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Crl.O.P.No.7215 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2026

CORAM:

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

Crl.O.P.No 7215 of 2023
and Crl.M.P.Nos.4559 & 4562 of 2023

1. M/s.Thea Technologies Pvt Ltd
D.No.2b, Ground Floor, P.No.105, Central
Warehouse, Arcot Salai, Virugambakkam,
Chennai 600092, Rep By Mr.Amit Kamlesh
Singh.
2. Amit Kamlesh Singh
S/o. Kamlesh Singh, Director M/s.Thea
Technologies Pvt Ltd., D.No.2b, Ground Floor,
P.No.105, Central Warehouse, Arcot Salai,
Virugambakkam, Chennai 600092.
3. Dhiraj Jain
S/o. Kamal Kumar Jain, Director M/s.Thea
Technologies Pvt Ltd., D.No.2b, Ground Floor,
P.No.105, Central Warehouse, Arcot Salai,
Virugambakkam, Chennai 600092.
4. S.Surajisairam
The Authorized Signatory And Warehouse
Manager Formerly M/s.Thea Technologies Pvt
Ltd., D.No.2b, Ground Floor, P.No.105, Central
Warehouse, Arcot Salai, Virugambakkam,
Chennai 600092.
Now Residing At Krishna Dwellington
Apartment, Devi Nagar Main Road,
Lottgallahalli, Bangalore 560094.

..Petitioner(s)



Crl.O.P.No.7215 of 2023

Vs

The State Of Tamil Nadu
Represented By The Drugs Inspector, Vadapalani
Range, O/o. The Assistant Director Of Drugs
Controa, Zone II, D.M.S. Campus, 259-261,
Annasalai, Teynampet, Chennai. 600006.

..Respondent(s)

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records and Quash the complaint in C.C.No.1046 of 2022 pending on the file of the Learned IV Metropolitan Magistrate and as the continuation of trial and pendency of Proceedings is an abuse of process of Court

For Petitioner(s): Mr.S.Karthikeyan

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

ORDER

This petition has been filed to quash the proceedings in C.C.No.1046 of 2022 on the file of the learned IV Metropolitan Magistrate, Saidapet, Chennai, thereby taken cognizance for the offence punishable under Section 27(d) of the Drugs and Cosmetics Act (hereinafter referred to as “the Act”) as against the petitioners.



Crl.O.P.No.7215 of 2023

WEB COPY

2. The petitioners are arrayed as A1 to A4 in this proceedings. The case of the prosecution is that the respondent had inspected the first accused company on 19.12.2018 and on verification of the stock, purchase invoices and sale distribution records relating to the drugs particularly the drug Tydol 100 mg and Tydol 50 mg tablets, it was found that there were discrepancies between the stock available and the records maintained by the accused. A substantial quantity of the said drugs could not be properly accounted for. Further certain quantities of the said drugs had been sold to the persons who were not holding valid drug licences and it is contravention of the provision under Section 18(c) of the Act. Further the accused had failed to maintain proper sale records under Rule 65(5)1 of the Drugs and Cosmetics Rules 1945 (hereinafter referred to as “the Rules”), by not entering the name of the manufacturer in the sale bills and the sale bills were not properly authenticated by the competent person. In view of the above discrepancies, the petitioners were served with notice thereby calling upon them to furnish explanation. Though the accused submitted explanation, it was found to be unsatisfactory and unsupported by reliable documentary evidences. Therefore, the accused had committed contravention of Section 18(c) of the Act r/w Rule 65(5)(1) of the Rules, which is punishable under Section 27(d) of the Act. After obtaining

Page 3 of 12



Crl.O.P.No.7215 of 2023

sanction, the respondent lodged complaint and the same has been taken cognizance by the Trial Court. To quash the said proceedings the petitioners filed the present Criminal Original Petition.

3. The learned counsel appearing for the petitioners submitted that the petitioners cannot be held responsible for the day to day affairs of the first accused company, since there is no specific averments to attract any charge as against the accused persons. As per Section 32(2) of the Act, no Court inferior to that of a Court of Session shall try an offence punishable under Chapter IV of the Act. Now the learned Metropolitan Magistrate has taken cognizance for an offence punishable under Section 27(d) of the Act and issued summons. The provision under Section 27(d) of the Act falls within the scope and ambit of Chapter IV of the Act. Therefore, the Trial Court has no jurisdiction to take cognizance on report filed by the respondent. The said error vitiates the entire trial as per Section 461 (k) & (l) of Cr.P.C., and it would also amount to illegality. Further the Trial Court had taken cognizance in a rubber stamp method without assigning any reason for taking cognizance. It is a clear violation of guidelines issued by the Hon'ble Supreme Court of India and this Court time and time again.



