

**IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH**

DATED THIS THE 4TH DAY OF MARCH, 2022

BEFORE

THE HON'BLE MRS.JUSTICE M.G. UMA

CRIMINAL PETITION No.102191/2021

C/W

CRIMINAL PETITION No.102201/2021

IN CRL.P.No.102191/2021:

BETWEEN:

SNAPDEAL PVT. LTD.,
(FORMERLY KNOWN AS
JASPER INFOTECH PVT. LTD.)

REGD. OFFICE AT:

... PETITIONER

(BY SRI: C.V. NAGESH, SENIOR COUNSEL FOR
SRI: S.S. POOVAYYA, ADVOCATE)

AND:

STATE OF KARNATAKA
REPRESENTED BY
DRUGS INSPECTOR-3

REPRESENTED BY ITS STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
DHARWAD.

... RESPONDENT

(BY SRI: PRAVEEN UPPAR, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. SEEKING TO CALL FOR ENTIRE RECORDS IN C.C.NO.6652/2021 PENDING BEFORE THE COURT OF I ADDITIONAL CIVIL JUDGE AND J.M.F.C. HUBBALLI AND QUASH THE COMPLAINT DATED 02.08.2021 IN C.C.NO.6652/2021, PENDING BEFORE THE COURT OF I ADDITIONAL CIVIL JUDGE AND J.M.F.C. HUBBALLI (AT ANNEXURE A) AND QUASH THE ORDER DATED 16.10.2021 (AT ANNEXURE B) AND FURTHER PROCEEDINGS PENDING IN C.C.NO.6652/2021 PENDING BEFORE THE COURT OF I ADDITIONAL CIVIL JUDGE AND J.M.F.C., HUBBALLI.

IN CRL.P.No.102201/2021:

BETWEEN:

1. MR. KUNAL BAHL
DIRECTOR
AGE 37 YEARS

2. ROHIT KUMAR BANSAL
DIRECTOR

... PETITIONERS

(BY SRI: C.V. NAGESH, SENIOR COUNSEL FOR
SRI: S S POOVAYYA, ADVOCATE)

AND:

STATE OF KARNATAKA
REPRESENTED BY DRUGS INSPECTOR-3
DHARWAD CIRCLE

REPRESENTED BY ITS STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
DHARWAD.

... RESPONDENT

(BY SRI: PRAVEEN UPPAR, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. SEEKING TO CALL FOR ENTIRE RECORDS IN C.C.NO.6652/2021 PENDING BEFORE THE COURT OF I ADDL CIVIL JUDGE AND J.M.F.C. HUBBALLI AND QUASH THE COMPLAINT DATED 02.08.2021 IN C.C.NO.6652/2021, PENDING BEFORE THE COURT OF I ADDL CIVIL JUDGE AND J.M.F.C. HUBBALLI (AT ANNEXURE A) AND QUASH THE ORDER DATED 16.10.2021 (AT ANNEXURE B) AND FURTHER PROCEEDINGS PENDING IN C.C.NO. 6652/2021 PENDING BEFORE THE COURT OF I ADDL CIVIL JUDGE AND J.M.F.C., HUBBALLI.

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED ON 21.01.2022 AND COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THROUGH VIDEO CONFERENCE AT BENGALURU BENCH, **M G UMA J.**, PASSED THE FOLLOWING:

ORDER

The petitioner in Criminal Petition No.102191 of 2021 being accused No.1 and the petitioners in Criminal Petition No.102201 of 2021 being accused Nos.2 and 3 are before this Court seeking to quash the criminal proceedings initiated against them and pending in C.C.No.6652 of 2021 on the file of I Additional Civil Judge and JMFC Court at Hubballi, for the offences under Section 18(c) which is punishable under Section 27(b)(ii) and 28 of the Drugs and Cosmetics Act, 1940 (for short 'the Act').

