

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 3 OF 2018

Sanjeev Wasan,
son of Kulbhushan Kumar Wasan,
47 years of age,
Director, Maxmed Life Sciences Pvt.
Ltd.
Plot No.5, Sec-2, D.C. SIDCUL,
Rudrapur, Uttarakhand.

...Petitioner

Versus

- 1 Union of India,
Ministry of Health and Family Welfare
Through its Drugs Inspector Navneet
Pratap Singh Central Drugs Standards
Control Organization, (CDSCO) India
C/o. Office of Drug Inspector, Sub
Zone / Post Office, 3rd floor, Customs
Building, Customs House, Marmagao,
Goa. ... Respondent

Shri J. Godinho, Advocate for the petitioner.

Shri Mahesh Amonkar, Advocate for the respondent.

CORAM: NUTAN D. SARDESSAI, J.

RESERVED ON : 15th October,2018.

PRONOUNCED 29th October,2018.

ON :

JUDGMENT :-

1. Heard forthwith with the consent of the learned Advocate
for the parties.

2. Rule.

3. Shri Mahesh Amonkar, learned Standing Counsel waives service of notice on behalf of the respondent.

4. The petition under Section 482 Cr.P.C. takes exception to the order of the learned Judicial Magistrate First Class, Vasco for quashing the proceedings initiated against the petitioner under Section 18(a)(i) r/w. Section 27(a) of the Drugs and Cosmetics Act, 1940 ('the Act' for short hereinafter).

5. Heard Shri J. Godinho, learned Advocate for the petitioner who contended that the respondents had lodged a complaint against the company Maxmet Life Sciences Pvt. Ltd. and two others including the petitioner herein under Section 32(1) of the said Act for an offence punishable under Section 18(a)(i) r/w. Section 27(d) of the Act. In the said complaint it was set out that the petitioner as one of the directors of the accused company was responsible for its day to day affairs and liable for punishment for the offence committed under Section 18(a)(i) r/w. Section 27(d) of the Act. It was his contention that a bare statement in the complaint was not adequate to rope the petitioner as an accused rather it was his contention that in its

reply filed to the respondent on behalf of the company, it was made abundantly clear to the respondent that their General Manager was in fact the person in charge and responsible to the company. He place reliance in **State of Haryana v/s. Brij Lal Mittal and others** [1998(5) SCC 343], **National Small Industries Corporation Ltd. V/s. Harmeet Singh Paintal and another** [(2010) 3 SCC 330], **State of NCT of Delhi through Prosecuting Officer, Insecticides, Government of NCT, Delhi v/s. Rajiv Khurana** [(2010) 1 SCC 469], **Pooja Ravinder Devidasani v/s. State of Maharashtra and another** [(2014) 16 SCC 1] and **A.V. Mody v/s. S.R. Salunke** [1999 (3) MLJ 850].

6. Shri M. Amonkar, learned Standing Counsel for the respondents submitted that the judgment relied upon by the petitioner were clearly distinguishable. Besides, the petitioner had not filed any reply to the notice taking a stand which was now sought to be taken in this petition that a different person was in-charge and responsible for the affairs of the company. There was a clear averment in the complaint that the petitioner with another person was clearly in-charge of and responsible for the affairs of the company and therefore there was no basis for the petition which had to be dismissed.

7. i would consider their submissions in the light of the judgments and pleadings in the complaint and decide the petition accordingly.

8. In **Brij Lal Mittal** (supra), a two Judge Bench of the Hon'ble Apex Court held while dealing with the appeal under the Act that in instances where the offences are committed by Company, simply because a person is a director of the company he does not vicariously become liable for the offence committed by the company. It must be shown that he was in charge of the company and also responsible to the company for the conduct of its business. 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. It was found in the facts of the case that except a bald statement in the complaint that the respondent were directors of the

manufacturers, there were no any allegation prima facie that they were responsible for the conduct of the business and in that view the matter is quashed and set aside.

9. In National Small Industries Corporation Ltd. (supra), another two Judge Bench of the Hon'ble Apex Court while dealing with an appeal under the Negotiable Instruments Act, 1881 and Sections 138, 141 and 142 thereof held that when an offence is committed by a company, it is not every person connected with the company but only those in charge of and responsible for conduct of the business of the company at the time of commission of offence can be held vicariously liable. Hence, the Director of the company who was not in charge of or responsible for the conduct of its business at the time of commission of the offence was not so liable. It further held that when an offence is committed by the company and to fasten vicarious liability on the Director / Managing Director / Joint Director averments are required to be made in the complaint. In case of the Director it was held that the complaint should specifically spell out how and in what manner the Director was in charge of and was responsible to the accused company to its conduct of its business a mere bald

statement that he was in charge of and responsible for conduct of its business was not sufficient. There is no presumption that every director knows about the transaction. In the absence of a specific averment as to the role of the co-accused director, the trial Court's order summoning him was rightly quashed by the High Court.

