



Crl.O.P.No.9883 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2025

CORAM:

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

Crl.O.P.No.9883 of 2025
and Crl.M.P.Nos.6543 and 6544 of 2025

1. M/s Ajanta PharmaLtd.,
represented by Yogesh Mannalal Agarwal
Managing Director

2. Yogesh Mannalal Agarwal

3. RameshBhaupatilKhairnar

4. M/s Ajanta PharmaLtd.,
represented by Yogesh Mannalal Agarwal
Managing Director

5. Yogesh Mannalal Agarwal

... Petitioners

Vs

State of Tamil Nadu
represented by
Drugs Inspector,
Tambaram – 1 Range,
O/o. The Assistant Director of Drugs Control,
Kancheepuram Zone, D.M.S.Campus,
259-261, Anna Salai, Chennai 600 006.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023/Section 482 of Cr.P.C, to call for records in C.C.No.496 of 2022 on the file of the Chief Judicial Magistrate, Chengalpattu and quash the same.



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Crl.O.P.No.9883 of 2025

For Petitioners : Mr.Sathish Parasran, Senior Counsel
for Mr.T.D.Selvan Babu

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.side)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.496 of 2022 on the file of the Chief Judicial Magistrate, Chengalpattu.

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

3. The respondent filed a complaint for the contravention under Section 18(a)(iv) of the Drugs and Cosmetics Act, 1940 (hereinafter called as “the Act”) read with Rule 106 read with S.Nos.8 and 44 of Schedule J of Drugs and Cosmetics Rules, 1945 (hereinafter called as “the Rules”) and under Section 27(d) of the Act. On 19.09.2016, the respondent had inspected the wholesale premises of M/s Gowri Enterprises and found the following deviations:-

“a. M/s Gowri Enterprises, No.11/10, Ground and First Floor, Kaveri Lane, Club road, East Tambaram, Chennai – 59 has been granted Drug licences in Forms 20B, 21B and 21G bearing Nos 3757/MIVC/20B,



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CrI.O.P.No.9883 of 2025

2944/MIVC/21B and 28/MIVC/20G, validity period from 13.03.2012 to 12.03.2017.

b. During the inspection, it was notice that the lotion namely 'SUNSTOP 30' Batch No.M455 MFD:03/2015 Exp:02/2017 Manufactured in India by M/s Ajanta Pharma Limited, Ajanta House, Charkop, Kandivil (W), Mumbai – 400067;MFD at: Vill. Tanda Mallu, Ram Nagar, Dist Nainital (U.K) claimed in the outer carton and inner most pack as that' Regular, long term use helps prevent premature aging, wrinkling and skin cancer due to overexposure to the sun', which is in contraventions as per Section 18 (a)(iv) read with Rule 106 read with Schedule J Serial No.44 and 8 respectively.

c. Hence the drug which was kept for sale was seized under Form 16 under a cover of Mahazer dated 19.09.2016 in presence of Mr.K.Subba Rao, competent person cum person In-charge of M/s Gowri Enterprises, No.11/10, Ground and First Floor, Kaveri Lane, Club road, East Tambaram, Chennai – 59 and two independent witness.

d. The seized drug was produced before the Hon'ble Chief Judicial Magistrate Court, Chengalpattu for safe custody on 20.09.2016 and the same was returned under P.I.No:08/2016.”

4. It has been granted regularization from 13.03.2012 to 12.03.2017.

The lotion called 'Sunstop 30' is manufactured in India by M/s Ajanta Pharma Limited, at Mumbai claimed in the outer carton and inner most pack as that regular, long term use helps to prevent premature aging, wrinkling and skin cancer due to overexposure to the sun which is contravention under Section 18 (a)(iv) read with Rule 106 read with Schedule J Serial No.44 and 8 respectively. Therefore, the respondent had seized the samples under Form 16 and the same



CrI.O.P.No.9883 of 2025

was sent to the Government Analyst. Upon receipt of the analyst report, it has been declared that the said lotion is of standard quality. Thereafter, the said M/s Gowri Enterprises was issued show cause memo stating that why action should not be taken for the contravention of Section 18 (a)(iv) read with Rule 106 read with Schedule J Serial No.44 and 8 of the Act and the Rules for having stocked for sale and sold the subject drug. Thereafter, the person in-charge of M/s Gowri Enterprises disclosed that the said drug was acquired from M/s Ajanta Pharma Limited.

