

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

C.R.M-M No.519 of 2015(O&M)

Date of Decision : 17.08.2015

Hasmukhbhai Ishwarlal Patel and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. M.S. Cheema, Advocate
for the petitioners.

Mr. Chetan Sharma, A.A.G., Haryana.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

By this petition the petitioners have challenged the issuance of criminal process against the accused No.1 and has also challenged the complaint dated 19.04.2010.

The contention of the learned counsel for the petitioners is that the person described as accused No.5 is actually the responsible person which was known to the respondents and that responsible person is facing trial in the Court. His further contention is that the criminal process can only be issued against a particular person and cannot be issued in the name of Director/person responsible.

Learned Assistant Advocate General has argued that this

method was adopted only because it was not disclosed to the Enforcement Staff as to who the responsible person was.

Learned counsel for the petitioners has countered by arguing that once the accused No.5 has been impleaded by the respondents, it does not lie in their mouth to say that the name of responsible person was not disclosed to them. But even if this averment is true yet as per him the issuance of criminal process against the Director/person responsible cannot be countenanced. In this connection he has relied upon Section 34 of the Drug and Cosmetics Act, 1940 which is quoted herein below:-

“34. Offence 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.”

Learned counsel for the petitioners has further relied upon the judgment of the Hon'ble Supreme Court in the matter of **S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhatia and another**, passed in Appeal (Crl.) No.664 of 2002, decided on 20.09.2005, wherein their Lordships held as follows:-

“(b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.”

Learned Assistant Advocate General is not in a position to counter the argument of learned counsel for the petitioners.

Consequently, this petition is allowed. The impugned orders are set aside.

Since the main case has been decided, the pending Criminal Misc. Application, if any, also stands disposed of.

August 17, 2015

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**(AJAY TEWARI)
JUDGE**