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*Crl.O.P.No.30405 of 2022  
etc. cases*

In the High Court of Judicature at Madras

Reserved on : 05.7.2023	Delivered on : 10.7.2023
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Original Petition Nos.30405 of 2022  
& 3555 and 4396 of 2023 &  
all connected pending Crl.M.Ps.

Mr.Moloy Banerjee

...Petitioner in  
Crl.O.P.No.30405  
of 2022

Brinda Kannan

...Petitioner in  
Crl.O.P.No.3555  
of 2023

M/s.TN Oxygen P. Ltd., rep.  
by its Managing Director  
Brinda Kannan

...Petitioner in  
Crl.O.P.No.4396  
of 2023

Vs

The State rep.by the Drugs  
Inspector, Mylapore Range,  
O/o the Assistant Director of  
Drugs Control, Zone III,  
Chennai-6.

...Respondent in  
all the Crl.O.Ps.



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PETITIONS under Section 482 of the Criminal Procedure Code

praying to call for the entire records pertaining to C.C.No.2571 of 2021 on the file of the Fourth Metropolitan Magistrate Court, Saidapet, Chennai and quash the same with respect to the petitioners.

For Petitioner in Crl.O.P.No.30405 of 2022	:	Mr.V.Karthic, SC for Mr.P.Vinodkumar
For Petitioners in Crl.O.P.Nos.3555 & 4396 of 2023	:	Mr.C.Jagadish
For Respondent in all the Crl.O.Ps.	:	Mr.A.Damodaran, Additional Public Prosecutor

COMMON ORDER

These criminal original petitions have been filed by A4, A7 and A6 respectively to quash the proceedings in C.C.No.2571 of 2021 on the file of the Fourth Metropolitan Magistrate, Saidapet, Chennai.

2. The respondent herein initiated proceedings by filing a criminal complaint against seven accused persons for contravention of Section 18(c) of the Drugs and Cosmetics Act, 1940 (for short, the

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Act) punishable under Section 27(d) and Section 27(b)(ii) of the Act.

3. The allegations made in the said complaint are as follows :

(i) On 30.1.2018, an inspection was conducted by the Drugs Inspector concerned in the premises of M/s.Oxaid (India) Gases (P) Limited situated at Royapettah, Chennai-14 and on enquiry, it was observed that the said company was not holding a drug licence for purchase and sale of drugs. On further verification of the relevant records, it was noticed that the said company was purchasing Oxygen IP and Nitrous Oxide from M/s.Linde India Limited, Kanchipuram and Oxygen IP from M/s.TN Oxygen (P) Limited, Ambattur, Chennai-95 and selling them to various hospitals. It was, therefore, prima facie concluded that there was a contravention of Section 18(c) of the Act for having stocked for sale/distribution without holding a valid licence.

(ii) The further allegation that has been made in the complaint was that the Managing Director of M/s.Oxaid (India) Gases (P) Limited admitted the contravention under the Act, the Rules framed thereunder and the conditions of licence. The main purport of the allegation made against the petitioners herein was to the effect that they had sold the drugs to a person not holding a requisite licence.



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(iii) On receipt of the show cause notice, M/s.Linde India Limited gave reply dated 12.11.2019 along with all the relevant documents. Similarly, M/s.TN Oxygen (P) Limited gave a reply dated 12.12.2019 along with all the relevant documents. A detailed report was collected from the Drugs Inspector and the Authority concerned came to the conclusion that an offence has been committed by the accused persons under the relevant provisions of the Act, the Rules framed thereunder and the conditions of licence and accordingly, the private complaint came to be filed against seven accused persons. As stated above, A4, A7 and A6 alone have challenged the complaint in these criminal original petitions.

4. Heard the respective learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent.

5. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.



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6. In so far as the petitioners are concerned, it has been stated in the complaint that they contravened the provisions of Section 18(c) of the Act read with Paragraph 2 of Form 25 read with Rule 65 of the Drugs and Cosmetics Rules, 1945 (for short, the Rules) and the conditions of licence under Form 20B and particularly condition No.3(ii) for having sold the drugs to a person not holding the requisite licence to sell, stock or exhibit for sale.

7. Section 18(c) of the Act deals with possessing of licence for manufacture, sale, distribution, etc., of any drug. The definition of the term 'drug' under Section 3(b) will include even devices intended for internal or external use in the diagnosis, treatment of disease or disorder in human beings and it will take within its fold Oxygen IP and Nitrous Oxide.

