

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL APPLICATION NO. 509 OF 2017**

Devendra Vinaykant Sheth,  
Age 74 years, Occupation Business,  
R/o Narayana Villa – 521 – B,  
R. T. Masani Road, Matunga,  
Mumbai – 19.

...Applicant

Versus

The State of Maharashtra,  
Through Drug Inspector,  
Food and Drug Administration  
Department, Rang Bhavan, Sarjepura,  
Ahmednagar.

...Respondent

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Mr. R. R. Mantri, Advocate for applicant.

Mr. A. D. Namde, Addl. Public Prosecutor, for respondent/  
State.

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**CORAM : SMT.VIBHA KANKANWADI, J.**

**Date of reserving  
the order : 06<sup>th</sup> August, 2018.**

**Date of pronouncing  
the order : 23<sup>rd</sup> October, 2018.**

**ORAL JUDGMENT : ( Per SMT. VIBHA KANKANWADI, J. )**

1. Rule. Rule made returnable forthwith. By consent, heard both sides for final disposal.
2. Present application has been filed by the original accused No. 7 by invoking powers of this Court under Section 482 of Code of

Criminal Procedure to quash and set aside proceeding in R. C. C. No. 686 of 2004 pending before Chief Judicial Magistrate, Ahmednagar on the charge of contravention of Section 18 (a) (1) r/w Section 16 and punishable under Section 27 (d) r/w. Section 34 of Drugs and Cosmetics Act, 1940.

3. The facts giving rise to this application are that Shri. S. N. Sale is the Drugs Inspector, serving at Ahmednagar. Original accused No. 1 to 4 are stated to be the directors of accused No. 13 M/s. Veronica Laboratories Ltd. Latur. Accused No. 8 was the Chairman and accused No. 9 was the director after change in the Constitution. Accused No. 10 was production chemist and accused No. 11 and 12 were quality control chemist. Accused No. 13 was holding licence for manufacturing of drugs from 1-4-1993 to 31-12-2002. Complainant had extracted sample of Pediscab lotion manufactured by accused No. 13 and sent it for analysis on 16-05-2000 from Shri A. P. Nahar (Partner of M/s. Mahavir Agencies, Ahmednagar). One sealed portion was given to Government Analyst on 17-05-2000. It was reported by Government Analyst on 17-3-2001 that the sample is not of standard quality. The contents of Gamma benzene hexachloride in the sample was less than the claim made on the label as given in the protocol. He called the details from Nahar. After getting information, notice was issued to accused No. 13. Accused No. 1 and 2 have given reply and contended that the three persons are looking after

the company. After considering the reply and other facts, it was found that there is contravention of the Drugs Act, therefore, complaint was filed.

4. Present applicant has contended that accused No. 13 company was promoted in 1992. Company had appointed Production Chemist and two quality control chemist as they were duly qualified. Applicant had resigned in mid 1996 as Director of the Company. Since then he never acted in that capacity. He was not looking after the day today activity of the company which is situated at Latur. One Nayanben Seth was also director of accused No. 13. She expired on 10-2-1997. The assets, shares and management of the company was transferred to Shri. Nazir Hakim, who then became Chairman. He is no way concerned with the affairs of the company, still has been arrayed as accused. He has therefore, prayed for quashment of entire proceeding against him.

5. Affidavit-in-reply has been filed by Shri. S. N. Sale for respondent. He has reiterated the contents of complaint, hence they are not reproduced again. He has stated that accused No. 7 was responsible for the affairs of the company and therefore, he can not escape from his liability. He had collected the Memorandum of Association of the company before lodging the report. No document has been produced to show that applicant had resigned in 1996. He

therefore, prayed for rejection of application.

6. Heard learned Advocate Shri. R. R. Mantri for applicant and learned A. P. P. Shri. A. D. Namde for respondent. Perused the record made available by respondent and documents filed by applicant. Learned Advocate appearing for applicant submitted that there was no evidence with the complainant to show that applicant was director of accused No. 13 at the relevant time when the sample was extracted. In fact, in response to his notice, it was specifically communicated that three persons are responsible for the affairs of the company. Applicant's name was not amongst those three persons. Perusal of complaint would show that full name of some of the directors were also not given. Accused No. 4 had expired on 10-02-1997, still she has been made as accused. This shows sheer negligence in making enquiry by the complainant before proceeding to lodge complaint. In para No. 2 status of some of the accused has been stated, but there is no mention of accused No. 7. Applicant had retired from the company in 1999. Sample was taken on 16-05-2000. Report was received on 17-03-2001. Under such circumstance, he can not be held responsible in any manner. In fact though it is stated that complaint was filed in 2004, the learned CJM has issued summons on 14-10-2016. It would be a futile exercise to ask applicant to face the trial. Now the right of the accused to get sample examined again has extinguished. The delay in filing

complaint as well as issuing summons till the expiry of shelf life of drug would cause prejudice to the applicant. Hence, he prayed for quashing the entire proceeding.