2. The brief facts of the case as stated by the complainant-respondent is that, accused No.1 - Snapdeal is an online site owned and operated as a Company having its registered office at New Delhi, represented by accused Nos.2 and 3, engaged in shopping by providing platform for online marketing and selling of various consumer

products. The drug by name SUHAGRA 100 tablets were displayed for sale in the said online site and same is being sold to various customers. Accused No.1 is the company doing business, accused Nos.2 and 3 are the Directors-cum-Promoters and Chief Executive Officer/Chief Operating Officer of accused No.1 and they are responsible for its day to day conduct of the business, as per the resolution passed by the Board of Directors of accused No.1. It is stated that a credible information was received regarding sale of drug - SUHAGRA tablets through online portal, without possessing valid drug license issued under the Act. CW2 carried out the investigation in this regard. CW5 placed an order for supply of the drugs through Snapdeal web portal and received the consignment on 19.12.2014. Similarly, CW3 also got SUHAGRA tablets through web portal. CW6 had also placed an order to get SUHAGRA drugs through Snapdeal web portal and had received the consignment on 17.04.2015. On enquiry with the Drugs Controller, Chandigarh it was revealed that the accused were not having valid license to deal with the

drugs. A detailed investigation was undertaken by the complainant and it was found that accused No.1 is dealing with various items through its online site i.e., web portal www.snapdeal.com, without possessing any license under the provisions of the Act, but displayed, provided platform to exhibit and sell the drugs - SUHAGRA tablets and aided in commission of the Act. Thereby, committed the offence by violating Section 18(c), punishable under Section 27(b)(ii) of the Act and Rules there under.

3. Accused Nos.2 and 3 - the Directors-cum-Promoters and Chief Executive Officers/Chief Operating Officers of accused No.1 are responsible for the day to day conduct of the business of the said Company and they are responsible for providing platform to exhibit and sell the drugs in question without possessing valid license and they have also committed offences as stated above. It is stated that accused Nos.1 to 3 have also not disclosed source of acquisition of the said drugs and thereby violated Section 18A punishable under Section 28 of the Act. Therefore, the

complainant requested the Trial Court to take cognizance of the offence and to initiate legal action.

4. On filing the private complaint by the public servant i.e., the Drugs Inspector, the Trial Court took cognizance of the offence punishable under Sections 27(b)(ii) and 28 of the Act, registered criminal case in C.C.No.6652 of 2021 and issued summons to the accused vide order dated 02.08.2021, which is called in question before this Court by accused Nos.1 to 3 by filing two separate petitions and to quash the complaint filed by the complainant and the order dated 02.08.2021 passed by the Trial Court.

5. Heard Sri.C V Nagesh, learned senior counsel for Sri.S S Poovayya and Sri.Praveen Uppar, learned High Court Government Pleader for the respondent.

6. Sri.C V Nagesh, learned senior counsel for the petitioners contended that the complainant filed the private complaint alleging commission of the offence against accused Nos.1 to 6. The address mentioned in the

private complaint discloses that accused Nos.1 and 2, who are the petitioners herein are the residents of New Delhi and accused No.3 is the resident of Malout, Muktsar, Punjab. When a complaint is received by the Magistrate and the accused is residing at a place beyond the area in which he exercise his jurisdiction, it is the mandate of law under Section 202 of Cr.P.C, that he shall postpone issuance of process against the accused and hold an inquiry into the case either himself or direct an investigation to be made by the Presiding Officer or any other person he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. The said mandatory requirement of law is not followed by the learned Magistrate before issuance of summons and therefore, the entire criminal proceedings initiated against the petitioners gets vitiated.

7. The learned senior counsel placed reliance on the decision of the Hon'ble Apex Court in **Vijay Dhanuka**

and Others Vs Najima Mamtaj and Others¹, to contend that inquiry contemplated under Section 202 of Cr.P.C is mandatory and the same cannot be bypassed while issuing process against the accused.

8. Learned senior counsel also placed reliance on the decision of this Court in the case of **Kunal Bahl and Others Vs State of Karnataka²**, to contend that inquiry under Section 202 of Cr.P.C is a must when the accused is the resident of the place beyond the jurisdiction of the learned Magistrate, and to contend that an intermediary as defined under Section 2(w) of the Information Technology Act, 2000, its Directors/Officers would not be liable for any action or inaction on part of a vendor/seller, making use of the facilities provided by the intermediary in terms of a website or a market place.

9. Learned senior counsel placing reliance on the same decision also contended that an intermediary would not be responsible and/or liable for sale of any item not

¹ (2014) 14 SCC 638

² 2021(2) KLJ 254

complying with the requirements under the Drugs and Cosmetics Act, 1940 on its platform, since the essential ingredients of Section 18 (1) (c) of the Act have not been fulfilled. Therefore, it is contended that accused No.1 or its Directors cannot be prosecuted for the offence punishable under Section 27(b)(ii) of the Act. Therefore, learned senior counsel prays for allowing the petition and to quash the impugned order taking cognizance of the offence and also criminal complaint filed by the respondent against these petitioners, in the interest of justice.

