IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.24952 of 2017

Arising Out of PS.Case No. -20 Year- 2003 Thana -GOVERNMENT OFFICIAL COMP. District- PATNA

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1. Reckitt Benckiser (India) Pvt. Ltd., a Company existing under the Companies Act, 2013 having its registered office at 227, Okhla Industrial Area Phase III, P.S. Okhala, Distt. Delhi, New Delhi- 110020, District- Delhi, through its Authorized Signatory Mr. Rajesh Kumar Jha, aged about 48 years, Son of Late Mr. Dip Narain Jha, posted as Regional Legal Director and one of the Directors in the Board of Directors of the Company, Reckitt Benckiser (India) Private Limited, having office at 227, Okhla Industrial Area Phase-III, P.S. Okhla, New Delhi- 110020, District- Delhi.
2. Mr. Rajesh Kumar Jha, aged about 48 years, Son of Late Mr. Dip Narain Jha, Regional Legal Director and one of the Directors in the Board of Directors of the Company, Reckitt Benckiser (India) Private Limited, having its registered office at 227, Okhla Industrial Area Phase III, P.S.- Okhla, New Delhi- 110020, District- Delhi.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The State of Bihar, through its Principal Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
3. The Food Inspector, Patna.

.... Opposite Party/s

with

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Criminal Miscellaneous No. 36986 of 2017

Arising Out of PS.Case No. -20 Year- 2003 Thana -GOVERNMENT OFFICIAL COMP. District- PATNA

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Mr. Amrit Bangur, aged about 30 Years, Indian, Son of Mr. Devendra Bangur, working as Regional Commercial Manager (East), With Reckitt Benckiser (India) Pvt. Ltd., a Company existing under the Companies Act, 2013 Having its registered office at 227, Okhla Industrial Area Phase III, New Delhi-110020.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The State of Bihar, through its Principal Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
3. The Food Inspector, Patna.

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.24952 of 2017)

For the Petitioner/s : Mr. P.Chitambaran, Sr. Advocate.
Mr. P.Jawahar, Advocate.
Mr. Amar Gupta, Advocate.
Mr. Anand Kumar Ojha, Advocate.

		Mr. Sanjeet Kumar, Advocate.
		Mr. Ashok Karn, Advocate.
For the Opposite Party/s:		Mr. Satyavrat Verma, A.P.P.
(In Cr.Misc. No.36986 of 2017)		
For the Petitioner/s	:	Mr. Aman Lakhi, Sr. Advocate.
		Mr. P.Jawahar, Advocate.
		Mr. Amar Gupta, Advocate.
		Mr. Anand Kumar Ojha, Advocate.
		Mr. Sanjeet Kumar, Advocate.
		Mr. Raj Kamal, Advocate.
		Mr. Digvijay Narayan Sinha, Advocate.
For the Opposite Party/s	:	Mr. Anil Kumar Singh 1, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
C.A.V. JUDGMENT

Date: 08-12-2017

Heard learned counsel for the petitioners and learned counsel for the State.

2. The two quashing applications filed against the impugned order taking cognizance of the offence in Complaint Case No. 20M of 2003 are being disposed of by the common judgment.

3. The petitioners, invoking inherent jurisdiction of the Court, under Section 482 of the Code of Criminal Procedure, 1973, seek quashing of the cognizance order dated 28.07.2003 passed by the learned Sub Divisional Judicial Magistrate, Patna in Complaint Case No. 20M of 2003 as well as setting aside the entire criminal proceedings.

4. A brief fact giving rise to the case is that a complaint was filed by the Civil Surgeon-cum-Chief Medical Officer, Patna in the court of Sub Divisional Judicial Magistrate, Patna against the

