



Crl.O.P.No.15650 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.03.2025

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CORAM:

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

Crl.O.P.No.15650 of 2023
and Crl.M.P.Nos.9740 & 9741 of 2023

1. M/s.Berina Cosmetics Private Limited,
Unit No.404, Reliable Pride,
Anandnagar Opp Heerapanna,
Jogeshwari, Mumbai City,
Maharashtra, Represented by
Its Director Ajay Kumar Jalan

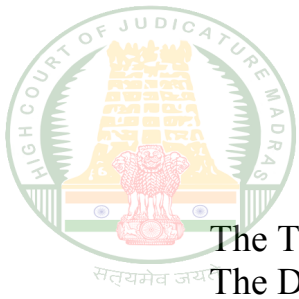
2. Ajay Kumar Jalan,
Director,
M/s.Berina Cosmetics Private Limited,
Unit No.404, Reliable Pride,
Anandnagar Opp Heerapanna,
Jogeshwari, Mumbai City,
Maharashtra.

3. M/s. Stella Industries Limited,
Old Khandasa Road, Sector 37,
HSI IDC, Gurugram – 122 001,
Harayana represented by its
Managing Director Rohit Wassan

4. Rohit Wassan
Managing Director,
M/s. Stella industries Limited,
Old Khandasa Road, Sector 37,
HSI IDC, Gurugram – 122 001,
Haryana.

... Petitioners

Vs.



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The Tamilnadu State Rep. by

The Drugs Inspector,

Kanchepuram I Range/

Chrompet Range (ic)

Office of Assistant Director of Drugs Control,

DMS Campus, Teynampet,

Chennai – 600 006.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for records and quash the proceedings in connection with C.C.No.524/2022 registered for contraventions under Section 18(a)(ii) r/w Section 17(C)(b) and 18(b) of Drugs and Cosmetics Act, 1940 punishable under Sections 27(A)(ii) and 28A of the Drugs and Cosmetics Act, 1940 on the file of the Court of Chief Judicial Magistrate, Chengalpet.

For Petitioners : Mr.C.Arun Kumar

For Respondent : Mr.R.Vinothraja
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.524 of 2022 pending on the file of the learned Chief Judicial Magistrate, Chengalpet, thereby taken cognizance for contraventions under Section 18(a)(ii) r/w Section 17(C)(b) and 18(b) of Drugs and Cosmetics Act, 1940 punishable under Sections 27(A)(ii) and 28A of the Drugs and Cosmetics Act, 1940.

2. The respondent filed complaint for the contravention of



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Section 18 a (ii) r/w 17(C) (b) and 18(B) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as 'the Act') which is punishable under Section 27(A)(ii) and 28A of the Act, alleging that first accused is the proprietor of M/s.Being Beauty and the second accused is a partnership firm and the third accused is the partner of the second accused. The fourth accused is a company represented by its Directors and the fifth accused is one of the Directors of the fourth accused company. The sixth accused is a company represented by the Directors and seventh accused is the one of the Directors of the sixth accused.

3. On inspection of the first accused company, it was found that some of the cosmetics items were sold or stocked for sale without the details of licence number for manufacturing or import and address of manufacturer or importer in labels of the containers. The Inspector had taken sample of the same and it was sent to the government analyst for testing under Form 18. As per the analytical report, the cosmetics items declared that it claims the specification of shaving foams. Thereafter, seized cosmetics items were produced before the trial Court. The first accused was issued with show cause notice for having stocked and sold the said cosmetic for the contravention under Section 18 a(vi) of the Act.



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After receipt of the reply from the first accused, it was ascertained that the said cosmetic were acquired from the second accused by invoice.

4. The second accused was also issued with show cause notice for the contravention of the 18 a (vi) of the Act. On receipt of the reply from the second accused, it was ascertained that the said cosmetics were acquired from the fourth accused. After that, the fourth accused was also issued with show cause notice for the contravention under Section 18 a(vi) of the Act. On receipt of the reply, it was found that the cosmetics were acquired from the sixth accused. Further sixth accused was also issued with show cause notice for the very same contravention. Thereafter, the sanction was accorded to prosecute the accused persons and lodged complaint.