10. In **Rajiv Khurana** (supra), a two Judge bench of the Hon'ble Apex Court while dealing with a criminal appeal seeking the quashment of the summons issued to the respondent observed that the respondent accused was the Regional Technical Director handling quality control of the offending company whose quality of product was not found conforming to ISI specifications. Neither any specific role attributed to the respondent in commission of alleged offence, nor established that the respondent was in any way responsible or in charge of the affairs of company to be vicariously liable. Held, in the absence of such clear averments in the complaint, the respondent could not be compelled to face criminal trial. It is imperative to specifically aver in the complaint that the accused was in charge and was responsible for the conduct of the business of the company. It was further held that every director need not be and is not in charge of the business of the

company and in case of such non-director officers, it is all the more necessary to state what were his duties and responsibilities were, and how and in what manner he is liable in order to initiate prosecution against him.

11. In **Pooja Ravinder Devidasani** (supra), a two Judge Bench of the Hon'ble Apex Court held while dealing with an appeal under the Negotiable Instrument Act where the Company was alleged to have conducted the offence, need that to make a director liable, there must be specific avement against the director showing as to how and in what manner he / she was responsible for the conduct of the business of the company. He / she was liable only if he / she was in charge of and responsible to the company for the conduct of its business or if it was proved that the offence was committed with the consent or connivance of or was attributable to any negligence on the part of the director concerned. Simply because a person is a director of a company, does not make him/ her liable under Act. A mere verbatim reproduction of the words of section without a clear statement of fact supported by proper evidence, is not enough to make an accused vicariously liable.

12. In **A.V. Modi** (supra), a learned Single Judge of this Court

while dealing with a complaint under Section 18(a)(i) and 34 of the Act alleging sale of drug not of standard quality by a company held that the averments in the complaint did not make out a prima facie case against the accused who was the director of the company. They were not liable for being prosecuted under Section 34 of the alleged offence committed by company. Only those persons who were in charge of and responsible for the conduct of business of the company could be prosecuted alongwith the company. It placed reliance in Brij Lal Mittal (*supra*).

13. The respondent – Union had filed a complaint against the company Maxmed Life Sciences Pvt. Ltd. alongwith the petitioner and another as its directors for the alleged commission of the offences punishable under Section 32(1), for the offences under Section 18(a)(i) punishable under Section 27(d) of the said Act. Apart from enumerating other facts, the respondent/ complainant had averred in the complaint that as there was no response from the accused i.e. the petitioner amongst others, the complainant had made enquiry about the company and after obtaining necessary information had filed a case. There were just a bald statement that the petitioner and another were responsible for the offences committed under

Section 18 (a) (i) of the Act punishable under Section 27(d) of the Act. No other specific averments were made against the petitioners carving out the actual role in the commission of the crime alleged under the provisions of the Act. Besides, the petitioner though in the petition had clearly revealed that responding to the letter of the respondent, they had clearly indicated to the respondent that one Dharmendra Kumar Singh was the person in charge of and was responsible to the company viz-a- viz the provisions of the Act and that instead of filing the complaint against the company and the person in charge of and responsible for its affairs, the respondent had filed a complaint against the petitioner merely because he was the director of the company and not involved in the commission of the alleged offence and besides nothing was attributed to him as to make him vicariously liable under the provisions of Section 34 of the Act.

14. The contention of Shri Amonkar, learned Standing Counsel therefore that the petitioner had not replied to the notice would not stand the test of scrutiny when there was a clear assertion on behalf of the petitioner that he had in fact submitted a reply and indicated who was the person in charge of and responsible for the affairs of the company under the Act

and against whom the respondents ought to have proceeded by excluding the petitioner.

15. In view thereof, the prosecution cannot lie against the petitioner herein which is liable to be quashed and set aside. In the result, i pass the following

ORDER

- 1.** Rule made absolute.
- 2.** The proceedings against the petitioner alone are quashed and set aside under the provisions of the Act.

NUTAN D. SARDESSAI J.

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