Managing Director, all Directors, Chairman, all Administrative Officers and Production Incharge of the company, namely, Reckitt Benckiser (India) Pvt. Ltd. situated at Kolkatta, for committing offence, under Section 16(1)(A) of the Prohibition of Food Adulteration Act, 1954 (hereinafter referred to as the 'Act'). On 19.02.2003, the Food Inspector, Patna, in exercise of his powers, under Section 10 of the Act, collected 03 cans of Barley Powder of 400 grams each from Shalimar Cold Stores, a C. & F. of the company in Patna and sent to public analyst for its analysis and report. Its report dated 12.03.2003 opines that label on the Barley Powder Can does not bear "best before date", which is required under the Rules 32(1) of the Prohibition of Food Adulteration Rules, 1955 (hereinafter referred to as the 'Rule') so the public analyst narrated that it amounts to misbranding in terms of Section 2(ix)(j)&(k) of the Act. The Food Inspector thereafter filed a petition before the Civil Surgeon-cum-Chief Medical Officer, Patna, under Section 20(1) of the Act, seeking written consent to prosecute the Managing Director, Directors, Chairman, all Administrative Officers and Production Incharge of the company for the offence consequently on getting approval by the concerned authority the instant complaint was filed on 24.07.2003.

5. Mr. P.Chitambaram, learned Senior Counsel appearing on behalf of the petitioners in Cr. Misc. No. 24952 of 2017, submits

that in the instant case sanction for prosecution, under Section 20(1) of the Act, was granted mechanically by the Chief Medical Officer, Patna, as the company, namely, Reckitt Benckiser (India) Pvt. Ltd. was not made accused in the case and sanction was not given to prosecute a specific individual, rather left vague against Managing Director, Directors, Chairman, all Administrative Officers and Production Incharge; moreover, sanction was given for launching prosecution relating to offence of adulteration in case of allged offence of misbranding. However, it is not the case that collected sample was found adulterated rather according to the public analyst, the product was misbranded because of absence of label "best before date" on the barley can. He submits that sanction has been given to prosecute the petitioners, under Section 16(1)(A) of the Act, which is an offence of adulteration in the food product, whereas for misbranding appropriate section is 16(1(a) of the Act. He further submits that incomplete address was given by the prosecution only mentioning as "Reckitt Benckiser India Ltd., Kolkata-700071". The learned Sub Divisional Judicial Magistrate, without applying the judicious mind, has taken cognizance mechanically for the offence of adulteration, under Section 16(1)(A) of the Act. Due to incomplete address in the complaint, no process was served to the accused persons and the trial court issued bailable warrant without service of summons, further, the court overlooking the fact whether bailable warrant was executed to the accused persons, issued non-bailable warrant of arrest and on the same day, contrary to the express mandate of Sections 82 and 83 of the Code of Criminal Procedure, also initiated proceeding to declare the accused as proclaimed offenders on 18.03.2017, by issuing permanent 'Warrant of Arrest'. Since one of the accused, in the complaint, is captioned as "All administrative Officers" of the company, so Kolkata Police, on 12.05.2017, visited Regional Office in Kolkata and served the permanent warrant on Amrit Bangur, Regional Commercial Manager (East), the petitioner of Cr. Misc. No. 36986 of 2017, who performs finance functions of the company but has no administrative role, and after arresting him produced before the Judicial Magistrate at Kolkata who granted bail to appear before the trial court. The learned counsel further submits that Amrit Bangur had joined the company only on 30.01.2017 and the purported offence was committed in 2003 so at that very point of time, petitioner Amrit Bangur was not related or concerned with affairs of the company in any manner; moreover the company by that time was unaware of issuance of any process of law by the trial court, however knowing this fact, the company has filed this quashing application before this Court. The company apprehends that like Amrit Bangur, the present Managing Director, Directors, Chairman, all Administrative Officers and Production Incharge may be arrested though they were not concerned with the affairs of the company at that point of time.

6. Learned counsel further submits that Section 17 of the Act deals with the offences committed by the companies. In case of offence committed by the company under the provisions of the Act , a person, who has been nominated, under sub-section (2) of Section 17 of the Act to be in charge of and responsible to, the company for the conduct of the business of the company and in case of absence of such nomination every person, at the time of commission of offence, was in charge or responsible for the conduct of the business of the company and the company itself is considered guilty for committing the offence and liable to be proceeded against and punished accordingly; however in the present case, the company has not been made accused, so in absence of the company, being arraigned as an accused, no other officers of the company can be held criminally liable.

