THE HONOURABLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL PETITION No. 13264 of 2010

ORDER:

Heard the learned counsel for the petitioners as well as the learned Public Prosecutor.

2. The present criminal petition is filed by the petitioners/A-1 to A-4 to quash the proceedings initiated against them in C.C.No.1000 of 2009 for the offences under Section 32 of the Drugs & Cosmetics Act, 1940 for contravention of Section 18(a)(i) r/w 17 (B)(d) of Drugs & Cosmetics Act, 1940 punishable under Section 27 ( c ) of the said Act on the file of the XI Additional Chief Metropolitan Magistrate, Secunderabad.

3. The facts of the case are that originally the Drugs Inspector, Ranga Reddy District filed a complaint on 25.05.2009 against the petitioners on the ground that they committed the offences as stated above. On 25.10.2007 Sri R. Chandra Sekhar, Assistant Director & Incharge Drugs Inspector, Hyderabad while inspecting the sale premises of a licensed wholesale shop M/s. Sree Veerabhadra Medical Agencies picked up sample of a drug, Gudcef Dry Syrup, 30ml (cefpodoxime proxetil for oral suspension U.S.P.) with batch No.MK70305, Mfg. dt.Sep.2007, expiry dt.Feb.2009,

Mft.Lic.No.31/UA/SC/Petitioner-2005, Mfg. by A-4 Firm for the purpose of test/analysis. After following the procedure, the said syrup was sent to the Government Analyst, Drugs Control Laboratory, Hyderabad. On 07.05.2008 the Assistant Director and in-charge Drugs Inspector received certificate of test/analysis in Form-13 from the Govt. Analyst declaring the subject drug as '*not of standard quality'* for the reason that the sample does not confirm to the assay for cefpodoxime as per labeled claim i.e. 30.8mg of cefpodoxime was found as to the labeled claim of 50 mg per 5ml. Thereafter, a second sample was also sent to the Central Laboratory. The Central Drugs Laboratory, Calcutta had opined that the subject drug is *not of standard quality* as the sample does not confirm to USP with respect to Assay. Therefore, a complaint was filed before the XI Additional Chief Metropolitan Magistrate at Secunderabad.

4. The said complaint was taken cognizance and numbered as C.C.No.1000 of 2009. Aggrieved by the said registration of the calendar case, the present criminal petition is filed.

5. The learned counsel for the petitioners would contend that a perusal of the entire complaint will not disclose that petitioners 1 to 3 are in-charge of the day today affairs of the company and as such, the complaint has been filed against

the petitioners 1 to 3 is not maintainable. He also brought to the notice of the Court about Section 34 of the Drugs and Cosmetics Act, which is as follows:

> "S. 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 the 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. "

6. To substantiate his contention, he relied on decision in STATE OF HARYANA v. BRIJ LAL MITTAL AND OTHERS[1]. In the said case, the Apex Court was pleased to observe as under:

[1] 1998 (1) ALD (Crl.) 883 (SC)

"It is thus seen that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises if at the material time he was in-charge of and was also responsible to the company for the conduct of its business. Simply because a person is a director of the company it does not necessarily mean that he fulfils both the above requirements so as to make him liable. Conversely, without being a director a person can be in-charge of and responsible to the company for the conduct of its business. From the complaint in question we, however, find that except a bald statement that the respondents were directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were in-charge of the company and also responsible to the company for the conduct of its business.

'So far as the Manager is concerned, we are satisfied that from the very nature of his duties it can be safely inferred that he would undoubtedly be vicariously liable for the offence, vicarious liability being an incident of an offence under the Act. So far as the Directors are concerned, there is not even a whisper not a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any act committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable. In these circumstances, therefore, we find ourselves in complete agreement with the argument of the High Court that no case against the Directors (accused Nos. 4 to 7) has been made out ex facie on the allegations made in the complaint and the proceedings against them were rightly quashed.'(emphasis supplied)"

7. He also relied on decision in STATE OF KARNATAKA v. PRATAP CHAND AND OTHERS[2] and the relevant portion is as under:

> "What then does the expression "a person in charge and responsible for the conduct of the affairs of a company mean"? It will be noticed that the word 'company' includes a firm or other association and the same test must apply to a director in-charge and a partner of a firm incharge of a business. It seems to us that in the context a person 'in charge' must mean that the person should be in over all control of the day to day business of the company or firm. This inference follows from the wording of S. 23C(2). It mentions director, who may be a party to the policy being followed by a company and yet not be in charge of the business of the company. Further it mentions manager, who usually is in charge of the business but not in over-all-charge. Similarly the other officers may be in charge of only some part of business.
>
> The evidence in the present case shows that it was respondent No. 1 and not respondent No. 2 who was in over all control of the day to day business of the firm. The second respondent is not liable to be convicted merely because he had the right to participate in the business of the firm under the terms of the Partnership Deed."

8. Basing on the aforesaid decisions, the learned counsel would contend that the proceedings initiated against the petitioners 1 to 3 are liable to be quashed. As far as petitioner No.4 who is A-4 in the complaint, it is represented by the

[2] AIR 1981 SC 872

authorized signatory viz. Naishadh R. Patel. The license to manufacture for sale of the drugs specified in Scheduleas 'C' and C(1) is Tablet, Capsule and Dry Syrup. In the Column of Names Approved i.e. Competent Technical Staff for manufacturing of the subject drug is Naishadh R. Patel. Even in the list of technical persons submitted showing manufacturing department, the name of Naishadh R. Patel is mentioned. Further, even the letter dated September, 2008 addressed on behalf of the 4th petitioner to the Drugs Inspector also would indicate that Naishadh R. Patel is the authorized signatory representing A-4 Company, *vis-à-vis*, the subject drug in question.

9. From perusal of the contents of the complaint and taking into consideration the submissions made on behalf of the learned counsel for petitioners, it is manifest on the face of the complaint as well as the material enclosed thereto that there is absolutely no whisper about the petitioners 1 to 3 that they are incharge of and responsible for the day-to-day affairs as well as the conduct of the business of the 4th petitioner Company. Admittedly, when vicarious liability of a person is to be fastened for being prosecuted for an offence committed under the Act by the Company, the basic ingredient to show prima facie case is that at the relevant point of time, the person alleged was incharge of and was also responsible for

the day today affairs and conduct of the business of the Company. Simply because the person is being shown as Director of the Company, it will not specify both the above said requirements to make him liable for prosecution. In para 1 and penultimate para of the complaint simply refer that the petitioners 1 to 3 are the Directors of the Company, and there are no other allegations to indicate a prima facie case that they were incharge and responsible for day today affairs and conduct of the business of the Company. That being the position, no prima facie case is made out against the petitioners 1 to 3/A-1 to A-3 for the offences as alleged supra against them. Therefore, the proceedings initiated against the petitioners 1 to 3 are liable to be quashed.

10. Accordingly, the criminal petition is allowed in part quashing the proceedings initiated against the petitioners 1 to 3/A-1 to A-3 in C.C.No.1000 of 2009 for the offences under Section 32 of the Drugs & Cosmetics Act, 1940 for contravention of Section 18(a)(i) r/w 17 (B)(d) of Drugs & Cosmetics Act, 1940 punishable under Section 27 (c) of the said Act on the file of the XI Additional Chief Metropolitan Magistrate, Secunderabad. In so far as the petition against the petitioner No.4 is concerned, it is dismissed. However, it is open to the respondents/complainant to proceed against the petitioner No.4/A-4 represented by its authorized signatory Naishadh R. Patel, as per law.

The miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

JUSTICE P. KESHAVA RAO

Date:07.12.2017
ccm

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