



Crl.R.C.No.239 of 2022

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED: 25.11.2025

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

Crl.R.C.No.239 of 2022

Sivaraj

Proprietor for M/s.Siva Medicines,
No.1A, Kailasanathar Kovil South Street,
Valangaiman,
Thiruvarur District.

... Petitioner

Vs

The State of Tamilnadu,
Rep. by the Drug Inspector,
Mannarkudi Range I/C,
Office of the Assistant Director of Drugs Control,
Thanjavur Zone.
No.2975, Gandhiji Road,
Thanjavur – 613 001.

... Respondent

Prayer: Criminal Appeal filed under Sections 397 r/w 401 of Code of Criminal Procedure, 1973 to call for the records and set aside the judgment in Criminal Appeal No. 1 of 2020 dated 29.11.2021 on the file of the Principal District & Session Judge, Thiruvarur in confirming the judgement made in C.C.No. 3 of 2018 dated 01.11.2019 on the file of the Chief Judicial Magistrate, Thiruvarur and acquit the petitioner from all the charges.

For Petitioner : Mr.I.Abrar Mohamed Abdullah

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor



Crl.R.C.No.239 of 2022

ORDER

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This revision is filed against the judgment of the learned Chief Judicial Magistrate, Thiruvarur dated 01.11.2019 made in C.C.No.03 of 2018 and the judgment of the Principal District and Sessions Judge, Thiruvarur dated 29.11.2021 made in C.A.No.1 of 2020.

2. By the aforementioned judgment, the trial Court had found the petitioner guilty of the offence punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940 read with Rules 65(2), 65(3) and 65(4)(3)(1) of the Drugs and Cosmetics Rules and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.20,000/- for each rules, totalling Rs.60,000/-, and in default of payment of fine, to undergo one month simple imprisonment.

3. The case of the prosecution is that this is a private complaint filed by the Drug Controller under Section 200 of the Code of Criminal Procedure, 1973 alleging an offence under Section 27(d) of the Drugs and Cosmetics Act read with Rules 65(2), 65(3) and 65(4)(3)(1) of the Drugs and Cosmetics Rules, 1940. As per the complaint, the accused is running a pharmacy at Kailasanathar Temple South Street, Valangaiman. On 13.06.2015, when an

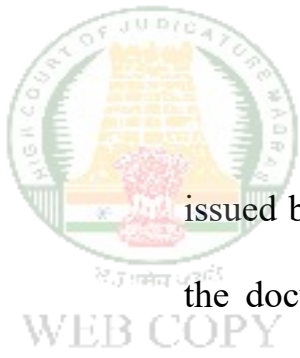


Crl.R.C.No.239 of 2022

inspection was made, it was found that from 01.05.2015 to 13.06.2015, drugs were dispensed to the public without the supervision of a qualified pharmacist.

Secondly, certain drugs were dispensed and sold without maintaining proper cash credit memos and registers. The said action on the part of the petitioner/accused amounts to violation of the Rules and consequently an offence punishable under the Act. Accordingly, when show cause notice was issued, the accused replied stating that the pharmacist had gone to his native place on account of illness and could not return to manage the pharmacy. Therefore, considering that reply and the fact that the drugs were dispensed without the supervision of a pharmacist and the cash credit memos and records were not maintained as per the Rules in respect of the drugs mentioned in the show cause notice, the complainant concluded that the offence was made out and accordingly filed the private complaint.

4. The accused pleaded not guilty and chose to contest the case. The Drug Controller who inspected the premises, namely *Dhanabal*, was examined as P.W.1, and *Sabita*, the other Drug Controller who concluded the proceedings later, was examined as P.W.2. Exs.P1 to P20 were also marked. Upon being questioned about the incriminating circumstances and material evidence on record, the accused denied the same as false. Thereafter, no evidence was presented on behalf of the defence. The trial Court, considering the reply



Crl.R.C.No.239 of 2022

issued by the accused, the inspection report, the evidence of P.W.1 and 2, and the documentary evidence including the receipts for buying and selling the drugs and the omission to enter the same in the cash credit memos/registers, concluded that the accused was guilty of the offence and imposed the sentence as aforementioned. Aggrieved by the same, when appeal was filed, the appellate Court, after reappreciating the evidence, confirmed the conviction and sentence against the accused.

