

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No. 18824 of 2014
and M.P.No.1 of 2014

N.Anand

.. Petitioner

Vs.

State rep by Mohan Subramanian,
Drugs Inspector, Salem II Range,
O/o. Assistant Director of Drugs Control,
7, Thiruvallur Street, Salem5 .. Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.11584 of 2008 on the file of the IV Metropolitan Magistrate, Saidapet, Chennai, quash the proceedings.

For Petitioner : Mr.C.S.Dhanasekaran
For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.11584 of 2008 pending on the file of the IV Metropolitan Magistrate, Saidapet, Chennai.

2. The learned counsel for the petitioner would submit that the respondent/complainant filed a complaint against the one Teen Pharmaceuticals/A-1, MR.T.Namasivayam/A-2, the Managing Director of Teen Pharmaceuticals and the petitioner/A-3 for the offence under sections 18(a) (i) & 18(c) and under section 27(d) of the Drugs and Cosmetics Act 1940 for distributing "Not of standard quality" drug namely "HOLSYN-D, B.No.T-186".

3. According to the petitioner, he is not an active partner in the accused firm named one Teen Pharmaceuticals and he is a student pursuing his nursing course and he has nothing to do with the activities of the accused firm. The petitioner would contend that he has no way connected with the alleged cause of action or the offence and he has no role to play in the affairs and management activities of the accused firm.

4. However, according to the petitioner, a charge sheet has been filed and the case is pending in C.C.No.11584 of 2008 on the file of the IV Metropolitan Magistrate, Saidapet, Chennai, against the petitioner and the other accused and the same has to be quashed in respect the petitioner herein to meet the ends of justice.

5. The learned counsel appearing for the petitioner submitted that the petitioner is a student and not an active partner in the accused firm, therefore, the charges against him is to be quashed. He further submitted that in a similar case, this Court has quashed such proceedings in Crl.O.P(MD).No.3328 of 2006 by order dated 06.04.2006, wherein it was held follows:

"9.The Honourable Supreme Court has held in state of Karnataka V.Pratap Chand (AIR 1981 Supreme Court 872) that a partner, who was not in overall control of the day to day business of the firm, cannot be held liable for the offence under the Drugs and Cosmetics Act, 1940."

6. Further, the learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court reported in AIR 1998 SC 2327 [State of Haryana Vs. Brij Lal Mittal and others], reads as follows:-

"8.Nonetheless, we find that the impugned judgment of the High Court has got to be upheld for an altogether different reason. Admittedly, the three respondents were being prosecuted as Directors of the manufacturers with the aid of section 34(1) of the Act which reads as under:

"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 this subsection 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."

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 fulfills 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."

7. Similarly, in the instant case also a certificate has been produced by the petitioner to show that he is studying B.Sc., (Nursing) and the partnership deed would also show that he is a sleeping partner in the accused firm. Therefore, following the ruling laid down by the Hon'ble Apex Court in State of Karnataka V. Pratap Chand reported in AIR 1981 Supreme Court 872 and considering the facts of the case, this petition allowed and the charge sheet filed in C.C.No.11584 of 2008 pending on the file of the IV Metropolitan Magistrate, Saidapet, Chennai is quashed in respect of the petitioner herein. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

mpa/lpp
To

1. The Metropolitan Magistrate No. IV, Saidapet, Chennai.
2. The Drugs Inspector, Salem II Range,
O/o. Assistant Director of Drugs Control,
7, Thiruvallur Street, Salem-5.
3. The Public Prosecutor, High Court Madras.

Cr1.O.P.No. 18824 of 2014
and M.P.No.1 of 2014

A.SK (04/04/2019)