

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 2721 OF 2003

1. Mr. Samprada Singh
residing at Buddha Colony, Boring Canal Road,
Patna-1
2. Mr. Basudeo Narayan Singh
residing at Supriya Apartments,
Worli Sea Face, Mumbai-18
3. Mr. Prabhat Narayan Singh,
residing at Ganga Towers, Near LTC Ghat,
Patna-1.
4. Mr. M. K. Singh,
residing at Supriya Apartments,
Worli Sea Face, Mumbai-18
5. Mr. D. K. Singh,
residing at Buddha Colony, Boring Canal Road,
Patna-1
6. Mr. B. P. Singh,
residing at Buddha Colony, Boring Canal Road,
Patna-1

... Applicants

(Ori. Accused nos.1 to 6)

vs.

1. Mr. S. R. Sharma,
Drugs Inspector, Food & Drugs Administration,
M. S. Mhatre Building, Dr. Ambedkar Road,
Pen, District Raigad.
2. State of Maharashtra

... Respondent

**WITH
CRIMINAL APPLICATION NO. 2723 OF 2003
WITH
CRIMINAL APPLICATION NO. 2724 OF 2003**

1. Mr. Samprada Singh
residing at Buddha Colony, Boring Canal Road,
Patna-1
2. Mr. Basudeo Narayan Singh

- residing at Supriya Apartments,
Worli Sea Face, Mumbai-18
3. Mr. Prabhat Narayan Singh,
residing at Ganga Towers, Near LTC Ghat,
Patna-1.
 4. Mr. M. K. Singh,
residing at Supriya Apartments,
Worli Sea Face, Mumbai-18
 5. Mr. D. K. Singh,
residing at Buddha Colony, Boring Canal Road,
Patna-1
 6. Mr. B. P. Singh,
residing at Buddha Colony, Boring Canal Road,
Patna-1
 7. Mr. Girish Anant Deshpande
having his address at Jawahar Co-operative
Industrial Estate, Kamothe, Taluka Panvel
Dist. Raigad.

...Applicants

(Ori. Accused nos.1 to 6
and accused no.9)

vs.

1. Mr. S. R. Sharma,
Drugs Inspector, Food & Drugs Administration,
M. S. Mhatre Building, Dr. Ambedkar Road,
Pen, District Raigad.
2. State of Maharashtra

...Respondents

Mr. Shrirish Gupte, Senior Advocate a/w Mr. Subodh Desai i/by
Pawan Mali, Advocate for the applicants.

Mr. S. R. Agarkar, A.P.P. for the State/respondent no.2.

Coram : Smt. R. P. SondurBaldota, J.

Date : 2nd February, 2017

JUDGMENT :

1. This is a common order on the above three

applications which give rise to identical questions of law and fact. Petitioner no.1 is the Managing Director of M/s. Alchem Laboratories Ltd., petitioners no.2 to 6 are it's Directors. The company is manufacturer of medicine Aldiamycin Suspension Antidiarrheic. The petitioners along with others are being prosecuted by respondent no.1 for the offence punishable under Section 16(1)(a) of The Drugs and Cosmetics Act, 1940. The Drug Inspector had taken the sample of the drug on 19th September, 1989, 9th October, 1990 and 23rd October, 1990 and got it tested. According to the prosecution, the sample was found to be of sub-standard quality because the contents of Iodochlorhydroxy-quinoline in the sample was found less than the labelled quantity (49.95%). The sample was found to contain 62.44 mg. of Iodochlorhydroxy-quinoline per 10 ml. against the label claim of 125 mg. Per 10 ml. On being served with the summons the petitioners appeared before the trial Court and applied for discharge contending that the contents of the complaint do not satisfy the requirement of Section 34 of the Drugs and Cosmetic Act which creates vicarious liability. The provision of Section 34 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 subsection 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.

2. Mr. Gupte, the learned Senior Advocate for the petitioner relying upon the decision of the Apex Court in ***Pepsico India Holdings Private Limited vs. Food Inspector and another reported in (2011) 1 Supreme Court Cases page 176*** submits that for expanding the liability to the petitioners as Directors of the company, it was necessary for respondent no.1 to specifically allege in the complaint the petitioners at the relevant time were in charge of and responsible to the company for the conduct of its business liability of the Directors. In the absence of specific allegation regarding the role of the Director in the management of the company made in the complaint, he cannot be held liable. The observations of the Apex Court at para 15 that are relied upon read as under :

“15. Mr. Chagla submitted that having observed that the mere presence of insecticide residue could not ipso facto justify the conclusion that the manufactured articles were injurious to health, the High court ought not to have relied on the report of the public analyst to arrive at a prima facie finding that the sample of sweetened carbonated water was adulterated. Mr. Chagla pointed out that when the tolerance limit of carbofuran in infant milk has

been set at 0.05 mg/litre, the presence of 0.001 mg/litre of carbofuran in the carbonated water manufactured by the appellants, could certainly not have been more injurious to public health than infant milk."

Mr. Agarkar, the learned A.P.P. does not dispute that the averments made in the complaint are not in conformity with Section 34 of the Drugs and Cosmetics Act and the observations of the Apex Court in the decision cited. Therefore as regards petitioners no.2 to 6 the prosecution cannot be sustained and they are entitled to be discharged from the proceedings.

3. As regards petitioner no.1, the Managing Director, he being in overall in charge of all the aspects of the company cannot escape his liability by taking shelter of Section 34 of the Drugs and Cosmetics Act.

4. Mr. Gupte, the learned Senior Advocate has one more argument to make as regards the prosecution by the respondent. He points out that Section 25 of the Drugs and Cosmetics Act specifically requires the Inspector collecting sample, to mandatorily deliver a copy of the report to a person from whom the sample was taken and another copy to the person if available whose name, address and other particulars have been disclosed under Section 18(a) of the Act i.e. the manufacturer of the drug or his agent for distribution. There is nothing on record to indicate that this mandatory provision has been complied with. According to Mr. Gupte this lapse would be fatal to the prosecution. Admittedly when the petitioners applied for discharge before the trial Court this contention was not taken. As such, the trial Court had no occasion to consider

the availability of the material on record to satisfy the mandatory requirements. In the circumstance, Mr. Gupte requests for liberty to petitioner no.1 to file an application before the trial Court for discharge on that ground. Considering the fact that the provision of Section 25 of the Drugs and Cosmetics Act is a mandatory provision and in the absence of it's strict compliance the prosecution cannot be sustained, in my opinion petitioner no.1 (ori. accused no.1) in Application No.2721 of 2003 and petitioner no.1 and 7 (ori. accused nos.1 and 9) in Application No.2723 of 2003 and Application No. 2724 of 2003 can be granted liberty to file a fresh application for discharge before the trial Court raising contentions based on the Section 25 of the Drugs and Cosmetics Act.

5. The applications are partly allowed in following terms :

- i) The applications by applicants no.2 to 6 are granted in terms of prayer clause (b).
- ii) The applications by the other applicants, who are original accused nos. 1 and 9 are dismissed. They are at liberty to file a fresh application for discharge raising contention based on Section 25 of the Drugs and Cosmetics Act.
- iii) Petitioner no.1 who is more than 90 years old may make an application to the trial Court for exemption from appearance. On the application being made the same may be considered by the trial Court sympathetically.

[Smt. R. P. SondurBaldota, J.]