7. Learned counsel places reliance in the case of ***Aneeta Hada vs. Godfather Travels and Tours Private Limited*** reported in **(2012) 5 SCC 661.** Learned counsel reiterates that there can be no vicarious liability to Managing Director, Directors, Chairman, all Administrative Officers and Production Incharge unless the company is made accused. Learned counsel further submits that in ***Aneeta***

Hada (supra) a cheque issued by the one of the Directors of the Company on behalf of the company got dishonoured, so the question before the Apex Court was whether a complaint under Section 138 of N.I.Act read with Section 141 thereof against a Director or authorized signatory of a cheque but without joining the company as an accused was maintainable. This matter was referred to a three Judge Bench who answered in negative. Section 141 of the N.I.Act deals the offences committed by the company and in para-58 of the judgment, the Hon'ble Apex Court has held that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. So when the company is prosecuted then only the officers could be vicariously liable for the offence because the company is a juristic person and it has its own respectability. The Apex Court arrives at a conclusion that for maintaining the prosecution under Section 141 of the N.I.Act, arraigning of a company as an accused is imperative. Learned counsel further places reliance to the case of ***S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and Another*** reported in ***(2005) 8 SCC 89***. He submits that in the said judgment, the Apex Court has considered that at the time of taking cognizance of offence, the Magistrate requires to look into the averments made in the complaint that at the time of offence committed whether the person accused was in charge of and responsible to the company for the conduct of its business; this averment is an essential requirement, so if the answer is in negative, so merely being a Director of the company is not sufficient to make him liable for prosecution under the N.I.Act. A Director in the company cannot be deemed to be in charge of and responsible for the conduct of its business. It is submitted that it is the Board of Directors, who assigns particular functions to the Directors, as per the memorandum and articles of association of the company, so without ascertaining that which of the officers at that time was nominated under sub-section (2) of Section 17 of the Act or in case of no such nomination, who was in charge of and responsible to the company for the conduct of its business, the accused persons have been arraigned and the company was left out, so the company was not prosecuted.

8. Learned counsel also places reliance to the case of ***Pepsico India Holdings Private Limited vs. Food Inspector and Anr.*** reported in ***(2011) 1 SCC 176*** and referring para 50 of the judgment, submits that in a complaint against a company and its Directors, the complainant is required to indicate as to whether the Directors concerned were either in charge of or responsible to the company for its day-to-day management or responsible to the company for the conduct of its business. Only a bald statement that a person was a Director of the company against which certain allegations have been

made is not sufficient to make him liable in the absence of any specific allegations regarding his role in the management of the company; in the present case also, no specific role is assigned to the Managing Director, Directors, Chairman, all Administrative Officers and Production Incharge of the company. So without ascertaining that which of the officers was in charge of the conduct of the business of the company, the court in mechanical manner issued the process that too was issued on incomplete address; moreover without ascertaining whether summons were served or not subsequently issued bailable warrant, non-bailable warrant and declared absconder without any service of any of the processes issued by the Court for their appearance.

9. Learned counsel further submits that the Food Safety and Standards Act, 2006 came into existence after repealing The Prevention of Food Adulteration Act, 1954, however, in terms of Section 97 (1) of the Food Safety and Standards Act, 2006, any proceeding instituted prior to that date under the Act continues but the Department had issued a circular on 02.08.2016 to all Commissioners of Food and Safety including the State of Bihar directing them to review all cases filed under the previous Act and if the offence is not serious in nature and the penalties/punishments prescribed for such offences are also not substantial then to withdraw such cases. In the

instant case, there is no allegation of any adulteration in the product, only allegation is of misbranding as “best before date” was not printed and the complaint was filed in 2003 with incomplete address, summons and warrant not served for more than 14 years, so the present case should have been withdrawn by the concerned authority.

10. Mr. Aman Lekhi, learned senior counsel appearing on behalf of the petitioner Amrit Bangur in Cr. Misc. No. 36986 of 2017, adopting the argument advanced by Mr. P.Chitambaran, learned senior counsel, submits that Amrit Bangur was not associated with the company in the year 2003, at that time he was a child and joined the company only on 30.01.2017, so in any case, he cannot be held liable for the affairs of the company at the relevant point of time.

11. Mr. Satyavrat Verma, learned counsel appearing on behalf of the State, concedes that unless the company is arraigned as accused, vicarious liability cannot be fastened to other officers of the company, however, he raised objection relating to *locus standi* of the petitioner no. 1 in Cr. Misc. No. 24952 of 2017 for the reason that as the company is not an accused, so no cause of action to file the quashing application.

