IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6778 OF 2014

Greesh Kumar Juneja .. Applicant
Versus
The State of Maharashtra & Anr. .. Respondents

Mr. A.D. Soman, Advocate for the applicant.
Mr. M.M. Nerlikar, A.P.P. for respondent/State.

CORAM : A.V.NIRGUDE,J.
DATED : 01.08.2016

P.C. :-

1. Heard learned Counsel for the parties. Accused No.4 of R.C.C. No.75 of 2014 has moved this application seeking cancellation of process issued by the learned Magistrate against him. The facts leading in short can be stated as under :-

2. The complaint is lodged by a Drug Inspector. He stated that he collected sample of a drug from a retail outlet from Osmanabad. It was sent for analysis and it was found that it was not of standard quality. One of the ingredients was found less in quantity. Selling, storing, manufacturing etc. of such non-standard drug is made punishable under section 18 of the Drugs and Cosmetic Act, 1940. Therefore, he lodged a complaint for prosecuting seven accused. It is an admitted fact that the applicant and accused No.3 are Directors of accused

No.7-Company. Accused No.7 has possessed manufacturing licence of drug in question. It admittedly, loaned its licence to a company of which accused Nos.5 & 6 are employees for maintaining quality of manufactured drug. Accused Nos.5 and 6 have their manufacturing unit at Haridwar. On the face of it, there is a case against accused Nos.5 & 6. Accused No.4 is Director of company by name Smith Pharma, which has taken manufacturing lience of this drug from accused No.7. Since accused No.7 gave their manufacturing licence on loan to Smith Pharma, apparently, they are also liable to be prosecuted because they are vicariously liable. It was for this company to keep vigil on the quality of the manufactured drug in their name by another company. If, accused No.7 is liable to be prosecuted, question arises as to who amongst Directors etc. of accused No.7 company, should be included in this case as an accused. The complainant included accused Nos.3 and 4 as representatives of accused No.7. The question is - whether accused No.4 can be dropped from this prosecution? In order to answer this question, we have to carefully read section 34 of the Act, which reads as under :-

> "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."

3. Once I hold that accused No.7, which is a company, is liable to be prosecuted in this case, sub-section (1) will apply, which says that every person responsible to the company for the conduct of business of company as well as the company shall be deemed to be guilty and should be liable to be prosecuted. Sub-section (2) further elaborates this aspect of prosecution of company. It says that a complainant may in addition to what is stated in sub-section (1) can also prove that when offence is committed by a company, he may further prove that the offence was committed with consent or connivance or neglect attributable to one or two persons' working in the company.

4. In this case, there is no specific allegation made against accused Nos.3 and 4 that because of their consent or connivance or neglect etc. offence was committed by their company. Nonetheless, sub-section (1)

gives liberty to the complainant to implead every person of accused company, who was responsible to the company's business. The scope of sub-section (1) of section 34 is wide enough to include all the Directors who are responsible for conduct of the business of the company. The Manager, Secretary or any other officers with whatever designation who is responsible to the company for conduct of business of company is liable to be prosecuted. In such situation, if the complainant made accused Nos.3 and 4, who are admittedly Directors and who can be said to be responsible to the company for the conduct of its business, they can be made accused in this case. The prosecution cannot be dropped against them. As provided in proviso to sub-section (1), it is now for them or anyone else to prove that the offence was committed without his knowledge or that he had exercised all due diligence to prevent commission of such offence.

5. The Criminal Application, therefore, stands dismissed.

[A.V.NIRGUDE,J.]