Crl.O.P.No.7215 of 2023

4. Per contra, the learned Government Advocate (Crl. Side)

appearing for the respondent submitted that the first accused is a company and the other accused are the Managing Directors of the first accused company. They are the competent persons to look after the day to day affairs of the first accused company and there are specific allegations as against them to attract the contravention as alleged in the complaint. The provision under Section 32(2) of the Act starts as “save as otherwise provided in this Act, no Court inferior to that of a Court of Session shall try an offence punishable under this Chapter”. The offences under Chapter IV to be tried by the Court of Sessions, only if it is not saved by any of the provisions in the entire Act as per Section 32(2) of the Act. Accordingly, the saving provisions is given in the Section 36A under Chapter V of the Act, which deals with miscellaneous components of the Act.

4.1. He also submits that Section 36A of the Act reads as notwithstanding anything contained in the Code of Criminal Procedure, 1973 punishable with imprisonment for a term not exceeding three year, 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 Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the



Crl.O.P.No.7215 of 2023

Provisions of Section 262 to 295 of the said Code shall, as far as may be, applied to such trial. Therefore, the Metropolitan Magistrate has jurisdiction to try the case. Further, the grounds raised by the petitioners can be considered only during the trial by letting in evidence since, it has question of facts to be dealt with and it cannot be considered under Section 482 of Cr.P.C.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. Though the learned counsel appearing for the petitioners raised several grounds, the points for consideration in these quash petitions are as follows :-

(i) Whether the learned Metropolitan Magistrate has jurisdiction to try the provision under Section 18(c) of the Act, when there is specific provision under Section 32(2) under Chapter IV of the Act, that mandates the Court of Sessions to try the offence punishable under Section 27(d) of the Act.

(ii) Whether the order of taking cognizance is in consonance with the guidelines issued by the Hon'ble Supreme Court of India and this Court.



Crl.O.P.No.7215 of 2023

7. It is relevant to refer the provision under Section 18(c) and 27(d)

of the Act as follows:-

18. Prohibition of manufacture and sale of certain drugs and cosmetics.—From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf—

(a).....

(b).....

(c) [manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,]or distribute any drug [or cosmetic], except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter:

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis :

Provided further that the 10[Central Government] may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the 11[manufacture for sale or for distribution, sale, stocking or exhibiting or offering for sale] or distribution of any drug or class of drugs not being of standard quality.

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Crl.O.P.No.7215 of 2023

WEB COPY

27. *Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter.—Whoever, himself or by any other person on his behalf, manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes,—*

(a).....

(b).....

(c).....

(d) any drug, other than a drug referred to in clause (a) or clause (b) or clause (c), in contravention of any other provision of this Chapter or any rule made thereunder, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to two years 5 [and with fine which shall not be less than twenty thousand rupees]:

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than one year.”

8. It is also relevant to refer the provision under Section 32(2) of the Act with regard to taking cognizance as follows :-

32. *Cognizance of offences—*

(1)

(2) Save as otherwise provided in this Act, no court inferior to that of a Court of Session shall try an offence



CrI.O.P.No.7215 of 2023

punishable under this Chapter.”

Thus it is clear that save as otherwise provided in this Act, no court inferior to that of a Court of Session shall try an offence punishable under Chapter IV.

9. Insofar as the taking cognizance of the complaint and the issuance of summons are concerned, summoning of an accused in a criminal case is a serious matter. The order of trial Court must reflect that the Trial Court has applied its mind to the facts of the case and the law applicable thereto. The Trial Court is required to examine the nature of allegations made in the complaint and the evidences both oral and documentary in support thereof and as to whether that would be sufficient for proceeding against the accused. Hence the Trial Court is not a silent spectator at the time of recording of preliminary evidence before summoning the accused.

10. In the case on hand, in a rubber stamp method, the Trial Court had taken cognizance without assigning any reason for making out prima facie for issuance of summons. The provision under Section 204 of Cr.P.C., deals with the issuance of process. If the Trial Court taking cognizance of a case on receipt of the complaint thinks that there is prima facie case for proceeding in respect of an offence, the Trial Court shall issue process against the accused.



Crl.O.P.No.7215 of 2023

Therefore, the presence of sufficient ground for proceeding is of immense importance as provided under Section 204 of Cr.P.C. An opinion is to be formed only after due application of mind that there is sufficient basis for proceedings against the said accused and formation of such an opinion is to be stated in the order itself. If no reason is given in support of the order of the issuance of process, it is clear that the Trial Court failed to apply its mind and is unsustainable in law. Therefore, at these two grounds the entire proceedings initiated as against the petitioners cannot be sustained and are liable to be quashed.

11. Accordingly, the proceedings in C.C.No.1046 of 2022 on the file of the learned IV Metropolitan Magistrate, is hereby quashed and the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

24.03.2026
(2/2)

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

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Crl.O.P.No.7215 of 2023

WEB COPY

To

1. The IV Metropolitan Magistrate,
Saidapet, Chennai.

2. The Drugs Inspector,
Vadapalani Range,
O/o. The Assistant Director Of Drugs Control,
Zone II, D.M.S. Campus, 259-261,
Annasalai, Teynampet,
Chennai. 600006.

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



Crl.O.P.No.7215 of 2023

G.K.ILANTHIRAIYAN. J,

rts

Crl.O.P.No 7215 of 2023
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(2/2)