**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRIMINAL PETITION No.9547 OF 2017**

**ORDER**

This Criminal Petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.282 of 2017 on the file of the Judicial First Class Magistrate, Nizamabad, for violation of Section 18(a)(i) of the Drugs and Cosmetics Act, punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940 (for short 'the Act')

The Drugs Inspector, Nizamabad (Urban), the respondent herein filed the complaint for prosecution against the present petitioner/A3, as he is alleged to be an authorised representative of M/s.Zuventus Healthcare Limited (a distributor of the drug alleged to be not of standard quality) and other accused.

The main grounds in the petition are that there is no averment in the complaint that the petitioner was in charge of M/s.Zuventus Healthcare Limited and was responsible for the conduct of its business and that there is no averment that the alleged offence was committed with the consent or connivance of, or is attributable to any negligence on the part of the petitioner/A3. In the absence of any averment, a bar under Section 34 of the Act, shall apply and thereby, the petitioner is not liable to be prosecuted for the offence punishable under Section 27(d) of the Act.

It is contended that there is no *prima facie* material to proceed against the petitioner to constitute an offence punishable under Section 27(d) of the Act for violation of Section 18(a)(i) of the Act and thereby, the respondent is not competent to prosecute this petitioner and the proceedings are liable to be quashed.

A2 is a licencee to manufacture drugs *vide* Form No.25, Licence No.09132634 dated 15.12.2014 and Form No.28 dated 15.12.2014 valid from 12.10.2014 to 20.11.2019 issued by the Licencing Authority, Department of Drugs and Control, Puducherry.

The petitioner has been arrayed as accused, as he is an authorised signatory of M/s.Zuventus Healthcare Limited (A4) and signed an agreement on behalf of A.4. The office address of A.4 is T-184, M.I.D.C., Bhosari, Pune-411026 and the godown address is Godown No.2, A&B, S.R.No.146/1, Village, Mann, Pune. A.4 is licenced to market/distribute the said drugs in question vide Form No.20B, Licence No.PZ4-P/M/2621-A dated 17.01.2009 and Form No.21B P/M/2670-A dated 17.01.2009 valid from 17.01.2014 to 16.11.2019.

On 29.04.2015, the respondent received a complaint from one D.Praveen of Kasabgalli, Nizamabad. Along with the complaint, D.Praveen also supplied the respondent with eight tablets of the product 'Myotop P', which he allegedly purchased from M/s.Ananda Medical and General Stores, Kotgally, Nizamabad, on 23.04.2017, based on a prescription obtained from Dr.B.Raju for Smt.Pushpa. It is alleged in the complaint that when the tablet was taken out from the packaging, it did not come out as one whole tablet but in two broken parts. The same was not in a form that could be consumed. The respondent registered the complaint. Then, he proceeded to M/s.Ananda Medical and General Stores and searched the shop for the said drugs. The respondent found 5x10 said drugs, bearing batch No.CBA 15006 with manufacturing date January, 2015 and expiry date was mentioned as December, 2016. The said drugs were manufactured by A2. The respondent verified the fact that D.Praveen, in fact, bought his tablets from the said store and the respondent himself opened one packet and found that the tablet could not be removed from the pack as a single tablet and it was splitted into two halves. The same was unfit for human consumption. The stock of the drug at M/s.Ananda Medical and General Stores was insufficient for lifting of a sample and hence, the respondent asked the staff of M/s.Ananda Medical and General Stores to return the stock to its supplier, namely, M/s.Krishna Sai Agencies, Nizamabad.

The respondent then headed to M/s.Krishna Sai Agencies and found that no such drugs were available. The respondent then headed to M/s. Ravindra Pharma Khaleelwadi, Nizamabad, wherein the said drugs were available in stock and the respondent took the said drugs for sample testing in accordance with Section 23(1) of the Act and the said drugs that were taken by the respondent bears the following description.