5. Thereafter, the Power Agent of M/s Ajanta Pharma Limited disclosed that the subject drug was acquired from M/s Ajanta Pharma Limited, Zirakpur. After issuance of notice to the said pharma, they disclosed that the subject drug was acquired from M/s Ajanta Pharma Limited, Mumbai. The said pharma is under loan licence at M/s M.R.Health care Pvt. Ltd, Uttarakhand and the same was transferred to Zirakpur depot under stock transfer note. Thereafter, a show cause notice was issued to M/s Ajanta Pharma Limited, Mumbai to explain as to why action should not be taken for the contravention of Section 18 (a)(iv) read with Rule 106 read with Schedule J Serial No.44 and 8 of the Act and the Rules for having stocked for sale and sold the subject drug.

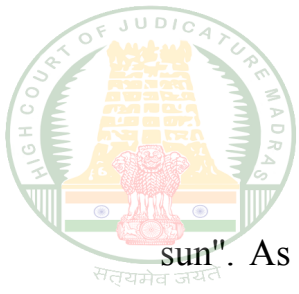


CrI.O.P.No.9883 of 2025

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6. After receipt of the reply, the respondent accorded sanction to prosecute the accused for the above said contraventions. Thereafter, lodged complaint and the same has been taken cognizance in C.C.No.496 of 2022, on the file of the Chief Judicial Magistrate, Chengalpattu.

7. The learned Senior Counsel appearing for the petitioners submitted that the petitioners are arrayed as A1 to A3, A5 and A6. The first accused is involved in Manufacturing and Marketing of medicines, pharmaceutical products, cosmetics and food supplement preparations for the past several years. The first accused gets the product manufactured by a third party drug manufacturing facilities on loan license basis to meet business exigencies. The subject drug viz., Sunstop 30- Sunscreen lotion was manufactured by the first petitioner under the loan license at a third party drug manufacturing Company viz., M.R.Health Care Pvt., Ltd., Nainital, Uttarakhand. During inspection, the respondent had taken sample of the drug of the said 'Sunstop 30' Batch No.M455 Manufacturing Date: 03/2015 Expiry date 02/2017. The respondent also found that the said drug bears a statement "Regular, long term use helps prevent premature aging, wrinkling and skin cancer due to overexposure to the



Crl.O.P.No.9883 of 2025

sun". As per the Analyst report, the respondent issued show cause notice. On receipt of the same, the petitioners had sent a detailed explanation dated 05.12.2016.

8. A perusal of the reply revealed that the said product was manufactured under loan license at M/s M.R.Health Care Pvt. Ltd., Nainital, Uttarakhand and the said drug has been discontinued immediately, viz., after receipt of the show cause notice. It was further informed that the manufacture of the said product as a drug itself was discontinued and a cosmetic license was obtained subsequently and prayed to drop further proceedings. However, without considering the explanation submitted by the petitioners, the respondent lodged a complaint for the alleged contraventions. Further, the Director of Drug Control has accorded sanction mechanically, without even considering the explanation submitted by the petitioners on the show cause notice.

9. Though the complaint was initially lodged on 07.12.2018, it was returned for want of corrections, since the complaint was filed with numerous defects. After a period of 3 ½ years, the said complaint was re-presented by the



respondent viz, only on 14.03.2022 that too without any supporting affidavit to condone the inordinate delay in representing the complaint. Unfortunately, without considering the same, the Trial Court also had taken cognizance on the complaint lodged by the respondent and issued summons to the accused.

10. Admittedly, all the accused are having their registered office outside the territorial jurisdiction of the Trial Court viz., Judicial Magistrate, Chengalpet. Therefore, the Trial Court before taking cognizance, ought to have conducted enquiry as contemplated under Section 202 of Cr.P.C. It is relevant to extract the provisions under Section 202 of Cr.P.C as follows:-

“ 202. Postponement of issue of process.—(1)

Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, 1 [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if



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any) have been examined on oath under section 200.

