



CRL OP(MD). No.15660 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 06/11/2025

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CRL OP(MD). No.15660 of 2025
and
Crl.M.P(MD) No.12753 of 2025

Tr.Jyotindra Bhogilal Gor,
Director and Responsible Person for
M/s.German Remedies Pharmaceuticals Pvt Ltd.,
PF61 & ^2 Sanand II,
Industrial Estate,
Tal Sanand,
Ahamedabad, Gujarat-38211

... Petitioner

Vs

The State of Tamil Nadu,
Rep. by the Drug Inspector,
Paramakudi Range,
Office of Assistant Director of Drugs Control,
Tuticorin Zone, At 30 LP, Shanmugam Street,
Virudunagar.

... Respondent

PRAYER :- This Criminal Original Petition is filed under Section 528 BNSS, to call for the records and quash the proceedings S.T.C.No. 513 of 2025 on the file of the Chief Judicial Magistrate, Ramanathapuram in so far as the petitioner.

For Petitioner : Mr.M.Rajaraman,



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CRL OP(MD), No.15660 of 2025

Advocate.

For Respondent : Mr.K.Sanjai Gandhi,
Government Advocate (Crl.Side)

ORDER

The petitioner seeks to quash the impugned complaint in S.T.C.No.513 of 2025 on the file of the learned Chief Judicial Magistrate, Ramanathapuram, filed for the offences under Sections 18(a) (i) of the Drugs and Cosmetics Act, 1940 r/w Section 84 E & 96(1)(i)(A) of the Drugs and Cosmetics Act 1940, which are punishable under Section 27(d) of the said Act.

2.The gist of the allegation in the complaint is that a sample of Evefresh Chlorhexidine Mouthwash was drawn for analysis at the premises of one M/s.Sakthi Surgicals at Ramanathapuram; that the said sample was sent for analysis to the Government Analysis Drug Testing Laboratory; that the analyst had sent the report stating that it was not of standard quality; that a show cause notice dated 11.12.2023 was issued to the said M/s.Sakthi Surgicals; that M/s.Sakthi Surgicals responded stating that they had purchased the drug from one M/s.Mohan Pharma; that a show cause notice dated 31.01.2024 was issued to M/s.Mohan



CRL OP(MD), No.15660 of 2025

Pharma, which in turn stated that they had purchased the drug from M.M.Medical Corporation and ultimately, it was found that the fourth accused, M/s.German Remedies Pharmaceutical Pvt Ltd., had marketed the drug, manufactured by the first accused; and that the petitioner is the Director of the fourth accused company and therefore, liable under Section 34 of the Drugs and Cosmetics Act (hereinafter referred to as 'the Act').

3.The short point raised by the petitioner is that the impugned prosecution as against the petitioner is not maintainable, as the respondent has not satisfied the requirements under Section 34 of the Act; that there are no specific averments that the petitioner was in-charge and responsible to the conduct of the business of the company or that the offence was committed with the consent or connivance or due to any neglect on the part of the petitioner as a Director; that even in the license granted to the fourth accused, which permits the exhibition or sale of the drug in question, it is stated that the person responsible for and under whose personal supervision the sale shall be made is one Sanjeev Srivastava; that therefore, the petitioner, as a Director, cannot be



CRL OP(MD), No.15660 of 2025

attributed with the knowledge of any violation said to have been committed by the manufacturer or by the company in which he is the Director. In support of his contention, the learned counsel relied upon the judgment of this Court in *Umanga Vohra Vs State of Tamil Nadu* in **Crl.O.P(MD) Nos.19643 and 19832 of 2022**. The learned counsel would further submitted that it is not for the respondent police to suggest as to who should be the representative of the company and it is for the company to file an appropriate application before the Magistrate under Section 305 of Cr.P.C.

4.The learned Additional Public Prosecutor appearing for the respondent police, per contra, would submit that the fourth accused, who is the marketer and sold the drug found to be of not standard quality, is liable to be prosecuted in the same manner as that of the manufacturer, in terms of Rule 84 (E) of the Drugs and Cosmetics Rules; that the petitioner, as a Director, is vicariously liable under section 34 of the Act; that the question as to whether the petitioner was in-charge and responsible for the company's affair or whether the offence was committed with his consent, connivance or neglect are questions to be



CRL OP(MD), No.15660 of 2025

determined by the trial Court and cannot be decided in this quash petition and sought for dismissal of this quash petition.

5.The undisputed facts are that the fourth respondent is the marketer of the product, which was found to be of not standard quality and the first accused is the manufacturer of the said product. Therefore, at this stage, this Court cannot determine as to whether the fourth accused, namely the company, is liable to be prosecuted for marketing the product. It is for the company to establish before the Court that they were not aware of any alleged violation by the manufacturer. However, the question in this case is whether the third accused, the petitioner herein, can be made vicariously liable for the offence said to have been committed by fourth accused. Section 34 of the Act provides for vicarious liability. Therefore, any person in the company, who is in-charge/responsible for the conduct of its affairs and with whose knowledge or neglect the alleged offence has been committed by the company, can also be prosecuted. However, in the instant case, there is no allegation against the petitioner as to whether he would fall under Section 34(1) or Section 34(2) of the Act. In fact, in the show case



CRL OP(MD). No.15660 of 2025

notice and in the sanction order, the petitioner is shown as the Director.

Even in the cause list, the petitioner is shown as a Director. However, in the body of the complaint, the petitioner is shown as the Managing Director. Therefore, the respondent themselves are not clear about the position held by the petitioner.

6. It is well settled that unless there are necessary allegations to hold the petitioner vicariously liable, the prosecution cannot be maintained.

7. Hence, this Criminal Original Petition is allowed and the impugned complaint in S.T.C.No. 513 of 2025 on the file of the learned Chief Judicial Magistrate, Ramanathapuram, is quashed insofar as the petitioner concerned. Consequently, connected miscellaneous petition is closed.

06.11.2025

NCC :Yes/No
Index :Yes/No
Internet :Yes
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CRL OP(MD). No.15660 of 2025

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- 1.The Chief Judicial Magistrate,
Ramanathapuram.
- 2.The Drug Inspector,
Paramakudi Range,
Office of Assistant Director of Drugs Control,
Tuticorin Zone,
At 30 LP, Shanmugam Street,
Virudunagar.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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CRL OP(MD). No.15660 of 2025

SUNDER MOHAN,J

CP/ars

ORDER
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