

Serial No.28

Reg.cause list

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

CRM(M) No. 148/2021

Reserved on: 16.12.2023

Pronounced on: 29.12.2023

1. **Shishir Gupta, Age 30 Years,
S/o Shiv Kumar Gupta,
R/o House No. 193, Sector-6
Panchkula, Haryana**

2. **Nitin Singla, Age 30 Years
S/o Yashpal Singla
R/o House No. 15, Sector-11
Chandigarh.**

..... petitioner(s)

Through: -

*Mr. Sunil Sethi, Sr. Advocate with
Mr. Ankesh Chandel, Advocate*

V/s

**UT of Jammu and Kashmir,
Through Drugs Inspector Zone-I, Srinagar
C/o Office of Controller,
Drugs and Food Control Organization,
Dalgate, Srinagar, J&K.**

..... Respondent(s)

Through: -

Mr. Satinder Singh Kala, AAG

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

(JUDGMENT)

1. Inherent powers enshrined under Section 482 Cr.PC is being invoked by the petitioners herein, seeking quashment of complaint titled as ***State through Drugs Inspector Zone-I, Srinagar J&K Vs. Alliance Biotech and Ors.***, (for short impugned complaint) along with the proceedings initiated

thereon, pending before the Court of Additional Sessions Judge (TADA-POTA) Srinagar (for short the trial Court.)

2. The facts under the shade and cover of which the instant petition has been filed are that the petitioners are partners in a partnership concern namely, Alliance Biotech having its registered office and place of business/manufacturing unit situated at village Katha, Baddi District Solan, Himachal Pradesh, being possessed of a license bearing No. MNB/06/384 & MB/06/385 (Form No. 28) for manufacturing, sale and distribution of drugs under Drugs and Cosmetics Act, 1940 (for short Act of 1940), issued by State Drug Licensing Authority of Himachal Pradesh, renewed from time to time. The partnership firm is stated to have engaged technical staff/persons under whose supervision and directions various drugs are being manufactured, whose particulars stand entered and approved in the said license and the other records by the Drug Licensing Authority.

3. The respondent herein, is stated to have filed the impugned complaint under Section 18 (a) (i) read with Section 27 (c), Section 27 (d) and Section 28A of the Act of 1940 besides others against the petitioners as well, alleging therein that the petitioners herein being manufacturer of a sub-standard and spurious drugs namely, Methylprednisolone, Sodium Succinate Inj. USP, have committed offences under Section 18 (a) (i), Section 17 B, punishable under Sections 27(c) and 27(d) of the Act of 1940.

4. The petitioners herein, have questioned the maintainability of the impugned complaint as also the proceedings initiated thereon by the trial Court, *inter alia*, on the grounds that the institution of the complaint and taking of cognizance by the trial Court thereon against the petitioners is

abuse of process of law and that the impugned complaint did not lie against the petitioners in absence of the specific averment in the complaint that the partners/petitioners herein were in charge of and responsible for the conduct of partnership business at the time of commission of alleged offence, in that, the respondent/complainant had failed to establish the extent of liability and role of the petitioners herein, in the process of manufacturing of drugs in question under and in terms of Section 34 of the Act of 1940 and that the criminal prosecution launched against the petitioners is unwarranted and the allegations made in the complaint are inherently improbable on the basis of which one can never reach to just conclusion that there is sufficient ground for proceeding against the petitioners and that the uncontroverted allegations made in the impugned complaint as also the evidence collected in support thereof does not disclose either commission of any offence by the petitioners or make out a case against the petitioners.

5. **Response** to the petition has been filed by the respondents, wherein the contentions raised and grounds urged in the petition are being controverted and resisted *inter alia* on the grounds that the petitioners have committed the offence in question by manufacturing sub-standard and spurious drug being an offence under Section 18 (a) (i) read with Section 17B of the Act of 1940, punishable under Section 27(c) and Section 27(d) respectively of the Act of 1940.

Heard learned counsel for the parties and perused the record.

6. The fundamental grounds urged in the instant petition against the maintainability of the impugned complaint and proceedings initiated thereon is based on the provisions of Section 34 of the Act of 1940. A reference to which thus becomes imperative hereunder:-

“34. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly:

Explanation.—For the purposes of this section—

(a) “company” means a body corporate, and includes a firm or other association of individuals; and

(b) “director” in relation to a firm means a partner in the firm.”

What emanates from plain reading of Section 34 is that a person/s who is/are sought to be made criminally liable should be at the time the offence was committed, in charge of and responsible for the conduct of the business of the Company. Thus every person connected with the company would not fall within the ambit of the provision, but it is only that person/s who was/were in charge of and responsible for the conduct of the business of the Company at the time of the commission of the offence are liable for criminal action. Thus, a person “in charge of” and “responsible to the Company for the conduct of the business of the Company,” contemplated in Section 34 must be a person in overall control of the day-to-day business of the Company or firm and unless and until the prosecution

makes an averment to that effect such prosecution against such person cannot sustain.

The aforesaid principal and view has been laid down and taken by the Apex Court titled as *State of Haryana Vs. Brij Lal Mittal, reported in AIR 1998 SC 2327 and M/S Cheminova India Limited and Anr. Vs. State of Punjab and Ors., reported in (LL 2021 SC 355)*.

7. Reverting back to the case in hand, in the impugned complaint the following is the allegation levelled against the petitioners at para 22, which is reproduced as under:-

“ That the accused no. 1 are the partners of the M/s Alliance Biotech which is a licensed manufacturer of the drug in question and as such responsible under the Drugs and Cosmetics Act, 1940 for manufacture, sale or for distribution of a drug which is not of a standard quality and also spurious as per the report of Government Analyst, as such, have committed an offence under Section 18 (a) (i) by manufacturing a drug which is not of a standard quality and also spurious under Section 17 B and, therefore, punishable under Section 27(d) and 27(c) respectively of the Drugs and Cosmetics Act, 1940 and rules there under and to establish this against the accused, the complainant has put all the relevant material evidence on record in support of the complaint.”

A closer examination and perusal of the complaint tends to show that except the aforesaid averment/allegation no further specific allegation/averment is made in the impugned complaint *qua* the petitioners that they were in charge of or were responsible for the conduct of business of the Company at the time when the alleged offence was committed inasmuch as the petitioners have had a nexus with the commission of offence by the Company owing to their acts of commission and omission.

8. Perusal of the license issued by the Licensing Authority otherwise also reveals that the petitioners do not figure therein, in the list of the approved technical competent staff involved in the manufacturing drug in question.

9. Insofar as the order of cognizance and summoning, passed by the trial Court is concerned, the perusal thereof, would reveal that even the trial Court has proceeded in the matter mechanically and has overlooked the position of law qua the taking of cognizance and issuance of process in a criminal complaint laid down by the Apex Court in this regard in case titled as ***Pepsi Foods Ltd. Vs. Special Judicial Magistrate reported in (1998) 5 SCC 749, 760***, wherein, in para 28 it has been held:-

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

10. Viewed thus, what has been observed, considered and analyzed hereinabove, the instant petition succeeds. Resultantly the petition is allowed, the impugned complaint and the proceedings initiated thereon by the trial Court are quashed insofar as it pertains to the petitioners herein.

11. Disposed of.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR
29.12.2023
“Mohammad Yasin Dar”