



Crl.O.P.No.2503 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2025

CORAM:

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

Crl.O.P.No.2503 of 2025
and Crl.M.P.Nos.1587 & 1589 of 2025

M/s. Grus Pharmaceutical Distributors,
Rep. by its Proprietor
Haribabu,
Dooe No.2192, Ground Floor and
First Floor, Kurunji Nagar,
Sourashtrapuram,
Vandiyur, Madurai – 625 020.

... Petitioner

Vs.

M/s.Xemex Pharmaceuticals Pvt. Ltd.,
Rep by its Director,
P.S.Sivakumar,
Xemex Towers, Plot No.34,
1st Street, Manikodi Srinivasa Nagar,
Perungudi, Chennai – 600 096.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records relating to proceedings in the C.C.No.41 of 2024 dated 17.04.2023 on the file of the learned Fast Track Court, Magistrate Lavel, Alandur and quash the same.

For Petitioner : Mr.V.Karthikeyan
For Mr.T.Antony Arul Raj



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ORDER

This Criminal Original Petition has been filed to quash the proceedings in the C.C.No.41 of 2024 on the file of the Fast Track Court, Magistrate Lavel, Alandur, thereby taken cognizance for the offences punishable under Sections 138 & 142 of the Negotiable Instruments Act, 1881 (herein after referred to as “the NI Act”), as against the petitioner.

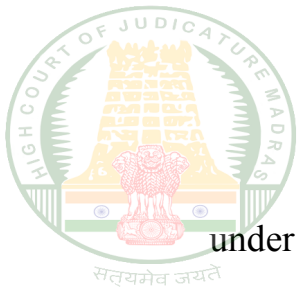
2. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Sections 138 & 142 of the NI Act. The respondent is a company which engaged in the business of marketing pharmaceuticals drugs. It is alleged that the petitioner was referred by the respondent’s representative and the petitioner had intention to be a distributor of the complainant’s products and to buy the products as a distributor and sell it to the complainant’s customer. Agreeing with the same, the respondent supplied the goods from time to time. However, the petitioner failed to clear the payments dues and further insisted the respondent to supply the goods. While being so, on 07.01.2023, the respondent categorically stated that the supply cannot be made without clearing the outstanding dues to the tune of Rs.39,55,008/-



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as on 06.01.2023. In order to clear the outstanding amount, the petitioner had issued three cheques and requested the respondent to present the cheques for collection. On the assurance given by the petitioner, the respondent presented those cheques on different dates and they were returned dishonoured for the reason that “payment stopped by drawer”. After causing statutory notice, the respondent lodged complaint and the same has been taken cognizance by the trial Court in S.T.C.No.41 of 2024.

3. The learned counsel appearing for the petitioner submitted that according to the respondent, the first cheque bearing No.00118 dated 18.02.2023 was presented on 24.02.2023 and the same was returned on 27.02.2023. The second cheque bearing No.00120 dated 23.02.2023 was presented for collection and the same was returned on 01.03.2023. Likewise, the third cheque bearing No.00121 dated 28.02.2023 was also returned on 01.03.2023. For all the three cheques, the respondent caused only one notice dated 25.03.2023. He also produced the return memo dated 20.02.2023 for the cheque bearing No.00118. Therefore, insofar as the first cheque is concerned the statutory notice was caused after the period of 30 days from the returning of the cheque and the notice issued

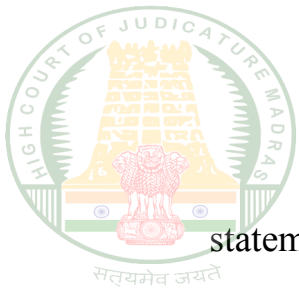


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under Section 138 of the NI Act itself is barred by limitation. Therefore, the trial Court ought not to have taken cognizance.

4. On perusal of the records, it is revealed that according to the respondent, the first cheque was returned by the return memo dated 27.02.2022 and the second and third cheques were returned on 01.03.2022. For all the three cheques, the respondent caused legal notice on 25.03.2023. February, 2023 consists only 28 days. Therefore, the statutory notice was caused within a period of 30 days and there is absolutely no question of barred by limitation. Further, the petitioner did not whisper about the above ground in the reply notice. That apart, the documents produced by the petitioner herein cannot be tested by this Court especially, under Section 528 of BNSS.

5. The Hon'ble Supreme Court of India in the judgment reported in **2019 (4) SCC 351** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr., (Crl.A.No.579 of 2019 dated 02.04.2019)** while dealing with the petition to quash the entire criminal proceedings held that the High Courts have no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their

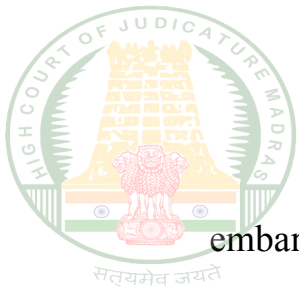


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statements and therefore, there was no *prima facie* case made out as against the accused. It could be done only by the trial Court while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order that the charge sheet has been laid on the basis of the inconsistency statement under Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

6. Further, the Hon'ble Supreme Court of India in the judgment reported in **2019 (10) SCC 686** in the case of ***Central Bureau of Investigation Vs. Arvind Khanna, (Crl.A.No.1572 of 2019*** dated 17.10.2019) held that the High Courts cannot record the findings on the disputed facts. The defence of the accused is to be tested after appreciation of evidence by the trial Court during the trial. Therefore, this Court has no power to consider the disputed facts under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

7. The Hon'ble Supreme Court of India in another judgment dated **02.12.2019** passed in ***Crl.A.No.1817 of 2019*** in the case of ***M.Jayanthi Vs. K.R.Meenakshi & anr,*** held that while considering the petition for quashment of complaint or charge sheet, the Court should not



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embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. Further, the Court can also see whether the preconditions requisite for taking cognizance have been complied with or not and whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged. Whether the accused will be able to prove the allegations in a manner known to law would arise only at a later stage i.e., during trial.

8. Further this Court cannot observe at this stage whether the initiation of criminal proceeding itself is malicious or not. The same is required to be considered at the conclusion of the trial. Therefore, the ground raised by the petitioner to quash the final report/charge sheet cannot be entertained to quash the entire proceedings.

9. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.41 of 2024 on the file of the Fast Track Court, Magistrate Lavel, Alandur. The petitioner can very well put forth his defence before the trial Court by adducing evidence. The trial Court is



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directed to complete the trial within a period of six months from the date

of receipt of copy of this Order.

10. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are also closed.

11.03.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

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To

1. Fast Track Court,
Magistrate Lavel,
Alandur



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G.K.ILANTHIRAIYAN, J.

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