HC-KAR

NC: 2026:KHC:61927
CRL.P No. 2607 of 2024

CNR: KAHC010160742024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAJESH RAI K

CRIMINAL PETITION NO. 2607 OF 2024

BETWEEN:

1. M/S GLAXO SMITHKLINE ASIA PVT LTD
   BHARAT YUVAK BHAVAN
   NO.1, JAI SINGH ROAD,
   NEW DELHI-110 001
   REPRESENTED BY
   MR. N.R VENKATESWARAN.

2. MR. K.K PALAN
   AGED ABOUT 62 YEARS
   S/O MR. KRISHNASWAMY H.S
   M/S GLAXO SMITHKLINE
   PHARMACEUTICALS LTD
   DEVENAHALLI ROAD, OFF
   MADRAS ROAD,
   BANGALORE-560 049

...PETITIONERS

(BY SRI. SANDESH CHOUTHA, SENIOR COUNSEL FOR
SRI. MRINAL SHANKAR,
SRI. DHARMA TEJ KONERU,
SRI. ABHAY SHETTY,
SRI. HANUMANTHARAYA C.H, ADVOCATES)

Digitally signed by PANKAJA S
Location: HIGH COURT OF KARNATAKA

AND:

STATE OF KARNATAKA
AT THE INSTANCE OF THE
DRUGS INSPECTOR,
DRUGS PRICE CONTROL CELL,

DRUGS CONTROL DEPARTMENT,
PALACE ROAD,
BANGALORE - 5600 01.
REPRESENTED BY THE
STATE PUBLIC PORSECUTOR
HIGH COURT BUILDING
BANGALORE-01

…RESPONDENT

(BY SRI. MAHESHA P, HCGP)

THIS CRL.P IS FILED U/S 482 OF CR.PC PRAYING TO QUASH THE ENTIRE CRIMINAL PROCEEDINGS IN C.C.NO.1492 OF 2003 PENDING BEFORE THE ADDL. CHIEF JUDICIAL MAGISTRATE, BENGALURU RURAL DISTRICT, ARISING OUT OF PRIVATE COMPLAINT DATED 30.09.2003 FILED BY THE RESPONDENT FOR VIOLATIONS UNDER PARAGRAPHS 15(1) AND 15(2) OF THE DRUGS (PRICES CONTROL) ORDER, 1995, P/U/S 7(1)(a)(ii) OF THE ESSENTIAL COMMODITIES ACT, 1955 (ANNEXURE-B AND ANNEXURE-C).

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

ORAL ORDER

This petition is filed under Section 482 of Cr.P.C. praying to quash the proceedings against the petitioners - accused Nos.1 and 7 in C.C No.1492/2003, for the offences punishable under section 7(1)(a)(ii) of the Essential Commodities Act, 1955 (for short, 'the EC Act') for violations under paragraphs 15(1) and 15(2) of the Drugs (Prices Control) Order, 1995 (for short, 'the Order, 1995'), pending on the file of the Additional

Chief Judicial Magistrate, Bengaluru Rural District (for short, 'the learned Magistrate') and also to set aside the order dated 17.12.2019 passed in C.C No.1492/2003 by the aforesaid learned Magistrate, whereby the learned Magistrate framed the charges against the petitioners for the aforementioned offences.

2. The brief facts of the case are that petitioner No.1 is a pharmaceutical company incorporated under the Companies Act, 1956, engaged in the manufacture and import of drugs and vaccines, while petitioner No.2 was formerly working as an Assistant Logistics Manager at the Bengaluru sales depot of petitioner No.1 and retired in the year 2008. Respondent No.2, the Drugs Inspector attached to the Drugs Price Control Cell, Bengaluru, lodged a private complaint on 30.09.2003 under Section 200 of the Cr.P.C., read with Section 11 of the EC Act, alleging violations of Paragraphs 15(1) and 15(2) of the Order, 1995, punishable under Section 7(1)(a)(ii) of the EC Act. The allegations arose from an inspection conducted on 21.07.2003, during which certain vaccines supplied by petitioner No.1 were allegedly found without the

prescribed price markings and labels. It was further alleged that petitioner No.1 had failed to furnish the requisite price list to local medical stores dealing in its products.