10. *Per contra*, Sri.Praveen Uppar, learned High Court Government Pleader opposing the petition submitted that the inquiry contemplated under Section 202 of Cr.P.C when the accused resides beyond the area over which the Magistrate concerned exercise jurisdiction is limited to ascertain the truth or otherwise of the allegations made in the complaint. The object of amending Section 202 (1) of Cr.P.C is to avoid false and frivolous complaints that are being filed and being entertained by the learned

Magistrate, without there being any inquiry about the truth or otherwise of the allegations made therein. In the present case, learned Magistrate has not passed the impugned order blindly or mechanically. But on the other hand, the impugned order dated 02.08.2021 discloses that there is application of mind regarding the averments made in the complaint and after fully satisfying with the averments made therein by the complainant in his official capacity and while performing the official duty, proceeded to take cognizance of the offence. There is no illegality or perversity in the order passed by the learned Magistrate and therefore, the same cannot be find fault with.

11. Learned High Court Government Pleader further submitted that accused No.1 being the Company, accused Nos.2 and 3 being the Directors-cum-Promoters are responsible for its day to day affairs and they were dealing with drugs in question without there being any license and thereby contravened the provisions of the Act. When *prima facie* materials are placed before the Court to

constitute the contravention and the offence punishable under the Act, the Trial Court rightly took cognizance of the offence and the criminal proceedings initiated against the accused is in accordance with law. Hence, he prays for dismissal of the petition as devoid of merits.

12. In view of the rival contentions urged by the learned counsel for the parties, the point that would arise for my consideration is:

"Whether the petitioners have made out a case for quashing the order dated 02.08.2021 and further proceedings pending in CC No.6652 of 2021 before the I Additional Civil Judge and JMFC, Hubballi, for the offence punishable under Section 18(c) punishable under Sections 27(b)(ii) and 28 of the Drugs and Cosmetics Act?"

My answer to the above point is in 'Affirmative' for the following:

REASONS

13. It is the initial contention of the learned senior counsel that the Trial Court has not followed the procedure as contemplated under Section 202 of Cr.P.C. before taking cognizance of the offence against the accused who are residing at a place beyond the area in which he exercises his jurisdiction. Under Section 202(1) of Cr.P.C., the learned Magistrate is required to postpone the issuance of process against the accused when he resides at a place in which the learned Magistrate exercise his jurisdiction only for the purpose of holding enquiry either by himself or directing an investigation by the police or such other persons as he thinks fit, only for the purpose of deciding whether or not there is sufficient grounds for proceeding against the accused.

14. In the present case, a detailed written complaint was filed under Section 200 of Cr.P.C. by a public servant i.e., the Drugs Inspector, Dharwad Circle making serious allegations against the accused. The

learned Magistrate passed the impugned order taking cognizance against all the accused including the petitioners herein, wherein, it is observed that the complainant had investigated into the matter on the direction issued by the Drugs Controller and the allegations made against the accused disclose the violation of Section 18(a) and (c) punishable under Sections 27(b)(ii) and 28 of the Act. Since the complaint was filed by the complainant in his official capacity, his sworn statement was dispensed with. Cognizance for the offence punishable under Sections 27(b)(ii) and 28 of the Act was taken and the office was directed to register the criminal case against all the accused.

15. As per the case made out by the prosecution, CW5 - Mr.Jesu Fernandez placed an order for purchase of SUHAGRA-50 tablets through the portal of accused No.1 on 09.12.2014 and on the same day, the consignment containing the tablets was delivered to the consignee. Similarly CW6 - Mr.Prashant Narayana Jadhav has placed

an order to supply SUHAGRA-25mg tablets through the web portal snapdeal on 14.04.2015 and the consignment was delivered on 17.04.2015. Therefore, commission of the offence by the accused was complete against CW5 on 19.12.2014 and against CW6 on 14.04.2015. But the private complaint was filed by the complainant on 02.08.2021 i.e., after lapse of more than 6 years.

