

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1652 OF 2001

Prakash Shah ... Petitioner
Vs.
M/s. Drugs India Pharmaceuticals
Distributors & Anr. ... Respondents

WRIT PETITION NO. 383 OF 2002

The Maharashtra State Chemists & Druggists
Association & Ors. ... Petitioners
Vs.
M/s. Drugs India Pharmaceuticals
Distributors & Anr. ... Respondents

WRIT PETITION NO. 401 OF 2002

Subhash Gupta & Ors. ... Petitioners
Vs.
M/s. Drugs India Pharmaceuticals
Distributors & Anr. ... Respondents

Mr. A.A. Kumbhakoni, Senior Advocate a/w. Mr. Ashutosh Kulkarni for the
petitioners.
Mr. S.R. Agarkar, APP for the respondent/State.
Mr. Shailesh Majethia present in the Court.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **16th December, 2016**

P.C.:

Since the issue involved in these three Writ Petitions are same,
they are heard together and disposed of by a common order.

2. These three Writ Petitions are directed against the order dated 13th
March, 2000 passed by the learned Judicial Magistrate First Class, Nashik

in Criminal Case No. 232 of 1999 of issuance of process against the petitioners and also the order dated 20th November, 2001 passed by the learned Additional Sessions Judge, Nashik in Criminal Revision Application no. 117 of 2001. The petitioners in all these three petitions are the office bearers of three associations of druggists and chemists in Maharashtra. The complainant in Criminal Case No. 232 of 1999 is a distributor and stockist of the medical drugs. As per his grievance, these three associations of which the petitioners are the office bearers are inducing the retailers/chemists and druggists to sell the medical products to the public at higher amount over MRP (market retail price), which is illegal. The amount collected by these retailers is not shown in their respective balance sheet and if the retailer is not selling the drugs as directed by the accused, then they are subjected to boycott or threats. Thus, these three associations and their office bearers have induced the traders and retailers in the business and as per his grievance, the amounts which are collected over the MRP are forced to be paid to these three associations. Thus, they are induced to pay uncalculated money by way of donation to these associations, which amounted to extortion, misappropriation and criminal breach of trust. After going through the complaint, the learned Magistrate issued process on 13th March, 2002 for the offences punishable under sections 403, 406, 384 r/w. 34 of the Indian Penal Code. Being aggrieved by the said order, 5 accused persons who are the petitioners in Writ

Petition Nos. 1652 of 2001 and 401 of 2002 approached the learned Sessions Judge by filing Criminal Revision Application No. 117 of 2001 and the said Revision Application was dismissed by order dated 26th November, 2001.

3. The learned senior counsel appearing for the petitioners has submitted that the allegations made in the complaint are of a general nature and no specific instance either of extortion or misappropriation or criminal breach of trust is made out. He submitted that the persons who are allegedly aggrieved, should have filed the complaint and some material should be there in the complaint to issue process under the sections. He further points out that the complainant is a partnership concern and they sold the firm to one Mr. Shailesh Majethia who is present before the Court. This Shailesh Majithia is not interested to pursue the matter. He sold the said partnership concern to some other person who is not before the Court. He further submitted that the advocate of the complainant who appeared in this Court for respondent no. 1 had returned his papers to the original complainant and he has given the intimation accordingly to the Registrar. Under such circumstances, he submitted that these Petitions be allowed and the orders passed by the Metropolitan Magistrate and Sessions Court be quashed and set aside.

4. I have perused the complaint, the order passed by the learned Magistrate and the order passed by the learned Sessions Judge in Revision No. 117 of 2001. As per the complaint, the office bearers of these three associations, who are the original accused, have forced the retailers/chemists to sell the products above MRP and the amounts which were collected above MRP were forced to be donated to these three associations. The process is issued under sections 403, 406 and 384, i.e., misappropriation of the property, criminal breach of trust and extortion. The complainant has not given the details of specific instances of such extortion or whose property was misappropriated. There is no mention of the amount of property which is alleged to be misappropriated or extorted. To prove the offence of criminal breach of trust, entrustment of the property is a condition precedent to constitute the said offence. In view of this allegations which are general, which may be in the interest of public, however, for want of specific instance and the details, the offence under these three counts cannot be constituted. Moreover, the complainant has not stated that he is subjected to either extortion of a specific amount or the funds which were entrusted by him to the accused were misappropriated.

5. Further it is to be noted that the complainant, partnership concern was sold to Mr. Shailesh Majethia who is present before the Court and

who also told that he has sold it to some other person. My attention is drawn to the order of this Court dated 23rd June, 2016 wherein my predecessor has noted down that the advocate of the respondent informed that he has returned the papers to respondent no. 1 and he has intimated to the registry accordingly. One Nadi Zohari, who was ex-partner of the complainant M/s. Drugs India Pharmaceuticals Distributors was present before the Court and he informed that the partnership firm has been assigned with entire business and goodwill in favour of Mr. Shailesh Majethia who is present in the Court and Mr. Zohari also informed that the Court, which has taken on record, that respondent no. 1 representing the said partnership firm is now 70 years old and he did not want to engage the advocate. Though the matter is appearing on the board on last two occasions, none represented the complainant. Mr. Zohari also did not appear before the Court. In view of this, I am inclined to set aside and quash the order of the Metropolitan Magistrate and Sessions Court passed in Revision Application.

6. Rule is made absolute in terms of prayer clause (b).

7. Writ Petitions are allowed.

(MRIDULA BHATKAR, J.)