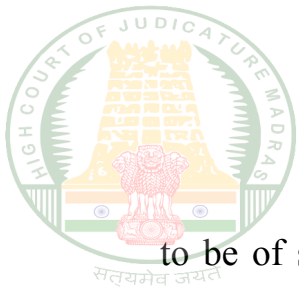
(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.”

11. A perusal of records revealed that the Trial Court did not conduct any enquiry before taking cognizance as contemplated under Section 202 of Cr.P.C, since the petitioners are having their registered Office outside the territorial jurisdiction of the Trial Court. An inspection was conducted by the respondent on 19.09.2016. But the complaint was filed on 07.12.2018. Further, it was re-presented only on 14.03.2022. Therefore, from the date of inspection, the Trial Court had taken cognizance after a period of 5 ½ years viz., 22.03.2022. In fact, the Trial Court also had mechanically taken cognizance without even raising any query with regard to huge delay in re-presenting the complaint.

12. Even according to the respondent, the subject product was found



to be of standard quality by the Government Analyst and as such, there is no defect in the quality of the sample. The only contravention is that the said product was labelled with the statement viz., 'Regular, long term use helps prevent premature aging, wrinkling and skin cancer due to overexposure to the sun'. However, there is no complaint by any user saying that even after using said lotion, they suffered with skin cancer. Therefore, these contraventions are minor defects. In fact, the Drugs Controller General of India, issued statutory guidelines under Section 33-P of the Drugs and Cosmetics Act, 1940. Accordingly, mentioned the lists of labelling defects as minor defects under Category C and directs the State Drug Control Authorities not to launch prosecution in a routine manner for Category C defects. Instead, it was directed to take only administrative action where no criminal intent or gross negligence is established. Further, the said product was registered under a Drug.

13. Therefore, these contraventions are attracted for the statement made in the lotion. After receipt of show cause notice, the said product was cancelled from the drug license and changed as cosmetics. Further, the respondent failed to follow the statutory guidelines that mandates referring issues to the Screening Committee of Drug Control Officers and obtaining



recommendations on the culpability and fitness for prosecution as contemplated under Rule 7 and 8 of the Statutory Guidelines issued under Section 33-P Drugs and Cosmetics Act, 1940. The said Rules reads as follows:-

“ 7. The State Drug Control Departments shall constitute screening committees comprising of at least three senior officers not below the level of Assistant drugs Controllers or equivalent to examine the investigation reports of the cases where prosecutions are proposed to be launched. The committee may submit written opinion on the investigation reports regarding their feasibility of taking legal action. The criminal intent or gross negligence should be taken into consideration while recommending actions like prosecution etc. Care should be taken that charges framed are not based on inappropriate provisions which may be difficult to prove in the court of law in the absence of proper justification or evidence. Cases of failing in assay, brand name disputes and non-renewal of manufacturing licence in time should be examined on their merits before recommending prosecution in such cases.

8. Prosecutions by the Inspectors shall be launched on the basis of written permissions of the controlling authority and this authority in turn shall consider the recommendations of the screening committee while taking final decision in the matter.”

14. Admittedly, the respondent did not follow the guidelines and mechanically filed a complaint after obtaining sanction. Therefore, the impugned complaint cannot be sustained as against the petitioners and is liable to be quashed. Accordingly, the complaint in C.C.No.496 of 2022 on the file of the Chief Judicial Magistrate, Chengalpattu, is hereby quashed.



Crl.O.P.No.9883 of 2025

15. In the result, this Criminal Original Petition stands allowed.

Consequently, connected Miscellaneous petitions are closed.

02.04.2025

Internet:Yes

Index:Yes/No

Speaking/Non speaking order

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Crl.O.P.No.9883 of 2025

G.K.ILANTHIRAIYAN. J.

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To

1. The Chief Judicial Magistrate, Chengalpattu.
2. The Drugs Inspector,
Tambaram – 1 Range,
O/o. The Assistant Director of Drugs Control,
Kancheepuram Zone, D.M.S.Campus,
259-261, Anna Salai, Chennai 600 006.
3. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.9883 of 2025

02.04.2025