*Mfd Date:11 Jan 2015, Exp Date: Dec.2016, Mfg Lic No.09132634, Mfd by M/s.GKM New Pharma.... quantity of subject drug lifted for analysis 1x4x5x10 tablets.*

It is also contended that the respondent after following necessary procedure filed complaint, as if the petitioner is a person authorised to conduct the business, but he is not responsible for manufacturing drugs in the company of M/s.Zuvantas Healthcare Limited and the samples were not in conformity with the standards and were not based on any material and therefore, sought to quash the proceedings against the petitioner/A3.

During hearing, learned counsel for the petitioner mainly demonstrated that the petitioner herein was not the person authorised by M/s.Zuvantas Healthcare Limited and thereby, the proceedings cannot be proceeded against the petitioner and placed reliance on the judgments of the Supreme Court in ***State of Haryana v. Brijlal Mittal and others***[1], ***Chekka Venkata Chenna Kesava Sudheer v. Drugs Inspector (Ayurveda) Andhra Region***[2], ***N.Dandapani and another v. State of Andha Pradesh***[3] ***and S.M.S.Pharmaceuticals Limited v. Neeta Bhalla and another***[4]

In all the judgments, the Apex Court held that when the offence was committed allegedly by a company, the person, authorised signatory, alone is responsible for any violation and in the absence of any authorisation, every partner or Director of the company cannot be proceeded for any of the offences punishable under the Act.

On the strength of the principle laid down in the above judgments, learned counsel for the petitioner contended that the petitioner is not an authorised representative and hence, he is not liable for the offences punishable under Section 27(d) of the Act and prayed to quash the proceedings.

Learned Public Prosecutor for the State of Telangana would contend that the petitioner is the authorised representative or signatory of M/s.Zuvantas Healthcare Limited and he himself entered into the agreement with the GKM New Pharma, which manufactured the drug on behalf of M/s.Zuvantas Healthcare

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[1] (1998)5 SCC 343
[2] 2007 SCC online AP 1074
[3] 2004 SCC online AP 1012
[4] (2005) 8 SCC 89

Limited and therefore, a copy of the agreement is also placed on record to contend that the petitioner is liable to be prosecuted for the offences being an authorised signatory on behalf of M/s.Zuvantas Healthcare Limited and prayed to dismiss the petition.

Considering the rival contentions and perusing the material available on record, the sole point that arise for consideration is :-

> "Whether the petitioner/A3 in C.C.No.282 of 2017 pending on the file of the Judicial First Class Magistrate, Nizamabad, is the authorised person to conduct business on behalf of M/s.Zuvantas Healthcare Limited, if so, whether the respondent can proceed against the petitioner to prosecute for the offence punishable under Section 27(d) of the Act" ?

A bare reading of the contents of the complaint discloses that the petitioner/A3 was described as authorised signatory on behalf of M/s.Zuvantas Healthcare Limited/A4. In para 4 of page No.2 of certified copy of the complaint placed on record, it is specifically averred as follows:-

> "Accused No.3 Sri Sanjay Mehta is authorised signatory of A4 Company. He signed an agreement on behalf of M/s.Zuvantas Healthcare Limited, T-184, M.I.D.C., Bhosari, Pune-411026, present marketing address of M/s.Zuvantas Healthcare Limited, Godown No.2, A&B, S.R.No.146/1, Village:Maan, Pune, Tal:Mulshi (Pune Zone 4) Pin:411057 with M/s.GKM New Pharma Spl Type Plot No.5,6,7&8, PIPDIC Electronic Park, Thirubuvanai, Mannadipet commune, Puducherry-605107 manufactured subject drug on behalf of A3, A2 firm manufactured subject drug supplied to the A4 company. The company is licensed to market/distribute the subject drug vide form No.20B, License No.PZ4-P/M/2621-A dated 17.01.2009 and form 21B P/M/2670-A dated 17.01.2009 valid from 17.01.204 to 16.11.2019."