8. There is no dispute with regard to the fact that M/s.Oxiad (India) Gases (P) Limited had purchased these drugs from M/s.Linde India Limited and M/s.TN Oxygen (P) Limited and supplied them to hospitals. Even in the reply that was given on behalf of these two companies namely M/s.Linde India Limited and M/s.TN Oxygen (P)



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Limited, it has been clearly stated that these two companies were in possession of licence and copies of the same were also available in the typed set of papers.

9. Rule 65 of the Rules deals with the conditions of licence and for the present case, specific reliance is placed on Paragraph 2 of Form 25 and condition No.3(ii) of Form 20B.

10. Paragraph 2 of Form 25 reads as follows :

*"The licence authorises the sale by way of wholesale dealing and storage for sale by the licensee of the drugs manufactured under the licence, subject to the conditions applicable to licence for sale."*

11. Condition No.3(ii) of Form 20B reads as follows :

*"Form 20B*

*1.....*

*2....*

*3. The sale shall be made under the personal supervision of a competent person.*

*\*\*\*\*\**

*Conditions of Licence*

*1.....*

*2.....*



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3. (i) .....

(ii) *No sale of any drug shall be made to a person not holding the requisite licence to sell, stock or exhibit for sale or distribute the drug.*

*Provided that the condition shall not apply to the sale of any drug to-*

(a) *an officer or authority purchasing on behalf of Government, or*

(b) *a hospital, medical, educational or research institution or a registered medical practitioner for the purpose of supply to his patients, or*

(c) *a manufacturer of beverages, confectionery biscuits and other non-medicinal products, where such drugs are required for processing these products."*

12. A reading of the relevant Rules and the Forms shows that the manufacture for sale or distribution of drugs can be made by those persons, who possess a licence subject to the conditions applicable to the licence. In so far as condition No.3(ii) under Form 20B is concerned, no sale of any drug shall be made to a person not holding the requisite licence to sell, stock or exhibit for sale or distribute the drug.

13. The specific allegation that has been made against the petitioners is that they had sold the drug to M/s.Oxiad (India) Gases



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(P) Limited, which did not possess a licence to run the unit at Royapettah and in fact, they had a licence to run the unit only at Tiruchirapalli.

14. Rule 65(5) of the Rules prescribes the procedure to be adopted for supply of a drug. What has to be ensured at the time of supply of the drug is that the person or the entity, to whom it is supplied, must possess a licence.

15. M/s.Linde India Limited and M/s.TN Oxygen (P) Limited satisfied themselves with regard to the fact that M/s.Oxiad (India) Gases (P) Limited had a valid licence. It is not possible for these two entities to follow up with M/s.Oxiad (India) Gases (P) Limited and see as to where all the drugs are being supplied/sold by them. That is not definitely within the control of these two entities.

16. If M/s.Oxiad (India) Gases (P) Limited had sold the drugs in areas, for which, they do not possess licence, that cannot be put against M/s.Linde India Limited and M/s.TN Oxygen (P) Limited and they cannot be prosecuted by initiating penal action.





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17. In the considered view of this Court, the petitioners have not contravened any of the provisions of the Act, the Rules or the conditions of licence and hence, they cannot be prosecuted by the respondent. The allegations made in the complaint do not constitute an offence against the petitioners.

18. After the petitioners received the show cause notice from the respondent, they had given their reply along with all particulars. However, the respondent has not properly considered the reply given by the petitioners, but went ahead on the premise that the petitioners had admitted the violation. Such an understanding on the part of the respondent with regard to the reply given by the petitioners suffers from non application of mind and is unsustainable.

19. Ex consequenti, the continuation of the criminal proceedings against the petitioners will amount to an abuse of process of court, which requires interference of this Court in exercise of its jurisdiction under Section 482 of the Criminal Procedure Code.



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20. In the light of the above discussions, the proceedings in C.C.No.2571 of 2021 on the file of the Fourth Metropolitan Magistrate Court, Saidapet, Chennai are quashed only in so far as the petitioners are concerned. The Court below shall proceed further with the case as against the other accused persons and complete the proceedings as expeditiously as possible.

21. In the result, all the criminal original petitions are allowed. Consequently, all connected pending Crl.M.Ps. are closed.

10.7.2023

Index : Yes  
Neutral Citation : Yes

To

- 1.The Drugs Inspector, Mylapore Range, O/o the Assistant Director of Drugs Control, Zone III, Chennai-6.
- 2.The Fourth Metropolitan Magistrate, Saidapet, Chennai-15.
- 3.The Public Prosecutor, High Court, Madras.

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