3. The learned Magistrate took cognizance of the offences and issued summons to the accused. Aggrieved by the said order, petitioner No.1 and accused Nos.2 to 5 approached this Court in Crl.R.P.No.1077/2003, and by order dated 20.02.2004, the complaint was quashed insofar as accused Nos.2 to 5 were concerned. Subsequently, the learned Magistrate framed charges against petitioner No.2 i.e., accused No.7 and accused No.6 on 21.03.2005 and, by judgment dated 19.07.2010, convicted them for the alleged offences and sentenced them to undergo simple imprisonment for three months and imposed a fine of Rs.10,000 each. In the appeal preferred by them, the learned Sessions Court, by judgment dated 23.07.2016, set aside the conviction and remanded the matter to the Trial Court with a direction to implead petitioner No.1 i.e., accused No.1 along with petitioner No.2/accused No.7 and accused No.6.

4. Pursuant to the remand, the learned Magistrate framed charges against the petitioners on 17.12.2019 and recorded their pleas without recording the prosecution evidence as contemplated under Section 244 of the Cr.P.C. Thereafter, the learned Magistrate permitted respondent No.2 to adopt his earlier examination-in-chief by orders dated 20.02.2020 and 12.11.2021. Both orders were challenged before this Court and were set aside. Ultimately, by order dated 10.11.2022 passed in Crl.P.No.10144/2021, this Court directed the learned Magistrate to conduct a fresh examination-in-chief of PW.1 and dispose of the matter in accordance with law.

5. Thereafter, the learned Magistrate posted the matter for examination-in-chief of PW.1. Though the non-availability of the material objects was noticed on 19.01.2023, the learned Magistrate proceeded to record the examination-in-chief of PW.1 on 29.01.2024 without the material objects and marked exhibits which were available. Aggrieved by the same, the petitioners have approached this Court seeking quashing of the entire criminal proceedings against them.

6. Heard the learned Senior counsel for the petitioners, the learned High Court Government Pleader for respondent No.1 - State in both the petitions.

7. The learned Senior Counsel for the petitioners, apart from raising several other contentions, primarily contended that the impugned order is patently illegal, as the learned Magistrate proceeded to try a warrant case instituted otherwise than on a police report by following the procedure applicable to summons cases. He submitted that the private complaint was filed under Section 200 of Cr.P.C., read with Section 11 of EC Act, alleging violations of Paragraphs 15(1) and 15(2) of the Order, 1995, punishable under Section 7(1)(a)(ii) of the EC Act. As the prescribed punishment extends up to seven years of imprisonment, the case falls within the definition of a warrant case under Section 2(x) of the Cr.P.C. He further contended that, pursuant to the remand, the learned Magistrate recalled the conviction warrant, issued summons to the petitioners and, on 17.12.2019, proceeded to frame charges and record their pleas without first recording the prosecution evidence as required under Section 244 of the

Cr.P.C. According to him, the failure to follow the prescribed procedure has occasioned a failure of justice and resulted in incurable prejudice to the petitioners. He also contended that the learned Magistrate failed to apply judicious mind and record reasons for framing charges in accordance with Section 246 of the Cr.P.C., thereby acting mechanically and contrary to the statutory scheme.

8. The learned Senior Counsel further contended that, as reflected in the order sheet from 20.10.2023 up to 27.02.2024, the material objects, namely, the seized drugs, were neither available nor in the custody of the Trial Court. Placing reliance on the judgment of the Hon'ble Apex Court in ***NOOR AGA Vs. STATE OF PUNJAB AND ANOTHER - (2008) 16 SCC 417***, he submitted that non-availability of the material objects warrants an adverse inference under Section 114(g) of the Indian Evidence Act. He argued that, in the absence of the material objects, the continuation of proceedings would serve no purpose, as the likelihood of conviction is bleak, and would amount to an abuse of the process of the Court. Accordingly, he prays to allow the petition.

9. *Per contra*, the learned HCGP for respondent-State contended that the case has a checkered history, as the petitioners were initially convicted and have thereafter approached this Court on several occasions raising one or the other ground. Ultimately, by order dated 10.11.2022 passed in Crl.P.No.10144/2021, this Court remanded the matter to the learned Magistrate with a direction to conduct a fresh examination-in-chief of PW.1 and dispose of the matter in accordance with law. Accordingly, the learned Magistrate proceeded with the examination-in-chief of PW.1, and therefore, no procedural irregularity, as alleged by the petitioners, has been committed. The learned HCGP, however, fairly submitted that the report received by the learned Magistrate indicates that the seized drugs/material objects could not be traced in the property room of the Trial Court and that the said issue has to be dealt with by the Trial Court in accordance with law. Nevertheless, the non-availability of the material objects, by itself, is not a ground to quash the proceedings. Accordingly, he prays to dismiss the petition.

10. I have given my anxious consideration to the submission made by the learned counsel for the respective parties and also perused the entire materials on record.

