

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2026

CORAM:

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

Crl.O.P.Nos.29757 & 29758 of 2022
and Crl.M.P.Nos.18234 to 18237 of 2022

Crl.O.P.No.29757 of 2022 :-

M.Raja

... Petitioner(s)

Vs.

The State of Tamil Nadu,
Rep. By Drugs Inspector,
Madhavaram Range,
O/o. The Assistant Director of
Drugs Control,
Zone IV, Chennai – 600 006.

... Respondent(s)

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for records, quash the proceedings in C.C.No.46 of 2019 on the file of the Chief Judicial Magistrate, Thiruvallur as against the petitioner.

For Petitioner(s):

Mr.P.H.Manoj Pandian

For Respondent(s):

Mr.A.Gopinath
Government Advocate (Crl. Side)

Crl.O.P.No.29758 of 2022 :-

M/s.Baxter India Pvt. Ltd.,
Rep. By Tabish Zubair,
Senior Counsel – Legal,
Survey No.219-1A1B, 225/4B, Block-C
Ground Floor, Kothari Warehouse,
Madhavaram, Redhills Road,
Puzhal Village, Ambattur Taluk,
Thiruvallur.

... Petitioner(s)

Vs.

The State of Tamil Nadu,
Rep. By Drugs Inspector,
Madhavaram Range,
O/o. The Assistant Director of
Drugs Control,
Zone IV, Chennai – 600 006.

... Respondent(s)

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for records, quash the proceedings in C.C.No.46 of 2019 on the file of the Chief Judicial Magistrate, Thiruvallur, for an offence punishable under Section 27(d) of the Drugs & Cosmetics Act, 1980 as against the petitioner.

For Petitioner(s): Mr.C.Manishankar,
Senior Advocate.
For Mr.C.Arunkumar

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

COMMON ORDER

Both the petitions have been filed to quash the proceedings in C.C.No.46 of 2019 on the file of the Chief Judicial Magistrate, Thiruvallur, thereby taking 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.

2. The petitioner in Crl.O.P.No.29757 of 2022 is arrayed as the fourth accused and the petitioner in Crl.O.P.No.29758 of 2022 is arrayed as the first accused. The case of the prosecution is that the respondent had inspected the first accused company on 30.07.2017 and observed that the first accused has been granted with drug license in Form 20 & 21 dated 19.01.2015 valid up to 18.01.2020. During the inspection, the purchase and sale of schedule H and other drugs were verified and the respondent found the following contravention:-

(i) Supply of the drugs by way of retail on the prescription of the registered practitioner were not recorded at the time of supply in the prescription register specially maintained for the purpose and it is not continuously signed by the endorsed registered pharmacist from 01.03.2016 to 30.03.2017. Further, name of the prescriber and patient is mentioned but the

address of the prescriber, patient is not mentioned in the prescription register. Therefore, it is in contravention of Section 18(c) of the Act r/w 65(3)(1) of the Drugs and Cosmetics Rules 1945 (hereinafter referred to as “the Rules”).

(ii) Further the supply of drugs by way of wholesale was made against cash or credit memo in which the name of the manufacturer is not mentioned, Drug license number of the licensee to whom the drugs were sold is incorrectly mentioned as listed in Table-I and it is in contravention under 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.

3. As per the inspection report, the accused was issued with show cause notice for the above contraventions. On receipt of the same, the accused by reply dated 28.07.2017 had stated that the first accused had taken immediate correction by maintaining the prescription register and the sale invoices produced at the time of inspection were reviewed as part of response to reported contravention. It was further stated that during verification, it is observed that there was typographic error in writing the license number and as such the errors have been corrected on immediate basis for future supplies.

4. However, without being satisfied by the reply, the respondent initiated prosecution for the contravention under Section 18(c) of the Act r/w Rules 65(3)(1), 65(5)(1) of the Rules, punishable under Section 27(d) of the Act. The trial Court had taken cognizance in C.C.No.46 of 2019 and issued summons to the accused. To quash the said proceedings the petitioners filed the present criminal petition.

5. The learned Senior counsel appearing for the fourth accused and other learned counsel appearing for the first accused submitted that the fourth accused 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 Chief Judicial 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

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method without assigning any reason for taking cognizance. It is clear violation of guidelines issued by the Hon'ble Supreme Court of India and this Court time and time again. Insofar as the fourth accused is concerned, he is neither a registered pharmacist nor a registered medical practitioner for the said offence to be attracted against him.

6. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent filed counter and submitted that already the third accused filed quash petition before this Court on the very same grounds in Crl.O.P.No.6797 of 2019 and the same was dismissed by this Court by an order dated 11.04.2022. The said order was also confirmed by the Hon'ble Supreme Court of India. In fact, the fourth accused filed petition to challenge the docket order dated 18.11.2022 in Crl.M.P.SR.No.4529 of 2022 in C.C.No.46 of 2019 on the file of the learned Chief Judicial Magistrate, Thiruvallur, thereby rejecting the request made by the fourth accused to return the complaint for want of jurisdiction. It was also dismissed by this Court in Crl.O.P.No.28742 of 2022 by an order dated 22.11.2022.

6.1. He further submits that the first accused is a company and the second accused is the Managing Director of the first accused company. The

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fourth accused is the competent person to look after the day to day affairs of the first accused company and there are specific allegations as against the fourth accused 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.

6.2. 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 Provisions of Section 262 to 295 of the said Code shall, as far as may be, applied to such trial. Therefore, the Chief Judicial Magistrate has jurisdiction to try the case. Further, the grounds raised by the petitioner can be considered

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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.

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

8. Though the learned Senior counsel and other counsel raised several grounds, the points for consideration in these quash petitions are as follows :-

(i) Whether the learned Chief Judicial 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.

9. 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.

.....

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.”

10. 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 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.

11. 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.

12. 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. 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

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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.

13. Accordingly, the proceedings in C.C.No.46 of 2019 on the file of the Chief Judicial Magistrate, Thiruvallur, is hereby quashed and both the Criminal Original Petitions stand allowed. Consequently, connected miscellaneous petitions are closed.

24.03.2026
(¹/₂)

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

rts

To

1. The Chief Judicial Magistrate,
Thiruvallur.

2. The Drugs Inspector,
Madhavaram Range,
O/o. The Assistant Director of
Drugs Control,
Zone IV, Chennai – 600 006.

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

Crl.O.P.Nos.29757 & 29758 of 2022

G.K.ILANTHIRAIYAN. J,

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Crl.O.P.Nos.29757 & 29758 of 2022
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24.03.2026
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