



Crl.O.P.No.4541 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.4541 of 2023
and Crl.M.P.Nos.2848 and 2850 of 2023

1. M/s.Relief Biotech Pvt Ltd.,
Represented By Its Managing Director
Cum Authorised Person Mr.Atul Kumarjain

2. Atul Kumar Jain

... Petitioners

Vs

The Tamil Nadu State,
Rep By Its Drugs Inspector,
Thiruttani Range
i/e. Office of The Assistant Director of Drugs Control,
Thiruvallur Zone, No.201,
J.N.Road, 1st Floor, Vishnu Complex,
Thiruvallur District - 602 001.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C/ 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to set aside the committal proceedings initiated by docket order dated 04.11.2022 passed by the Learned Chief Judicial Magistrate, Tiruvallur converting the C.C.No.116 of 2021 into PRC.NO.66 of 2022.

For Petitioners : Mr.P.Ramesh Kumar

For Respondent : Mr.R.Vinothraja

Government Advocate (Crl.side)



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ORDER

This Criminal Original Petition has been filed to set aside the committal proceedings initiated by docket order dated 04.11.2022 passed by the Learned Chief Judicial Magistrate, Tiruvallur converting the C.C.No.116 of 2021 into PRC.NO.66 of 2022.

2. Heard the learned counsel appearing on either side and perused the materials placed on record.

3. The petitioners are the accused in the complaint lodged by the respondent for the offences under Section 18(a)(i) read with Section 27(d) of the Drugs and Cosmetics Act, 1940, alleging that on 27.01.2020 the sample of Cephalexin Capsules was drawn for analysis from Government Urban Primary Health Centre, Thiruttani and the same was sent for analysis on the same day. Thereafter, from the report dated 25.02.2020, the sample was declared as “not of standard quality” for the reason that the sample does not confirm to label claim with respect to the content of Cephalexin Anhydrous and Dissolution. Therefore, the



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respondent issued a show cause notice dated 05.03.2020 to the accused.

The accused, by their reply dated 12.03.2020 failed to agree the report of the Government Analyst. Hence, the complaint.

4. After taking cognizance by the learned Chief Judicial Magistrate, Tiruvallur, the accused were served with the copies. However, by the docket order dated 04.11.2023, the calendar case was converted to PRC.No.66 of 2022 stating, since the complaint falls under Chapter IV of the Drugs and Cosmetics Act, 1940 and as per Section 32 of the Drugs and Cosmetics Act, 1940, the case should be tried only by the Court of Sessions.

5. Similar issue was already dealt with by this Court in Crl.O.P.No.13125 of 2022 dated 04.01.2024 wherein this Court held as follows:-

" 3. Chapter IV of the Act covers the provisions which provides for the Courts which can take cognizance of the offence and deal with the case. Section 32 of the Act deals with cognizance of offences and Section 32(2) of the Act is extracted hereunder:

32.Cognizance of offences.



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..
(2) *Save as otherwise provided in this Act, no Court inferior to that of a Court of Session try an offence punishable under this Chapter.*

4. *It is clear from the above provision that no Court inferior to that of a Court of Session can try any offence punishable under Chapter IV, save as otherwise provided in the Act. This would mean that if there is any other provision under the Act which enables some other Court to try the offence, Section 32(2) of the Act will have to yield to that provision.*

5. *The other provisions which have to be taken into consideration are Sections 36A and 36AB. Section 36A deals with certain offences which can be tried summarily. This provision was brought in through an amendment made by Act 68 of 1982 which came into effect from 01.02.1983. The provision itself start with a non-obstante clause and its states that the offences punishable with imprisonment for a term not exceeding three years, other than an offence under Clause(b) of Sub-section (1) of 33-I, can be tried in a summary manner by a Judicial Magistrate of the first class especially empowered in this regard by the State Government or by a Metropolitan Magistrate. The provision also makes it clear that the Magistrate Court must follow the provisions of Sections 262 to 265 of Cr.P.C., while conducting the summary proceedings.*

6. *It is quite apparent from the above provision that Section 36A is one exception to Section 32(2) of the Act. Whatever offences fall within the scope of Section 36A can be dealt with by means of summary proceedings by the Judicial Magistrate of first class especially empowered by the State Government or by any Metropolitan Magistrate. Paragraph 15 of the order does not deal with cases of this nature and it is made*



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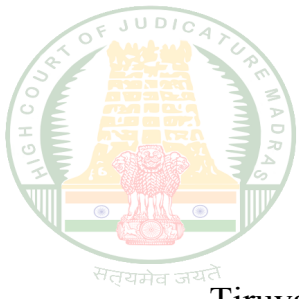
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clear that the cases which falls within the scope of Section 36A will be tried only by the notified Judicial Magistrate of first class or by any Metropolitan Magistrate and it does not require any committal to the Sessions Court.

7. The Second category which is also an exception to Section 32(2) of the Act are those cases which are falling under Section 36AB. This provision was brought into force through Act 26 of 2008 w.e.f., 10.08.2009. There are certain specified offences relating to adulterated drugs or spurious drugs which can be tried before the Special Courts. Such Special Courts must be constituted / designated by a notification by the Central Government or the State Government in consultation with the Chief Justice of the High Court. Wherever, such Special Court is constituted and the offences contemplated under Section 36AB is committed, it can be tried only before the Special Court.

8. To make it more clearer, only those cases which do not fall within the scope of Section 36A and Section 36AB, will come within the scope of Section 32(2) of the Act. Only such cases can be tried by the Court of Sessions as contemplated under Section 32(2) of the Act. This clarification will sufficiently take care of the prevailing confusion and a copy of this order shall be marked to the Principal District Judges across the State of Tamil Nadu. The cases shall be taken cognizance by the concerned Courts in line with the clarification issued in this order."

6. In the light of the above clarification, the impugned order cannot be sustained and is liable to be quashed. Accordingly, the docket order dated 04.11.2022 passed by the Learned Chief Judicial Magistrate,



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Tiruvallur, is hereby quashed. The learned Chief Judicial Magistrate, Tiruvallur is directed to proceed with the Trial in C.C.No.116 of 2021 in the light of the provisions under Section 36(A) of Drugs and Cosmetics Act, 1940 and complete the trial, within a period of six months from the date of receipt of a copy of this order.

7. Accordingly, this Criminal Original Petition stands allowed.

Consequently, connected Miscellaneous petitions are closed.

04.02.2025

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
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To

1. The Chief Judicial Magistrate, Tiruvallur.
2. The Drugs Inspector,
Thiruttani Range,
i/e. Office of The Assistant Director of Drugs Control,
Thiruvallur Zone, No.201,
J.N.Road, 1st Floor, Vishnu Complex,
Thiruvallur District - 602 001.
3. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN. J.

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