25 of the Rules. For having manufactured the subject drug with certain products which is not permitted in the licence which is punishable under Section 27(d) of the Act. That apart, the Government Analyst report mentioned that the sample does not confirm to the label claim and hence, there was contravention of Section 18(1)(i) read with Section 17-A of the Act.

5. Insofar as Accused Nos.3 to 9, it is alleged that they have stocked and sold the hand disinfectant manufactured by A1 and hence, they have contravened Section 18(a)(i) of the Act punishable under Section 27(d) of the Act, Section 18(a)(i) read with Section 17(a)(e) of the Act punishable under Section 27(b)(i) of the Act and also Section 18(b) of the Act punishable under Section 27(d) of the Act.

6. The main ground that was raised on the side of the petitioners is that the method that was adopted by the Government Analyst was not correct and therefore, the test report itself is *non est* in the eye of law. It was further contended that the manufacturer has manufactured the product under proper and valid licence and there was



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no violation of any of the provisions of the Act or Rules. The incident had taken place during the pandemic period where the Central Government had issued a notification dated 27.07.2020 to the effect that hand sanitizers are essential to meet the requirements of the emergency arising due to Covid-19 pandemic and therefore, the hand sanitizer was exempted from the requirement of sale licence for its stocking or sale. It was further contended that there is no specific allegation against A2 and there is non compliance of Section 34 of the Act.

7. Insofar as the first ground that the method of analysis conducted was not correct, it is seen from the complaint that the Government Analyst had adopted the proper method as provided under the Act and Rules and the same has been explained in the complaint as well as in the written arguments submitted by the respondents. At this stage, this Court can only see if *prima facie* material is available to show that proper analysis has been done. The Court cannot get deeper into this issue since it is a matter of fact and can be established only during the course of trial.



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8. Insofar as the Government Analyst report, the petitioners did not opt for sending the analyst report within 28 days to the Central Drugs Testing Laboratory and thereby, they did not question the report which found various contraventions. Therefore, it is too far fledged for the petitioners to question the report in these quash petitions.

9. The notification of the Central Government that was relied upon cannot be read to the extent that even hand sanitizers which contains harmful ingredients like ethanol and methanol, can be sold during the pandemic period. The relaxation given by the Central Government will not enable someone to stock or sell a product which has been found by the Government Analyst to be not of standard quality.

10 .The second petitioner (A2) is the Managing Director of the company. Therefore, the very position that has been held by A2 satisfies the requirement under Section 34 of the Act. It is not necessary to state specifically that the Managing Director was responsible to the company for the conduct of business and incharge of the company. The



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very position held by A2 satisfies the requirement.

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11. The grounds that are raised by the petitioners are all factual in nature and the same cannot be gone into in these quash petitions. The Court must be wary in cases where it involves an offence under the Drugs and Cosmetics Act since public interest is involved. In the instant case, hand disinfectant is used regularly by the general public and it gets directly exposed to the skin and therefore no chance can be taken. The complaints that are filed in this regard should not be quashed casually unless some strong grounds are made out.

12. In the light of the above discussion, this Court does not find any ground to quash the criminal complaint filed against the petitioners. All the grounds that have been raised by the petitioners are factual in nature and hence, it is left open to the petitioners to raise all the grounds before the Court below and the same will be considered on its own merits and in accordance with law. Any observations made in this order will not have any bearing while the Court below decides the case on merits.



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13. The learned Senior Counsel for the petitioners requested this Court to dispense with the appearance of the petitioners. Considering the said submission, the appearance of the petitioners is dispensed with and they will be permitted to appear through their counsel. They shall appear before the Court as and when required, at the time of questioning under Section 313 of Cr.P.C. and at the time of final judgment. The learned counsel appearing on behalf of the petitioners shall cross-examine the witnesses on the same day they are examined in chief.

14. In the result, the above Criminal Original Petitions are dismissed and the learned Judicial Magistrate No.1, Karur, is directed to dispose of the case in S.T.C.No.713 of 2020 within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

18.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PKN

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- To
- 1.The Drugs Inspector,
Karur Range,
Office of the Assistant Director of Drugs Control,
Trichy Zone, Trichy – 18.
 - 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH,J.

PKN

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Dated: 18.11.2024