

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-28682-2011 (O&M)
Date of Decision: 24.07.2018**

Sh. A.V. Patil

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. G.S. Sawhney, Advocate
for the petitioner.

Mr. R.K. Doon, A.A.G. Haryana.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has sought for quashing of complaint No.516 dated 31.10.2006 filed under the Drugs and Cosmetics Act, 1940 read with Rules 1945 framed thereunder (Annexure P-18) as well as summoning order dated 31.10.2006 (Annexure P-19) passed by the Chief Judicial Magistrate, Gurgaon and consequential proceedings.

2. Petitioner is stated to be one of Director of M/s Centurion Laboratories, Baroda, Gujarat. Complainant inspected the Estate Office of Civil Surgeon, Gurgaon and found certain drugs were substandard. Consequently, material was referred to Lab at Gurgaon as well as Kolkatta. Pursuant to the report of the Lab, complainant proceeded to file complaint before the Chief Judicial Magistrate, Gurgaon. Complaint was entertained by the Chief Judicial Magistrate, Gurgaon and after due consideration proceeded to pass order summoning the petitioner. Thus, petitioner is aggrieved by the complaint as well as summoning order dated 31.10.2006.

3. Learned counsel for the petitioner submitted that petitioner is one of the Director. No specific allegations have been made against the petitioner in respect of his role as a Director in the complaint. Therefore, complaint dated 31.10.2006 as well as summoning order dated 31.10.2006

are liable to be set aside. In support of the petitioner's contention, he relied on following decisions: **Pepsico India Holdings Pvt. Ltd. v. Food Inspector and another**; 2010 (6) LAW HERALD (SC) 4424 (see: Para-39); **Mrs. Anita Malhotra v. Apparel Export Promotion Council and another**; 2012 (2) AICLR 407 (see: Para-15); **State of NCT of Delhi v. Rajiv Khurana**; 2010 (4) Criminal Court Cases 23 (see: Para-18); **Pooja Ravinder Devidasani v. State of Maharashtra and another**; 2015 (1) LAW HERALD (P&H) 234 (SC) (see: Para-20); **Jayesh Cholera v. State of Punjab**; 2015 (4) LAW HERALD (P&H) 2999 (see: Para-12) and **Shyam Sunder Aggarwal and another v. State of Haryana**; 2015 (5) LAW HERALD (P&H) 3886 (see: Para-8). Learned counsel for the petitioner stressed upon the decision of the Supreme Court rendered in the case of **State of Haryana v. Brij Lal Mittal**; 1998(2) RCR (Criminal) 608 (see: Para-8) to substantiate his contention that Director's role is required to be examined and specific allegations should be made in the complaint. It was further contended that necessary sanction is required for the purpose of taking action against the Director. However, there is no compliance to the statutory provision relating to obtaining sanction.

4. Per contra, learned counsel for the State vehemently contended that petition under Section 482 Cr.P.C is not maintainable. It was further submitted that petitioner has raised objection relating to lab report issued by the State of Haryana. Thereafter, it was sent to Lab at Kolkatta and after receipt of two reports and due examination, complaint has been presented. Therefore, there is no infirmity in the complaint. Consequently, no interference is called for in respect of summoning order. Learned State counsel vehemently submitted that Section 34 of the Drugs and Cosmetics,

Act 1940 (for short “the Act”) is crystal clear that if any action is required to be taken against a company, in that event, sub-section 2 of Section 34 of the Act would operate to the extent that officials of the company as well as Director or any other person acquainted with the company's affairs. Therefore, petitioner's contention that he is Director and his role has not been stated in the complaint to the extent allegations against the petitioner-Director cannot be taken into consideration for the purpose of filing complaint. It was further submitted that decisions cited by the petitioner are distinguishable having regard to the statutory provision i.e. Section 34 of the Act. It was also submitted that necessary sanction has been obtained on 19.10.2006 vide Annexure P-16. Moreover, petitioner has not challenged Annexure P-16 to what extent it is illegal or contrary to statutory provision.

5. Heard learned counsel for the parties.

6. Petitioner is a Director of the M/s Centurion Laboratories, Baroda, Gujarat having various branches all over India. In the State of Haryana, complainant Drug Inspector from Drug Departments inspected the civil surgeon office and found that certain materials which are stated to have been supplied by the petitioner-company were substandard. Thereafter, materials were subject matter before the Lab Test in the State of Haryana as well as Kolkatta. After receipt of the report and analysing the report, Drug Inspector proceeded to file a complaint.

7. Question for consideration in the present petition is whether complainant can initiate complaint proceedings against Director of the Company or not?

8. Learned counsel for the petitioner relied on the aforesaid decisions to contend that unless and until allegations are stated in the

complaint, no action can be taken against the Director. Having regard to the statutory provisions in particularly Section 34 (1) (2) of the Act. Sub-Section 2 of Section 34 provides for taking action against the members of the company including Director. Question of making specific allegation in the complaint is defect in the drugs supplied by the petitioner's company. Specific role of Director could be ascertained only during the criminal proceedings after adducing necessary evidence to the extent what are powers and function of the Director like petitioner.

9. In view of the facts and circumstances read with the statutory provision of Section 34 of the Act, decisions cited by the petitioner are distinguishable. Insofar as decision cited by the petitioner in the case of Brij Lal Mittal's case (supra), perusal of para-8 of the said judgment, it is evident that Court has not considered statutory provision of sub-section 2 of Section 34 of the Act. Therefore, the said decision is distinguishable. The other contention relating to obtaining sanction for the purpose of taking action against the petitioner is concerned, it is evident from Annexur P-16, necessary sanction has been taken by the State Drugs Controller-cum-Controlling and Licensing Authority Office Directorate Health Services Haryana while communicating the same to the State Drug Controller.

10. In view of the above facts and circumstances, petitioner has not made out a case.

11. Accordingly, petition stands dismissed.

24.07.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**