In view of the specific allegation, the petitioner is the present authorised signatory of the company-M/s.Zuventus Healthcare Limited/A4 and looking after the affairs of the company. At the last para of page No.5, the respondent made a specific allegation that A2 manufacturing firm, represented by A1 its Managing partner and A4 company, represented by its Authorised signatory A3 have entered into an agreement dated 03.09.2011 to manufacture the subject drug not of standard quality drug for A4 company as per the specifications and technical knowhow supplied by A4 company with the formula and brand owned by A4 company and to supply the entire produce to A4 company on principal to principal basis. This agreement was signed by the officials of both parties. At page No.6, it is made clear that on verification of the samples of the subject drug is not of standard quality drug maintained by A2 firm. Quality control personnel of A2 firm tested the hardness of the control sample before the complainant and it is found to be $9 kg/cm^2$. The complainant further observed that the tablet from the control sample is intact and not splitting into two halves as noticed at the time of sampling the produce from M/s.Ravindra Pharma Distributors Khaleelwadi Nizamabad. Further the hardness of the tablet as per the original batch manufacturing record is $6 kg/cm^2$. Hence, it is clear that A2 manufacturing firm has replaced the original control sample with that of another sample manufactured later to suppress the evidence. The complainant observed that A2 firm utilised PVPK 30 as binding agent in the manufacture of the product in a quantity of 1.5 kg and 0.675 kg with AR No.1415/RM/661 for preparing Paracetamol and Tolperisone granulations. A2 failed to produce the quality test report bearing AR No.1415/RM/661 pertaining to PVPK 30 binding agent. Thus, A1, A2 and A4 including the petitioner/A3 are liable for the offence and request the Court to try and decide the guilt of the petitioner and other accused before the Judicial First Class Magistrate.

While considering the application under Section 482 Cr.P.C., the Court has to look into the allegations and material produced along with the complaint to find out whether the allegations made in the complaint would *prima facie* constitute the offence punishable under the penal provision and this Court cannot appreciate the evidence but verify only for the limited purpose to exercise its inherent jurisdiction under Section 482 Cr.P.C. to give effect to the orders passed under Cr.P.C., or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

Keeping in view of the scope of Section 482 Cr.P.C., the Apex Court in ***State of Haryana v. Bhajan Lal***[5] laid down the following seven guidelines:

> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
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> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
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> (3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
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> (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
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> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
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> (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is

[5] 1992 Supp. (1) SCC 335

instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

In "***R.P. Kapur v. State of Punjab***[6]", the Apex Court laid down the following principles:

(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;

(iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

In "***State of Karnataka*** v. ***L. Muniswamy***[7]" the Supreme Court while considering the scope and jurisdiction of the High Courts under Section 482 Cr.P.C, has held as under:

"In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and

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[6] AIR 1960 SC 866
[7] AIR 1977 SC 1489

> purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction."

In ***(Mrs.) Dhanalakshmi v. R. Prasanna Kumar and others***[8], the Supreme Court dealt with the scope of Section 482 of Cr.P.C and held as under:

> "Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious. in that event there would be no justification for interference by the High Court."

In view of the law declared by the Apex Court in various judgments referred supra, the Court while exercising the power under Section 482 Cr.P.C. has to verify the allegations made in the complaint or FIR together with material annexed to the complaint and if the Court finds that the material is not sufficient to proceed against the accused, prima facie, it can exercise its inherent jurisdiction. If for any reason, the Court finds that the allegations made in the complaint, if taken on its face value, would constitute an offence under any penal provisions or that the said complaint was filed to wreck vengeance against the accused, the Court may

[8] AIR 1990 SC 494

quash the proceedings by exercising inherent jurisdiction under Section 482 Cr.P.C.

Keeping in view, the scope of jurisdiction of this Court, I would like to examine the specific issue raised by the learned counsel for the petitioner that the petitioner is not the authorised signatory and not responsible for the conduct of business by the company to fasten any criminal liability for the offence punishable under Section 27(d) in view of Section 34 of the Act.

