

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

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CRIMINAL PETITION Nos.58 and 61 of 2023

Between:

M/s Ortin Laboratories Limited Rep. by Managing
Director Murali Krishna Murthy Sanka and 3 others.

...Petitioners/Accused

AND

1. The State of Telangana, Rep. by its Public Prosecutor,
High Court for the State of Telangana at Hyderabad.

2. The State of Telangana Rep. by Drugs Inspector,
R.C. Puram – Manufacturing, Sanga Reddy District.

...Respondents/Complainant

DATE OF JUDGMENT PRONOUNCED: 10.02.2023
Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**
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% Dated 10.02.2023

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Director Murali Krishna Murthy Sanka and 3 others.

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R.C. Puram – Manufacturing, Sanga Reddy District.

...Respondents

! Counsel for the Petitioners: Sri Sunil Gaswane

^ Counsel for the Respondents: Additional Public Prosecutor-
for Respondent Nos.1 and 2.

>HEAD NOTE:
? Cases referred

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION Nos.58 of 2023 and 61 of 2023****COMMON ORDER:**

These Criminal Petitions are filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.')

by the petitioners-Accused to quash the Docket order dated 09.12.2022 passed in P.R.C. No.31 of 2022 and P.R.C.No.30 of 2022 on the file of Additional Judicial First Class Magistrate, Sanga Reddy and direct the learned Additional Magistrate to register the complaint as C.C. instead of P.R.C. and direct the same to be tried by a magistrate Court.

2. Heard learned counsel for the petitioners-Accused and learned Additional Public Prosecutor for the respondent – State.

3. The Drug Inspector has filed complaint against the petitioners/accused Nos.1 to 4 stating that he seized Enalapril Maleate Tablet brand name lapril dated 29.01.2023 (CrI.P.No.58 of 2023) and also on 16.02.2022 (CrI.P.No.61 of 2023) and sent them for analysis. In both the cases, reports were received that the drug was "Not of Standard Quality ", as the drug does not meet the I.P. specification with respect to the test parameters 'Assay' and

'Dissolution'. Accordingly, two separate complaints were filed by the drug inspector, for the seizures effected on two different dates.

4. Learned Magistrate on receiving of the complaint registered it as P.R.C.No.30 of 2022 and P.R.C.No.31 of 2022 as the cases for the offence punishable under Section 27(d) of Drugs and Cosmetics Act are triable by the Court of Session.

5. The only grievance of the petitioner is that in cases relating to 'adulterated drugs' or 'spurious drugs' punishable under the Drugs and Cosmetics Act can be tried by the Specially Constituted Session Court. The offence alleged against the petitioner is triable by the magistrate court in accordance with Section 36-AB of Drugs and Cosmetics Act, as the drug was found to be "not of standard quality" and not a spurious or adulterated drug.

6. The learned Magistrate did not find favour with the arguments of the petitioners that the case has to be tried by a magistrate. In the lower Court, petitioners relied on the judgment of the *M/s. RA Chem Pharma Limited Vs State of Andhra Pradesh*, in support of their argument, however the learned magistrate having considered the said judgment found that the Government of Andhra Pradesh in consultation with the High Court designated the First

Additional District and Sessions Judge to try and dispose of the cases for the offences relating to adulterated and spurious drugs. Accordingly, the case has to be committed to the Sessions Court.

7. Under the Drugs and Cosmetics Act, 1940, Section 16 of Chapter-IV deals with 'standards of quality' of Drugs and Cosmetics. Sections 17-A, 17-B, 17-C, 17-D, 17-E deal with adulterated drugs, misbranded drugs, spurious drugs, misbranded cosmetics and spurious cosmetics.

8. The enactment has clearly demarcated the drugs and cosmetics into "misbranded" "adulterated" "spurious", drugs or cosmetics". The standards of quality of a drug or cosmetic are defined under Section 16 of the Act.

9. Section 36AB of Drugs and Cosmetics Act is extracted hereunder.

The Central Government, or the State Government, in consultation with the Chief Justice of the High Court, shall, for trial of offences relating to adulterated drugs or spurious drugs and punishable under clauses

(a) and (b) of section 13, sub-section (3) of section 22, clauses (a) and (c) of section 27, section 28, section 28A, section 28B and clause (b) of sub-section (1) of section 30 and other offences relating to adulterated drugs or spurious drugs, by notification, designate one or more Courts of Session as a Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification. Explanation.—In this sub-section, "High Court" means the High Court of the State in which a Court of Session

designated as Special Court was functioning immediately before such designation.

(2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in subsection (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

10. The Central Government, or the State Government, in consultation with the Chief Justice of the High Court, shall designate a Session Court as Special Court for trial of offences relating to 'adulterated drugs' or 'spurious drugs'.

11. There is a clear distinction made under the Act as to which Court can try the cases. The learned magistrate has committed an error in passing an order that cases relating to "drug not being of standard quality" has to be tried by the Specially Constituted Sessions Court. A Specially Constituted Session Court in accordance with Section 36AB of the Drugs and Cosmetics Act can try the offences of "Adulterated" or "spurious" drugs only.

12. The case for the offence punishable under Section 27(d) of the Drugs and Cosmetics Act is made punishable for maximum period of two years.

13 As per Schedule - II of Cr.P.C; If an offence is punishable with imprisonment of three years and not more than seven years the offence has to be tried by the Magistrate of First Class. Under

Section 36AB of Drugs and Cosmetics Act, the offences punishable under Section 27(d) of the Drugs and Cosmetics Act are tried summarily except the offence triable by the said Court under Section 36AB of the Court of Session. Either way the offence under Drugs Act when the "drug is not of standard quality" has to be tried by the Magistrate of First Class.

14. Accordingly, the orders of the learned magistrate in P.R.C.No.31 of 2022 and P.R.C.No.30 of 2022 are hereby set aside and learned magistrate is directed to try the said case in accordance with law.

15. Accordingly, both the Criminal Petitions are disposed of.

Miscellaneous applications pending, if any, shall stand closed.

K.SURENDER, J

Date: 10.02.2023
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