7. Learned Advocate for applicant relied on the decision in ***State of Haryana v/s. Brij Lal Mittal and others [1998 CRI. L. J. 3287]***; wherein it has been held that,

“At the risk of petition, we wish to emphasis that the right to get the sample examined by the Central Drugs Laboratory through the Court before which the prosecution is launched arises only after the person concerned notifies in writing the Inspector or the Court concerned (here the latter clause did not apply for the prosecution was set to be initiated) within twenty eight days from the receipt of the copy of the report of the Government Analyst that he intends to adduce evidence in controversion of the report. The complaint and its accompaniments (which include correspondences that took place the Inspector and the manufacturers) clearly disclose that on February 19, 1991 the Inspector served the original copies of the Analyst's report upon the Managing Director of the manufacturers along with two letters asking for their comments. They further disclose that receiving no reply from the manufacturers the Inspector again wrote a letter on March 6, 1991 directing them to reply to his letters dated February 19, 1991 and asked whether they wanted to take benefit of the provisions of Section 25 (3) of the Act. In spite thereof the manufacturers did not exercise their right (much less

within 28 days from the date of the receipt of the report of the Government Analyst i.e. February 19, 1991); and, on the contrary, in their letter dated April 8, 1991 annexed to the complaint), sent in response to the letter dated March 6, 1991, asserted, that their quality control department examined and tested samples of the two drugs and found that they complied with the test of sterility. It must, therefore, be said that consequent upon their failure to notify the Inspector that they intended to adduce evidence in controversion of the report within 28 day, not only the right of the manufactures to get the sample tested by the Central Drugs Laboratory through the Court concerned stood extinguished but the report of the Government Analyst also became conclusive evidence under sub-section (3). The delay in filling the complaint till the expiry of the shelf life of the drugs could not, therefore, have been made a ground by the High Court to quash the prosecution. It will not be out of place to mention that the manufacturers' right under sub-section (3) expired four months before the expiry of the shelf life of the drugs. In view of the above discussion, the reasoning of the High Court for quashing the prosecution against the three respondents cannot at all be sustained".

Similar view was taken by this Court in ***Sanjay Nensukhlal Katariya and another v/s. State of Maharashtra [Criminal Writ Petition No. 280 of 2017 decided on 09-10-2017]***. He also relied on the decision in ***Askoke Mal Bafna v/s. M/s. Upper India Steel Mfg. & Engg. Co. Ltd. [AIR 2017 SC 2854]***; wherein

it has been held that,

“Courts must ensure strict compliance of statutory requirements as well as settled principles of law before holding an accused vicariously liable”.

8. Per contra, it has been submitted on behalf of respondent that no document has been produced by the applicant to show that his resignation has been accepted and he has been relieved of all the responsibilities by the company. Though summons has been issued belatedly, yet M. A. No. 311 was filed before the Court of C.J.M., Ahmednagar for sending the sample to Central Drug Laboratory, Kolkata. The report from that laboratory has been received on 3-2-2003. It has been specifically mentioned in the complaint itself. After ensuring who were the persons responsible for the conduct of the affairs of the company, the complaint has been filed. Hence, there is no need to quash entire proceeding.

9. The contents of the complaint would show that the sample was extracted on 16-05-2000. First batch of sample was sent for analysis on 17-05-2000. The report was received from Government Analyst, Mumbai on 17-03-2001. Information was collected regarding the manufacturing company. It is stated that an application was filed on 8-8-2002 before the learned CJM, Ahmednagar for sending the sample to Central Drug Laboratory, Kolkata and according the sample was sent. It has not been clarified by complainant as to

whether any intimation was given by complaint or the Court to the present applicant about their intention to send the sample to Kolkata. Mere filing of such application is not sufficient. Intimation will have to be given to proposed accused persons and they should be given option or willingness to exercise their right to get the sample analyzed by Central laboratory. The said right given under Section 25 of the Drugs Act to the accused is vital right and non-compliance of the same would vitiate the trial. Intimation about such an application only to the company is not sufficient compliance. The report of the Government analyst would show that the manufacturing date of the drug was 01-02-2000 and the expiry date was 31-01-2003. That means when the complaint was filed on 09-03-2004, already the said date of expiry of the drug was over. Why the Central Laboratory also tested the drug after the expiry of the drug is a question. Learned CJM, Ahmednagar ought to have considered these dates before issuing summons. If the shelf life of the drug had expired then, cognizance of the offence itself ought not to have been taken. Now the summons appears to have been issued to the applicant on 14-10-2016. What purpose is going to be served by such act? There is total non-application of mind by the Court of C.J.M., Ahmednagar in the act of issuing summons in such an outdated case. The ratio laid down in above decisions is applicable to the facts of this case. The vital right of the applicant, even if it is

considered that he was director of accused No. 13, has been prejudiced.

10. Learned CJM ought to have considered the averments in the complaint, before taking cognizance of the offence. There is absolutely no specific averment that accused No. 7 was in any manner responsible for the affairs of the business of company. In fact, the communication was already given as to who are the three persons responsible for the conduct of the company. The papers of the prosecution also showed that complainant had collected the 8<sup>th</sup> annual report of accused No. 13 for the year 2000. It does not make a mention of name of accused No. 13 as the director of the company. The total non-application of mind of complainant is also apparent when he has made a dead person as accused No. 4. It is also to be noted that when report of the Kolkata Laboratory was available on 03-02-2003, why complainant waited till 09-03-2004 to lodge complaint. It can not be said that he was not aware about the date of expiry of the drug. There would unnecessary harassment to the accused persons, under such circumstances to face the trial. Therefore, case is made out to exercise the powers of this Court under Section 482 of Code of Criminal Procedure. Hence, following order.

**ORDER**

1. Application is hereby allowed.
2. The proceedings in R. C. C. No. 686 of 2004 pending before learned C. J. M., Ahemdagar is quashed and set aside against present applicant/ original accused No. 7.
3. Rule made absolute in those terms.

**(SMT. VIBHA KANKANWADI)**  
**JUDGE**

*vjg/-.*