

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18449 of 2013

Arising Out of Complaint Case No.642(C) Year- 2004 District- SAHARSA

Deepak Parekh, s/o Shantilal Parekh, the chairman of M/S Glaxo Smithkline Pharmaceuticals Limited, having its registered office at M/S 252, Dr. Annie Basant Road, Police Station Worli, Mumbai 400026, Maharashtra.

.... .. Petitioner/s

Versus

The State of Bihar

.... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. Adv.
Mr. Sanjeev Kumar, Adv.
For the State : Mr. S. Dayal, A.P.P.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 16-05-2016

Heard learned counsel for the Petitioner and the State.

The Petitioner seeks quashing of the order of cognizance dated 25.6.2004 passed by the Chief Judicial Magistrate, Saharsa, in Complaint Case No. 642(C) of 2004.

The case of the Complainant is that when he inspected the Premises of M/s. Popular Agencies, Saharsa, he found some medicines which were misbranded. The medicines allegedly were manufactured by M/s. Glaxo Smithkline Pharmaceuticals Ltd. It was alleged that accused No. 1 to 18 have manufactured, distributed and sold misbranded drug and thus violated different Provisions of Drugs & Cosmetics Rules, 1945 and, therefore, were liable to be punished under Section 27(d) of Drugs & Cosmetics Act, 1940.

It has been submitted on behalf of the Petitioner that

without going into the nature of allegations, it would be sufficient to say that the Petitioner was the Chairman of the Company and it was no part of his duty to look after the daily affairs of the Company. Section 34 (1) of Drugs and Cosmetics Act permits Prosecution of the following:

“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.

(underlining provided)

There is no averment in the entire Complaint that the Petitioner was In charge of the Company and, hence, the Prosecution against him should be dropped.

On the other hand, the counsel for the Informant submits that since the Petitioner was the Chairman in the name and style of the Company, he should also be put on Trial.

Having considered the relevant portion of the Drugs and Cosmetics Act, and facts mentioned in the Complaint petition whereas

there is no averment that the Petitioner was the In-charge of daily affairs of the Company, the application is allowed and the Proceeding including the order of cognizance dated 25.6.2004 passed by the Chief Judicial Magistrate, Saharsa, in Complaint Case No. 642(C) of 2004, is hereby, set aside so far as Petitioner is concerned.

(Anjana Prakash, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N/A
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