IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.O.P.No.6109 of 2012
and
M.P.No.1 of 2012

Bandi Vamsi Krishna
S/o.Parthasaradhi Reddy .. Petitioner

vs.

The State of Tamil Nadu,
represented by M.Rani
Drugs Inspector,
T.Nagar Range,
Vadapalani Range in Charge,
O/o.The Assistant Director of Drugs Control,
Zone III, D.M.S. Campus,
259-261, Annasalai,
Teynampet, Chennai – 600 006. .. Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for records in C.C.No.4817 of 2011 on the file of learned IV Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioner : Mr.I.Subramanian, senior counsel
for Mr.K.Krishnamoorthy

For Respondent : No appearance

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O R D E R

Petitioner seeks quash of proceedings in C.C.No.4817 of 2011 on the file of learned IV Metropolitan Magistrate, Saidapet, Chennai.

2. Petitioner is the second accused in case pending trial in C.C.No.4817 of 2011 on the file of learned IV Metropolitan Magistrate, Saidapet, Chennai. The case is one being tried for offences under Sections 18(c) of the Drugs and Cosmetics Act, 1940 r/w Rules 65(2), 65(3)(1) and 65(9)(a) of the Drugs and Cosmetics Rules, 1945. Challenging the same, petitioner/A2 has moved the present revision.

3. Heard learned counsel for petitioner. There is no appearance for respondent.

4. A bare reading of the complaint reveals that this petitioner is arrayed as an accused in his capacity as a Director of the first accused firm. Section 34 of the Drugs and Cosmetics Act, 1940 reads as follows:

> *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.

5. In decision reported in ***Tidal Laboratories Pvt Ltd vs State of Tamil Nadu, 2013 SCC Online Mad 2453***, this Court has observed as follows:

"...

12. With regard to the next fold of submission of the learned senior counsel for the petitioners that in the absence of any specific averment as to how the petitioners are responsible *or in charge of the affairs of the company, the respondent cannot be compelled the petitioners to face criminal trial. In the instant case, a reading of the complaint would show that absolutely there is no averment to the effect as to how the petitioners are responsible for the conduct of the business of the company or in charge of the day-to-day affairs of the company. In this regard, it would be appropriate to refer the judgment of the Hon'ble Apex Court reported in (2010)11 SCC 469 in the case of STATE (NCT OF DELHI) .vs. RAJIV KHURANA, wherein it has been held as follows:*

"20. The legal position which emerges from a series of judgments is clear and consistent that it is imperative to specifically aver in the complaint that the accused was in charge of and was responsible for the conduct of the business of the company. Unless clear averments are specifically incorporated in the complaint, the respondent cannot be compelled to face the rigmarole of a criminal trial".

13. In 1992 (58) E.L.T.6 (Mad.), (supra), a single Judge of this Court has held that a person, who at the time when the offence under section 34 of the Act was committed, was in charge of and responsible for the conduct of the business of the company, will be vicariously liable. The relevant paragraph in the said judgment reads as follows:

"The last argument of the learned Counsel has a sufficient force. Under Section 34 of the Drugs and Cosmetics Act, were an offence under the Act had been committed by a company, the persons who will be vicariously liable, would be those, who at the time when the offence was committed were in charge of and responsible for the conduct of the business of the company as well as the company itself. Before choosing to prosecute any person vicariously, prima facie the complaint must contain allegations, that such persons were in charge of and responsible for the conduct of the business of the company, at the relevant time. The absence of this basic averment would be sufficient to half the

prosecution, against those persons, who do not fall within this category contemplated by law. Only after the initial burden of "incharge of" and "responsible" is discharged by the prosecution, the proviso to Section 34(1) would come into operation, shifting the onus on the persons concerned, to prove that the offence was committed without the knowledge in spite of exercise of all due diligence to prevent commission of such an offence. The law on this question is well settled. A perusal of the complaint clearly shows, that petitioners 2 and 3 were the directors of the first petitioner and were residents of Bombay. Nowhere, it has been stated in the complaint, that petitioners 2 and 3 were in charge of and responsible for the conduct of the business of the first petitioner. The second petitioner is a lady and the wife of the third petitioner. On the sole ground that no allegations have been made against petitioners 2 and 3, which would attract the ingredients of Section 34(1) of the Act, the pending prosecution in so far as it relates to them, will have to be quashed and shall accordingly stand quashed. As far as petitioners 1, 4 and 5 are concerned, the prosecution will have to be sustained. The first petitioner is the company itself, while the fourth petitioner is not only the Chairman, but also the person in charge of the conduct of the business of the first petitioner at Bombay, where the manufacturing unit is situated. As far as the fifth petitioner is concerned, he is the person in charge of the day-to-day conduct of the business at Madras. Of course, it will be open for these petitioners to contend, before the trial Magistrate, that the offence alleged had not been established and further the proviso to Section 34(1) of the Act will attract their case. At this stage, I do not find any scope to interfere, as far as petitioners 1, 4 and 5 are concerned.

14. A reading of the said judgments would show that under section 34 of the Act, where an offence under the Act had been committed by a *company, the persons who were responsible for the conduct of the business of the company as well as the company itself shall be deemed to be guilty. In this case, there is no averment to the effect that these persons are responsible and in charge for the conduct of the business of the company and hence, merely they are the Directors, it does not mean that automatically they are liable to be prosecuted. There should be a clear averment as to how the Directors are responsible and in charge for the conduct of the business of the company when they are all residing at Mumbai where the alleged offence said to have been committed at Chennai. In this regard, one more judgment of a Full Bench of Hon'ble Supreme Court reported in 2005 STPL (DC) 878 SC in the case of S.M.S.PHARMACEUTICALS LTD., .vs. NEETA BHALLA AND ANOTHER, wherein it has been held as follows:*

"....Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in charge of and responsible for conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. It follows from this that if a director of a Company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable under the provision. The liability arises from being in charge of and responsible for conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company......The conclusion is inevitable that the liability arises on account of conduct, act or omission on the part of a person and not merely on account of holding an office or a position in a company. Therefore, in order to bring a case within Section 141 of the Act the complaint must disclose the necessary facts which make a person liable".

Therefore, I am of the opinion that in the absence of specific allegation as to how they are

> *responsible for the conduct of the business of the company, the complaint itself is not legally sustainable."*

This Court finds itself in agreement with the above observations. The facts of the present case are apposite. Accordingly, the Criminal Original Petition shall stand allowed. The proceedings in C.C.No.4817 of 2011 on the file of learned IV Metropolitan Magistrate, Saidapet, Chennai, shall stand set aside insofar as this petitioner is concerned. Consequently, connected miscellaneous petition is closed.

22.03.2017

Index:yes/no
Internet:yes
gm

To

The IV Metropolitan Magistrate,
Saidapet,
Chennai.

C.T. SELVAM, J

gm

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