11. The first limb of the argument advanced by the learned Senior Counsel for the petitioners is that the learned Magistrate has failed to follow the procedure prescribed for the trial of warrant cases. In the present case, respondent No.2 lodged a private complaint under Section 200 of the Cr.P.C., read with Section 11 of EC Act, alleging violations of Paragraphs 15(1) and 15(2) of the Order, 1995, punishable under Section 7(1)(a)(ii) of EC Act. The offences are punishable with imprisonment for a term extending from three months up to seven years and with fine. Hence, the case falls within the ambit of a warrant case. Admittedly, the learned Magistrate framed charges against the petitioners on 17.12.2019. Thereafter, pursuant to the order dated 10.11.2022 passed by this Court in Crl.P.No.10144/2021, the learned Magistrate proceeded to record the examination-in-chief of PW.1.

12. Section 244 of Cr.P.C is reproduced below for the ease of reference :

"**Section 244. Evidence for prosecution**

(1) When, in any warrant-case instituted otherwise than on a police report the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing."

13. On a plain reading of the aforesaid provisions, it is clear that, in a warrant case instituted otherwise than on a police report, the Magistrate is required to hear the prosecution and record the evidence before proceeding to frame charges, upon being satisfied that there are grounds for presuming that the accused has committed an offence. The accused is also entitled to seek discharge under Section 245 of the Cr.P.C. before the charges are framed. In the present case, the learned Magistrate framed charges against the petitioners without first

recording the prosecution evidence, thereby depriving them of their statutory right to seek discharge. Hence, the procedure adopted by the learned Magistrate suffers from a material irregularity. This view is fortified by the judgment of the Hon'ble Apex Court in the case of ***SUNIL MEHTA AND ANOTHER Vs. STATE OF GUJARAT AND ANOTHER - (2013) 9 SCC 209*** and in the case of ***AJOY KUMAR GHOSE Vs. STATE OF JHARKHAND AND ANOTHER - (2009) 14 SCC 115*.** Accordingly, the first limb of the contention raised by the learned Senior Counsel for the petitioners is tenable.

14. The second limb of the argument advanced by the learned Senior Counsel for the petitioners is that the continuation of the criminal proceedings would be a futile exercise, as the material objects, namely, the drugs seized in the present case, are lost and are no longer available in the custody of the Trial Court. In this regard, this Court, by order dated 30.09.2026 directed the learned Magistrate to submit a report regarding the availability of the material objects seized in the present case. Pursuant to the said direction, the learned Magistrate submitted a report dated 14.10.2026, stating that

he, along with the Sheristedar, the clerk of the property room and the police constable, visited the property room on 08.10.2026. However, despite such inspection, the seized property could not be traced in the property room. Thus, it is evident that the material objects seized in the present case are not available in the custody of the Trial Court.

15. In such circumstances, as rightly contended by the learned Senior Counsel for the petitioners, the matter requires consideration in the backdrop of the judgments of the Hon'ble Apex Court in ***Noor Aga*** supra and ***MADHAVRAO JIWAJIRAO SCINDIA & OTHERS Vs. SAMBHAJIRAO CHANDROJIRAO ANGRE & OTHERS - (1988) 1 SCC 692***.

16. Further, in the present case, the material objects are none other than the samples of medicines/drugs allegedly seized during the inspection. Their production and proof assume significance, as they constitute primary physical evidence for establishing the factum of seizure and the alleged commission of the offences. Therefore, the non-availability of the material objects and its consequential impact on the prosecution case are matters of considerable significance,

which cannot be overlooked. However, these aspects of the matter has to be considered by the learned Magistrate. Hence, I proceed to pass the following:

ORDER

(i) The criminal petition is ***allowed in part.***

(ii) The order dated 17.12.2019 framing chargesagainst the petitioners-accused Nos.1 and 7 is hereby set aside.

(iii) The matter is remitted to the learned Magistrate to proceed afresh from the stage of recording prosecution evidence under Section 244 of the Cr.P.C., in accordance with law.

(iv) The petitioners-accused Nos.1 and 7 are at liberty to file an appropriate application seeking discharge. If any such application is filed, the learned Magistrate shall consider the same on its merits, keeping in view the observations made hereinabove, the judgments of the Hon'ble Apex Court referred to supra and

the report regarding non-availability of the seized material objects.

(v) All contentions are left open to be urged before the Trial Court in accordance with law.

SD/-
(RAJESH RAI K)
JUDGE

PKS
List No.: 1 Sl No.: 0