

Sessions Case No. 25 of 2019

Order No. 17 dated 11. 02. 2021 :-

Today is fixed for further order. The accused No. 1, namely, M/s. Life Drug Private Limited is represented by its Ld. Counsel under Section 305 CrPC. Accused No. 2 Swapan Das on court bail is present by filing hazira. The accused No. 3, Sudipa Dey is also present, being represent by her Ld. Counsel under Section 205 of the CrPC.

It is manifest from the case record that complaint case No. 17521 of 2014 was instituted before the court of the Ld. Chief Metropolitan Magistrate, Calcutta. At the relevant point of time, Section 28A and 28B of the Drugs & Cosmetics Act, 1940 was triable by the court of Ld. Magistrate. In due course, the record was transferred to the Court of the Ld. MM, 6th Court, Calcutta. Subsequently, by virtue of amendment which was given retrospective operation, offences punishable under Sections 28B and 28B of the Drugs & Cosmetics Act

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were deemed to be exclusively triable by the Court of Sessions. Accordingly, the Ld. 6th MM, Calcutta by virtue of his order dated 04. 03. 2019 committed this case to the Court of the Ld. Chief Judge, City Sessions Court, Calcutta. Since the Ld. Magistrate did not mention the provision under which such commitment was made, a debate ensued between the Ld. Counsel for the defence and the Ld. Counsel for the prosecution regarding the stage at which the case should be proceeded with by this court.

Clearly, in a trial before a court of Sessions, the court has to take all evidence, which may be produced by the prosecution. If Section 244 of the CrPC is to be applied to a trial before a court of Sessions, the complainant/prosecution has to produce all evidences twice and the witnesses too, would have to under go cross-examination twice. Such proposition is patently absurd and such intention thereof can not be impuded to the Legislative wisdom. The concerned case was proceeding in due course before the Court of the Ld. Magistrate, till there was an amendment of the Drugs & Cosmetics Act itself regarding jurisdiction. Consequently, the commitment made by the Ld. Magistrate to this court was under Section 323 of the CrPC and not under Section 209 of the CrPC. Provisions contained in Section 323 of CrPC apply to any stage before signing of the judgment with only one precondition that it must appeared to the Magistrate that the offence ought to be tried by a court of Sessions. In such type of situation, there would be no scope for recording a pre-charge evidence by the Sessions court under Section 244 of the CrPC. Once a case is committed under Section 323 CrPC, the provisions of Chapter-XVIII of the CrPC will become applicable.

Consequently, regardless of the fact that this case was in the stage of 'evidence before charge', before the court of the Ld. Magistrate, it would proceed herein, in accordance with Chapter-VIII of the CrPC, which starts with consideration of charge.

Fixing: 10. 03. 2021 for consideration of charge.

Accused persons to remain present before the court on the date fixed.

Accused persons are as before.

Dictated & corrected by me.

Addl. Dist. & Sessions Judge
1st Fast Track Court, Calcutta.
11. 02. 2021

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