

(2013) 08 KL CK 0011

In the High Court Of Kerala

Case No : Criminal R.P. No's. 1475, 1477, 1730 and 1742 of 2013

Zest Pharma, M.P. and Others

APPELLANT

Vs

Drug Inspector, Thrissur and Another

RESPONDENT

Date of Decision : 30-08-2013

Acts Referred:

Citation : (2014) 1 ILR (Ker) 300 : (2013) 4 KHC 223 : (2013) 4 KLT 462

Hon'ble Judges : K. Harilal, J

Bench : Single Bench

Advocate : P.V. Kunhikrishnan, for the Appellant; Liju V. Stephen, Public Prosecutor, for the Respondent

Judgement

K. Harilal, J.—Though the revision petitioners in all these revision petitions are different and the crimes from which these warrant cases arose are also different, the legal issue involved in these revision petitions are one and the same. Therefore, these revision petitions can be heard together and disposed of by a common order. In all these revision petitions, the respective accused are charge-sheeted for the offence punishable u/s 18(a)(i) read with Section 27(d) of the Drugs and Cosmetics Act, 1940 (for short "the Act"). The prosecution allegation against each revision petitioner is that the drugs taken from their possession are "not of standard quality" and thereby committed the offence punishable u/s 18(a)(i) read with Section 27(d) of the Drugs and Cosmetics Act, 1940. But, the respective Magistrate Courts committed those cases to the concerned Sessions Courts on a finding that after the commencement of the Drugs and Cosmetics (Amendment) Act, 2008 (Act 26 of 2008) with effect from 10/08/2009, these offences are not triable by a Magistrate's Court; but shall be tried only by Sessions Courts. Consequently, these cases now stand committed to respective Sessions Court. These orders of committal to the concerned Sessions Courts are under challenge in these revision petitions. Sri. P.V. Kunhikrishnan, the learned counsel for the revision petitioners in all these revision petitions advanced arguments, assailing the impugned committal orders and pointed out the scope

and extent of jurisdictional changes brought up by Act 26 of 2008. Sri. Liju V. Stephen, the learned Public Prosecutor advanced arguments highlighting the scope of amendment. The teamed counsel for the revision petitioners submits that the Courts below went wrong by committing the cases to the respective Sessions Courts u/s 209 of the CrPC. The committal order passed by the learned Magistrate is illegal and improper. The learned counsel drew my attention to the relevant provisions of Sections 36, 36AB, 32, 18(a)(i) and 27(d) of the Drugs and Cosmetics Act and placed arguments relying on these provisions. It is contended that as per Section 36AB of the said Act, the Special Court has no jurisdiction to try an offence alleging violation of Section 18(a)(i) punishable u/s 27(d) of the Drugs and Cosmetics Act and even after the said amendment, the jurisdiction to try the above offence remains with the Magistrate Court, as it was, before the amendment. As per Section 36AB, the Special Court is constituted for trying the offences relating to adulterated drugs and spurious drugs covered by Clauses (a) and (b) of Section 13, sub-section (3) of Section 22, Clauses (a) and (c) of Sections 27, 28, 28A, 28B, Clause (b) of sub-section (1) of Section 30 and other offences relating to adulterated drugs and spurious drugs.

2. The petitioners are charge-sheeted for the alleged offence u/s 18(a)(i), punishable u/s 27(d) of the Drugs and Cosmetics Act. According to the learned counsel for the revision petitioners, the offence u/s 18(a)(i) punishable u/s 27(d) is conspicuously excluded from the said amendment conferring jurisdiction to Special Courts. Therefore, the trial of the offence u/s 18(a)(i) punishable u/s 27(d) still remains with the Magistrate's Court. Hence the committal orders passed by the learned Magistrates based on Section 32(2), substituted by the Act 26 of 2008, is illegal and unsustainable. Moreover, the said amendment Act, without any ambiguity says that the same is applicable only prospectively with effect from 10/08/2009. The learned counsel for the revision petitioners drew my attention to the consequences thereof under the committal proceedings. The learned counsel further drew my attention to Sections 36 and 36A and submits that by various amendments, upto 2008, the power of the Magistrate Court is also enhanced so as to empower the Magistrate Court to try the offences with enhanced penalties and also to try certain offences punishable with imprisonment for a term not exceeding three years in a summary way, notwithstanding the power of the Magistrate under the Code of Criminal Procedure. The crux of the arguments advanced by the learned counsel for the revision petitioners is that those offences which stand excluded from the purview of Section 36AB introduced by Act 26 of 2008 still remains with the Magistrate's Court and it is permissible under the saving clause of Section 32(2). The learned counsel further pointed out that even though the offences relating to "spurious drugs" are also incorporated under the purview of the amendment, all these cases do not come under that category as the allegation is that the drug is not of a standard quality.