5. The learned counsel appearing for the petitioners submitted that the petitioners are arrayed as accused 4 to 7. They are facing charges for the contravention under Section 18 a (ii) r/w Sections 17 (C)(b) and 18 (B) of the Act punishable under Sections 27(A)(ii) & 28A of the Act. He raised three grounds to quash the entire proceedings. The first ground is that the complaint was lodged belatedly after the period of limitation



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and the second ground is that all the contraventions are minor in nature and after the receipt of the show cause notice, the petitioners had duly replied by detailed explanation. Without even considering the explanation and without discussion of the explanation submitted by the petitioners, the respondent lodged complaint. The third ground is that the trial Court has no jurisdiction to take cognizance on the complaint lodged by the respondent, since the petitioners are in Mumbai and Gurugram. Therefore, the trial Court has no territorial jurisdiction to try the offence as alleged by the respondent. Further, the trial Court is not competent to try the offence, since the offences fall within the Chapter IV of the Act and as per Section 32(2) of the Act, the offences are triable by a Court not inferior to that of a Court of Sessions.

6. Heard the learned Counsel appearing on either side and perused the materials placed on record.

7. The accused are charged for the contravention under Section 18(a)(ii) r/w 17(C)(b) of the Act for having manufactured for sale and sold the cosmetics without manufacturer address and licence number in the labels of the containers, which is punishable under Section 27 A(ii) of



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the Act. They are also charged for the offence under Section 18(B) of the Act for not disclosing the details required in the show cause notice sent to the company, which is punishable under Section 28A of the Act.

8. Insofar as the limitation is concerned, the Hon'ble Supreme Court of India in a *Suo Motu Writ Petition (C) No.3 of 2020*, by an order dated **10.01.2022**, held that the period of limitation prescribed under the general law of limitation period from 15.03.2020 till 28.02.2022 shall stand excluded. Therefore, the period of limitation does not arise in the complaint lodged by the respondent.

9. Insofar as the jurisdiction of the trial Court is concerned, it is relevant to extract the provision under Section 36 A of the Act as follows:-

“36A. Certain offences to be tried summarily.—

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences except the offences triable by the Special Court under section 36AB or Court of Session under this Act punishable with imprisonment for a term not exceeding three years, other than an offence under clause (b) of sub-section (1) of section 33-I, shall be tried in a summary way by a Judicial



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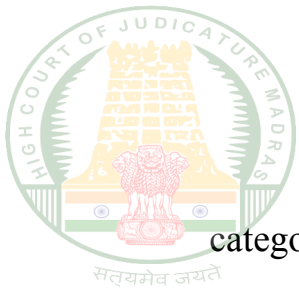
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Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial :

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall, after hearing the parties, record an order to that effect and thereafter recall any witness who has been examined and proceed to hear or rehear the case in the manner provided by the said Code.”

10. Before the commencement of Act 26 of 2008, all the offences coming under the purview of the Act were being tried by the Magistrate's Court only. Thereafter, the trial of certain offences were brought under the jurisdiction of the Sessions Court, which can be designated as Special Court. Therefore, after the amendment, two



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categories of the Court are provided for the trial of offences coming under the Act. The powers of the Magistrate's Court are also enhanced so as to try certain offences punishable with imprisonment for a term not exceeding three years in a summary case. Therefore, after amendment, the Magistrate's Court as well as Sessions Court designated as Special Court are vested with powers to try the respective offences coming under those Courts. As per Section 32(2) of the Act, no Court inferior to that of Court of Sessions shall try an offence punishable under this Chapter, save as otherwise provided in this Act. Therefore, the trial Court has got jurisdiction to try the offences and the trial Court had rightly taken cognizance.

11. Insofar as the contraventions of the petitioners are concerned, they are very serious innature since they had sold the cosmetics without manufacturer name and license number. Therefore, it cannot be said that they are minor defects or contravention. It may lead to production of low quality products and it would negatively impact the users.

12. In view of the above discussions, this Court finds no ground



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to quash the entire proceedings and accordingly, the Criminal Original

Petition stands dismissed. Consequently, connected miscellaneous petitions are also closed.

26.03.2025

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

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To

1. The Chief Judicial Magistrate,
Chengalpet.

2. The Drugs Inspector,
Kanchepuram I Range/
Chrompet Range (ic)
Office of Assistant Director of Drugs Control,
DMS Campus, Teynampet,
Chennai – 600 006.

3. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

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