12. Having considered the rival submissions and on perusal of record, the Court finds that Cans of Purity Indian Barley were taken from the premises of Shalimar Cold Stores, a C & F Agent

of the company on 19.02.2003 and were sent to the public analyst for its report and the report dated 12.03.2003 indicates that manufacturing date is mentioned on the product 7/02, but the label does not bear "best before date" which is required under Rule 32(i) of the Rules, 1955, so a case of misbranding and not a case of adulteration. The offence for misbranding comes under Section 16(1)(a) of the Prevention of Food Adulteration Act, 1954 but inadvertently, oblivious of the correct provisions of law, cognizance was taken under Section 16(1)(A) of the Act. The company has not been arraigned as an accused in the complaint lodged by the Chief Medical Officer, only its Managing Director, all Directors, Chairman, all Administrative Officers and Production Incharge were made accused though it was an offence committed by the company.

13. Section 17 of the Act deals with offence committed by the company, which reads as such:

> "17. Offences by companies.- (1) Where an offence under this Act has been committed by a company- (a)(i) the person, if any, who has been nominated under sub-section (2) to be in charge of, and responsible to, the company for the conduct of the business of the company (hereafter in this section referred to as the person responsible), or
> (ii) where no person has been so nominated, 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; and
> (b) 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 and that he exercised all due diligence to prevent the commission of such offence.

(2) Any company may, by order in writing, authorize any of its directors or managers (such manager being employed mainly in a managerial or supervisory capacity) to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this Act and may give notice to the Local (Health) Authority, in such form and in such manner as may be prescribed, that it has nominated such director or manger as the person responsible, alongwith the written consent of such director or manager for being so nominated.

(3) The person nominated under sub-section(2) shall, until-

(i) further notice cancelling such nomination is received from the company by the Local (Health) Authority; or

(ii) he ceases to be a director or, as the case may be, manager of the company; or

(iii) he makes a request in writing to the Local (Health) Authority, under intimation to the company, to cancel the nomination which request shall be complied with by the Local (Health) Authority, whichever is the earliest, continue to be the person responsible:

Provided that where such person ceases to be a director or, as the case may be, manager of the company, he shall intimate the fact of such cesser to the Local (Health) Authority:

Provided further that where such person makes a request under clause (iii), the Local (Health) Authority

> shall not cancel such nomination with effect from a date earlier than the date on which the request is made.
>
> (4) Notwithstanding anything contained in the foregoing sub-sections, 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 not being a person nominated under sub-section (2) 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."

14. In view of said provision, a company may order in writing or authorize any of its Directors or Managers to exercise all such powers and take all such necessary steps expedient to prevent commission of any offence under the Act by the company. A person nominated under sub-section (2) of Section 17 of the Act becomes responsible for the offence committed by the company along with company itself or in case of no nomination, under sub-section (2) of Section 17 of the Act, every person, who at the time the offence was committed, was in charge of, and responsible to, the company for the conduct of its business. Company is a juristic person, so making company an accused becomes mandatory, only in that situation, other officers responsible for the affairs of the company may be held responsible. In case of offence committed by the company its officers cannot be made vicariously liable for commission of offence on the

part of the company. Vicarious liability gets attracted in case of the officers of the company only when condition precedent laid down in Section 17(1) of the Act gets satisfied. Drawing the analogy from the ratio decided in ***Aneeta Hada*** (supra) case , it becomes more clear. Para 59 of the judgment is quoted hereinbelow:

> "59. In view of our aforesaid analyse, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in *C.B.Parekh; (1970) 3 SCC 491: 1971 SCC (Cri) 97*, which is a three-Judge Bench decision. Thus, the view expressed in *Sheoratan Agarwal; (1984) 4 SCC 352: 1984 SCC (Cri) 620.* does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada; (2000) 1 SCC 1: 2001SCC (Cri) 174 is overruled with the qualifier as stated in para-51. The decision in Modi Distillery; (1987) 3 SCC 684: 1987 SCC (Cri) 632 has to be treated to be restricted to its own facts as has been explained by us hereinabove".