3. In view of the arguments advanced by the learned counsel for the revision petitioners, the question to be considered is whether the Magistrate's Court has the power to try an offence u/s 18(a)(i) read with Section 27(d) of the Drugs and

Cosmetics Act after the commencement of Act 26 of 2008 with effect from 10/08/2009. Before the commencement of Act 26 of 2008, all the offences coming under the purview of the Drugs and Cosmetics Act, 1940 were being tried by the Magistrate's Court only. The drastic change brought up by the said amendment is that punishment provision of certain offences are enhanced and the trial of certain offences are brought under the jurisdiction of the Sessions Court, which can be designated as Special Court. Therefore, after the amendment, two categories of Courts are provided for the trial of offences coming under the Drugs and Cosmetics Act so also, the powers of the Magistrate's Court are also enhanced so as to try certain offences punishable with imprisonment for a term not exceeding three years in a summary way. In short, after the amendment of 2008, the Magistrate's Court as well as Sessions Court designated as Special Court are vested with powers to try the respective offences coming under those Courts. Coming to Section 32(2), no Court inferior to that of Court of Session shall try an offence punishable under this Chapter, save as otherwise provided in this Act. Therefore, the jurisdiction and power of the Magistrate's Court to try certain offences are also saved by the said saving provision. Coming to Section 36AB, the Special Courts are vested with jurisdiction and power to try certain 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. In these cases, admittedly, the allegations would come neither under adulterated drug nor spurious drug. Thus, unambiguously Section 18(a)(i) is excluded from Section 36AB introduced by way of amendment with effect from 10/08/2009. Certain offences which stood in the Act before the said amendment are seen carved out and brought under the jurisdiction of Special Court constituted and designated u/s 36AB introduced by Act 26 of 2008 with enhanced penalties. Obviously, those offences excluded from such carving of will remain there with the Magistrate Court and continue as such without any disturbance. Therefore, I am of the opinion that even now after the amendment of 2008, the Magistrate's Courts are vested with the jurisdiction and power to try the offences u/s 18(a)(i) read with Section 27(d), if the allegation u/s 18(a)(i) is that the drug is "not of a standard quality".

4. The above view is further supported by the decision reported in C.P. Udayadivakaran Vs. State of Kerala, In the above decision, this Court held that "other than the offences referred to in Section 36AB of the Act, which are exclusively triable by the Special Court, the rest of the offences punishable under the Act can be taken cognizance of and tried by the Magistrate as before". I am of the opinion that the view, which I have taken above is further supported by the rule that emerges from the legal maxim *expressio unius est exclusio alterius*, that is, the express mention of one thing implies the exclusion of another. Whenever a Statute limits a thing to be done in a particular form, it necessarily

included in itself a negative also. Therefore, I find that, regarding the jurisdiction and powers of Courts, in the amendment brought up by the Act 26 of 2008, a negative is also implied that all other things excluding the amendment will remain there in the Statute as they were, without any disturbance. I find that the Courts below in all these cases went wrong by committing these cases to the Court of Sessions, u/s 209 of the CrPC. Consequently, I am inclined to set aside the impugned orders, viz.; CP Nos. 5/2013 & 6/2013 of the Chief Judicial Magistrate, Thrissur, CP No. 55/2013 of the Chief Judicial Magistrate, Thiruvananthapuram and CP No. 7/2013 of the Judicial First Class Magistrate, Vatakara, committing the cases to the concerned Sessions Court and I do so. The concerned Magistrate Courts are directed to proceed in accordance with law as if no committal order had been passed. The parties shall appear before the concerned Magistrate Court on 01/11/2013.

The Revision Petitions are allowed.