5. *Mr.I.Abrar Mohamed Abdullah*, the learned counsel appearing on behalf of the petitioner, though initially started arguing the matter on merits, when this Court pointed out the evidence on record, thereafter made a plea that instead of sentencing the accused, he may be released on probation. The learned counsel relied upon the judgment of the Honourable Supreme Court of India in *Lakhvir Singh etc. vs. The State of Punjab and Another (Crl.A.Nos.47-48 of 2021)*, more specifically paragraphs 11 to 13, to contend that unless a particular statute specifically takes away the benefit under the Probation of Offenders Act, 1958, the same can be extended even where a minimum punishment is prescribed under the statute. The learned counsel submitted that the petitioner is eking out his livelihood by running the pharmacy.



Crl.R.C.No.239 of 2022

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6. The learned counsel placed strong reliance on the reply given by the petitioner to contend that the petitioner was honest enough not to make any false plea and that he had stated the truth before the authorities. Though that cannot be a ground for acquitting the accused, it can be considered for showing his good conduct. The learned counsel further submitted that now the pharmacy is run strictly in accordance with the Act and Rules. A pharmacist by name *K. Manikandan* has been appointed and is present in the pharmacy and without his supervision no drug is sold or dispensed. The petitioner has realised his mistake and shown remorse. The learned counsel also submitted that though the petitioner has paid the fine amount, he will not seek refund of the same.

7. Per contra, *Mr.S.Sugendran*, the learned Additional Public Prosecutor, contended that the prosecution has proved the offence beyond doubt. The relevant registers and bills were produced and the show cause notice and reply given by the accused were also marked. The trial Court and lower appellate Court have considered the offence as proved. With reference to releasing the petitioner on probation, the learned Additional Public Prosecutor is not in a position to dispute the fact that the incident relates only to the non-presence of



Crl.R.C.No.239 of 2022

the pharmacist for 13 days and does not relate to any issue of sub-standard medicines being dispensed. Therefore, when this Court pointed out that this is a fit case for extending the benefit, he stated that the petitioner has no other antecedents, which is also confirmed on behalf of the prosecution.

8. Under these circumstances, this Court directed that a Probation Officer's Report be obtained. Thereafter, the Probation Officer's Report dated 25.11.2025 was also obtained. As per the Probation Officer's Report, the petitioner has a permanent abode and is living with his parents, father aged about 80 years and mother aged about 68 years, along with his wife and two young children aged 13 years and 7 years. He is eking out his livelihood by earning from his pharmacy. The report states that since the petitioner is leading a lawful life, an opportunity can be granted by releasing him on probation. The report is taken into account.

9. Considering the nature of the violation that is alleged, the explanation rendered by the petitioner and his subsequent conduct, I am of the view that this is a fit case where the accused can be released on probation under the provisions of the Probation of Offenders Act, 1958.



Crl.R.C.No.239 of 2022

10. In view thereof, this criminal revision is ***partly allowed***. The finding of guilt for the offence under Section 27(d) of the Drugs and Cosmetics Act, 1940 read with Rules 65(2), 65(3) and 65(4)(3)(1) of the Drugs and Cosmetics Rules, 1940 by the trial Court in C.C.No.3 of 2018 dated 01.11.2019 and the appellate Court in Crl.A.No. 1 of 2020 dated 29.11.2021 shall stands confirmed. However, without proceeding to further sentence the accused, after admonition, the accused is released on probation under the provisions of the Probation of Offenders Act, 1958, on the following condition:

(i) The accused shall appear before the trial Court and execute a bond undertaking good conduct, stating that he will run the pharmacy without violating any Rule whatsoever, with the presence of the duly registered pharmacist and shall maintain the undertaking for a period of one year, failing which he shall appear before this Court to take the sentence.

(ii) The undertaking given on behalf of the petitioner that he will not claim refund of the fine amount already paid is also recorded.

25.11.2025

Neutral Citation: Yes/No
nsl



Crl.R.C.No.239 of 2022

To

1. The Principal District & Session Judge, Thiruvarur.

2. The Chief Judicial Magistrate, Thiruvarur.

3. The Drug Inspector,
Mannarkudi Range I/C,
Office of the Assistant Director of Drugs Control,
Thanjavur Zone.
No.2975, Gandhiji Road,
Thanjavur – 613 001.

4. The Public Prosecutor
High Court of Madras.



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Crl.R.C.No.239 of 2022

D.BHARATHA CHAKRAVARTHY, J.

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Crl.R.C.No.239 of 2022

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