15. In ***S.M.S.Pharmaceuticals Ltd.*** (supra), the Apex court has made elaborate and vivid description on the position of the vicarious criminal liability on a person connected with the company, para-18 of the said judgment is referred to hereinbelow to elucidate the concept:

> "18. To sum up, there is almost unanimous judicial opinion

that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141, he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non-director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial."

16. Only such officers along with the company can be held liable for prosecution who was in charge of the affairs of the company at the time when the offence was committed, but in the present case, petitioners, namely, Rajesh Kumar Jha, a Regional Legal Director and Amrit Bangur, Regional Commercial Manager of the company, joined in the year 2017 admittedly joined much later after the alleged occurrence so definitely they were not in the

company at that point of time and not concerned with the conduct of the business of the company. So in any view of the matter, they cannot be held liable for the alleged offence of misbranding in the year 2003.

17. On the question of liability of the Directors of the company with respect to offence alleged to have been committed by the company, a clear case requires to be spelled out alleging and naming the particular Director responsible to the company for the conduct of its business. In the present case, no such name with such averment is mentioned in the complaint. In the case of ***Pepsico India Holdings Private Limited*** (supra), the Apex Court has held that mere bald statement that a person was a Director of the Company is alleged to have committed the offence is not sufficient unless a specific allegation regarding his role in the management is made clear. In this regard, para 50 and 52 of the said judgment is quoted hereinbelow:

> "50. As mentioned hereinbefore, the High Court erred in giving its own interpretation to the decision of this Court in *S.M.S. Pharmaceuticals Ltd. case* (supra), which was reiterated subsequently in several judgments, some of which have been indicated hereinabove, and relying instead on the decision of *Rangachari case; (2007) 5 SCC 108: (2007) 2 SCC (Cri) 460*, the facts of which were entirely different from the facts of this case. It is now well established that in a complaint against a company and its Directors, the complainants has to indicate in the complaint itself as to whether the Directors concerned were either in

> charge of or responsible to the Company for its day-to-day management, or whether they were responsible to the Company for the conduct of its business. A merely bald statement that a person was a Director of the Company against which certain allegations had been made is not sufficient to make such Director liable in the absence of any specific allegations regarding his role in the management of the Company."
>
> 52. Having considered the matter in its totality and also having regard to the fact that Somesh Dahale had been nominated under sub-section (2) of Section 17 of the 1954 Act to be a person in charge of and responsible to the Company for the conduct of its business, we are of the view that the appeals have to be allowed".

18. In the present case, only the Managing Director, all Directors, Chairman, all administrative Officers and Production Incharge have been arraigned as accused naming them in the column of the accused of the complaint in a typed format of complaint. There is no specific allegation regarding individuals' role in the management of the company rather all Directors and others have been made accused not even a particular managing Director or any Director by name has been made accused with the specific allegation regarding the specific role in the management of the company.

19. In view of the aforesaid discussions, as the company, namely, Reckitt Benckiser (India) Pvt. Ltd, has not been arraigned an accused as per Section 17(1) of the Act, so its all officers including Managing Director, all Directors, Chairman, Production Incharge in

absence of specific name of any officers of the company with allegation of being responsible for the conduct of business of the company, cannot be held vicariously liable for the alleged offence, moreover Rajesh Kumar Jha, petitioner of Cr. Misc. No. 24952 of 2017 and Amrit Bangur, petitioner of Cr. Misc. No. 36986 of 2017, were not even employed in the company at the relevant point of time. Meaning thereby at alleged period of occurrence, definitely they cannot be held responsible for conduct of the company's business during those period. In the backdrop of such fact and legal propositions, continuation of criminal proceeding against the accused persons would be abuse of the process of the court as in absence of the company being arraigned as accused, only its officers cannot be prosecuted fastening vicarious criminal liability as the principal offender is the company itself being a Juristic person.

20. In view of the aforesaid reasons, entire criminal proceeding of Complaint Case No. 20M of 2003 pending in the court of learned S.D.J.M., Patna inclusive of cognizance order dated 28.07.2003 is set aside.

21. The application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	13.10.2017
Uploading Date	08.12.2017
Transmission Date	08.12.2017