The only ground raised before this Court is that the petitioner, being one of the directors along with other directors, is not responsible for any violation committed by the company. But the 1st respondent relied on the agreement executed by this petitioner in favour of GKM New pharma. The copy of the agreement is placed on record and the contents of the agreement *prima facie* disclosed that the petitioner/A3 was authorised signatory to enter into contract/agreement with GKM New Pharma and accordingly, entered into a contract/agreement incorporating usual terms of contract of manufacturing a particular drug on behalf of the company with A4 M/s.Zuventus Healthcare Limited. When this petitioner entered into an agreement with GKM New Pharma, the Court can *prima facie* conclude that he is the present authorised person to transact the business on behalf of M/s.Zuventus Healthcare Limited/A4 but whether such authorisation is sufficient or not is a question to be decided at appropriate stage, but at the threshold, it is difficult to uphold such contention of the learned counsel for the petitioner.

Section 34 of the Act deals with the Offences by the companies:

(1) When 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.

The clause contained under Section 34 of the Act does not exclude or fasten any criminal liability to any Director and the fact that the petitioner is not only a director of M/s.Zuventus Healthcare Limited/A4 but also transacting business on behalf of A4 M/s.Zuventus Healthcare Limited and entered into an agreement with GKM New Pharma, is *prima facie* suffice to conclude that the petitioner is having control over the business of manufacturing drugs by M/s.Zuventus Healthcare Limited/A4 and hence he shall be deemed to be guilty of the offence *prima facie* and liable to be proceeded against. However, still he is entitled to prove that the offence was committed without his knowledge or that he has exercised due diligence to prevent such violation of Section 18(a)(i) of the Act which is punishable under Section 27 of the Act. Thus, when *prima facie* material is available to establish that the petitioner, who was the authorised signatory of M/s.Zuventus Healthcare Limited/A4, is deemed to be guilty *prima facie*, along with the company for any offence punishable under the Act, proof of exercise of due diligence or without his knowledge is a matter of trial, but at this stage, it is difficult to hold that there is no *prima facie* material to proceed against him accepting the contention that the petitioner was not the present authorised person to carry on business on behalf of M/s.Zuventus Healthcare Limited/A4.

Learned counsel for the petitioner referred to several judgments, more particularly, as regards the law laid down by the Supreme Court in ***State of Haryana v. Brijlal Mittal and others***[9], ***Chekka Venkata Chenna Kesava Sudheer v. Drugs Inspector (Ayurveda) Andhra Region***[10] *and* ***N.Dandapani and another v. State of Andha Pradesh***[11]. He further contended that the Apex Court in ***S.M.S.Pharmaceuticals Limited v. Neeta Bhalla and another***[12] laid down certain principles to attach vicarious liability while deciding a complaint filed under Section 138 read with Section 141 of Negotiable Instruments Act. In ***Brijlal Mittal and others*** case (referred supra) the specific provision i.e., 34(1) of the Act was discussed and held that the vicarious liability of a person for being prosecuted for an offence

[9] (1998)5 SCC 343
[10] 2007 SCC 1074
[11] 2004 SCC 1012
[12] (2005) 8 SCC 89

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 and quash the proceedings.

If the principle is applied to the present facts of the case, the petitioner/A3 is not only a director along with the other directors of the company but also authorised signatory on behalf of the company and conducting the business transactions on behalf of the company M/s.Zuventus Healthcare Limited/A4. Therefore, such authorisation in favour of the petitioner/A3 by the other directors of the company is suffice to proceed against the petitioner for the offence under Section 27(d) of the Act. Hence, the contention that the petitioner was not a person authorised by the company or incharge of the company is a question of fact that can be decided only during trial and since the agreement placed on record by the respondent would *prima facie* disclose that the petitioner is looking after the business transactions of the company. The proceedings against the petitioner in C.C.No.282 of 2017 pending on the file of Judicial First Class Magistrate, Nizamabad, at the threshold cannot be quashed in view of the law declared by the Apex Court in various judgments referred supra. Therefore, I find no ground to quash the proceedings at this stage. However, it is left open to the petitioner to raise all these questions during trial or at any appropriate stage before the trial Court.

In view of my foregoing discussion, I find no ground to quash the proceedings and consequently, the petition is devoid of merits and deserves to be dismissed.

In the result, the petition is dismissed. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

**M. SATYANARAYANA MURTHY, J**

Date: 15.02.2018
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