16. As per Section 468 of Cr.P.C., there is a bar for taking cognizance of the offence after lapse of period of limitation provided therein. Since the offence alleged is punishable under Section 27(b)(ii) and the prescribed imprisonment shall not be less than 3 years, the period of limitation as per Section 468(2)(c) is within three years from the date of commission of the offence. On close scrutiny of the complaint which runs into several pages, the complainant has not stated anything about the delay caused in filing the complaint. There is neither an explanation for the delay nor there is prayer for condonation of the same, if the same is permissible under

law. Unfortunately, the learned Magistrate has also lost sight of this aspect of the matter and proceeded to take cognizance of the offence mechanically. Even though the learned Magistrate has referred to the complaint in brief before taking cognizance of the offence, it has to be concluded that there is no application of mind before passing the impugned order against these petitioners.

17. The next contention raised by the learned senior counsel is that accused No.1 is an intermediary as defined in the Information Technology Act, 2000 (for short IT Act), and therefore, there is an exemption from liability which is complained of. As per Section 2(w) of the IT Act, intermediary with respect to any particular electronic records means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-

auction sites, online-market places and cyber cafes. As per Section 79 of the IT Act, there is an exemption from liability of the intermediary in certain cases. Subject to the provisions of Sub Section (2) and (3) of Section 79, an intermediary shall not be liable for any third party information, data or communication link made available or hosted by him. It is not the contention of the complainant in the present case that the act alleged falls under Sub Section (2) or (3) of Section 79 of IT Act. It is not made clear in the complaint as to whether this exemption could be made available against the petitioners.

18. The learned senior counsel placed reliance on the decision of this Court in ***Kunal Dahl*** (*supra*). In the said decision, the co-ordinate Bench of this Court considered the similar facts of the case pertaining to accused No.1 and formulated several questions for determination. Point Nos.(vi) and (vii) as formulated by the co-ordinate Bench of this Court is "(vi)whether an intermediary as defined under Section 2(w) of IT Act would

be liable for any action or inaction on party of a vendor/seller making use of the facilities provided by the intermediary in terms of a website or a market place and (vii) whether Snapdeal/accused No.2 would be responsible and/or liable for sale of any item not complying with the requirements under the Drugs and Cosmetics Act, 1949 on its platform accused No.2 being an intermediary. While answering these points, it is held that intermediary as defined under Section 2(w) of IT Act or its Directors/Officers would not be liable for any action or inaction on the part of the vendor/seller making use of the facilities provided by the intermediary in terms of a website or a market place and that the Snapdeal/accused No.2 could not be responsible and/or liable for sale of any item not complying with the requirements under the Act on its platform by accused No.1 since the essential ingredients of Section 18(1)(c) of the Act not having been fulfilled neither Snapdeal nor its Directors can be prosecuted for the offence under Section 27(b)(ii) of the Act. The co-ordinate bench of this Court in its decision

discussed at length about various provisions of Cr.P.C., Information Technology Act and Drugs and Cosmetics Act and held that no offence whatsoever is made out against the accused and therefore, the petitions were allowed quashing the criminal proceedings initiated against the accused therein. The petitioners herein being the Snapdeal Private Limited and its Directors who are arrayed as accused Nos.1 to 3 are the same parties in the above said criminal petitions and the offence alleged of is also similar.

19. Learned High Court Government Pleader fairly replied to the query raised by the Court and stated that the State has not challenged the order passed by the co-ordinate Bench of this Court in ***Kunal Dahl*** (*supra*). Therefore, the said order of the learned Single Judge reached finality. Moreover, the learned High Court Government Pleader has not convinced this Court as to how the petitioners are liable for prosecution when there is an exemption from liability as provided under Section 79 of

the IT Act. It is not in dispute that accused No.1 is an intermediary as defined under Section 2(w) of IT Act. Under such circumstances, I do not find any reason to form a different opinion. Therefore, I am of the opinion that the petitioners have made out grounds for allowing the petitions.

20. Accordingly, I answer the above point in 'Affirmative' and pass the following:

ORDER

The petitions are ***allowed***.

The impugned order dated 02.08.2021 passed in CC No.6652 of 2021 and all further proceedings pending on the file of the I Additional Civil Judge and JMFC, Hubballi, in so far as relating to petitioners-accused Nos.1 to 3 for the offences punishable under Sections 27(b)(ii) and 28 of the Drugs and Cosmetics Act, 1940, is quashed.

**Sd/-
JUDGE**

*bgn/-