

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

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CRM-M-28031-2016 (O&M)

Date of decision: 27.08.2019

Vinod Gupta

..... Petitioner

Versus

State of Punjab through its Drugs Inspector, Jalandhar-I ..... Respondent

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Mr. S.K. Jain, Advocate and  
Mr. Akshay Jain, Advocate  
for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

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**ANIL KSHETARPAL, J. (ORAL)**

Prayer in the petition is to quash the criminal complaint No.COMA-58/16 of 15.02.2016 and the summoning order dated 15.02.2016.

Learned counsel for the petitioner has pointed out that State has not impleaded M/s Meridian Medicare Limited, the primary accused. The petitioner in this case is sought to be prosecuted for being vicariously liable. He submit that language of Section 34 of the Drugs and Cosmetics Act, 1940 and Section 141 of the Negotiable Instruments Act, 1881 is pari materia on this aspect. He further relies upon a 3 Judges Bench judgment of the Hon'ble Supreme Court in the case of Aneeta Hada Vs. Godfather Travels and Tours Pvt. Ltd., 2012(5) SCC 661, to submit that in absence of the company, the prosecution of the alleged Director is not maintainable as primary accused is the company which has not been impleaded as party.

Section 34 of the Drugs and Cosmetics Act, 1940 is extracted as under:-

***“34. 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 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.”*

Section 141 of the Negotiable Instruments Act, 1881 is extracted as under:-

***“141. Offences by companies.***

*(1) If the person committing an offence under section 138 is 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 sub-section shall render any person liable to punishment if he proves that the offence was*

*committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:*

*[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]*

*(2) Notwithstanding anything contained in sub-section (1), where any 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.”*

On careful reading of Section 34 of the Drugs and Cosmetics Act, 1940 and Section 141 of the Negotiable Instruments Act, 1881, it is clear that whenever offences are alleged to have been committed by the companies, every person who at the time of the alleged offence was committed, was incharge of or 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 offence and shall be liable to be proceeded against and punished accordingly. The language of the statute is clear and categorical. Every person who at the time of offence was committed, was incharge of or was responsible to the company for the conduct of the business of the company and the company is to be impleaded as accused. In the present case, it is undisputed position that the company which is a primary accused has not been impleaded as accused.

Section 141 has been incorporated by the Hon'ble Supreme

Court in the case of Aneeta Handa (supra). The relevant discussions in the aforesaid judgment is extracted as under:-

*“We have referred to the aforesaid passages only to highlight that there has to be strict observance of the provisions regard being had to the legislative intendment because it deals with penal provisions and a penalty is not to be imposed affecting the rights of persons whether juristic entities or individuals, unless they are arrayed as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the company. The learned counsel for the respondents have vehemently urged that the use of the term “as well as” in the Section is of immense significance and, in its tentacle, it brings in the company as well as the director and/or other officers who are responsible for the acts of the company and, therefore, a prosecution against the directors or other officers is tenable even if the company is not arraigned as an accused. The words “as well as” have to be understood in the context. In Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others[44] it has been laid down that the entire statute must be first read as a whole, then section by section, clause by clause, phrase by phrase and word by word. The same principle has been reiterated in Deewan Singh and others v. Rajendra Prasad Ardevi and others[45] and Sarabjit Rick Singh v. Union of India[46]. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the company” appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it*

*would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.*

*43. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh (supra) which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal (supra) does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada (supra) is overruled with the qualifier as stated in paragraph 37. The decision in Modi Distilleries (supra) has to be treated to be restricted to its own facts as has been explained by us hereinabove.”*

Keeping in view the aforesaid binding precedent, this Court is left with no choice but to quash the aforesaid complaint.

Hence, the present petition is allowed.

Let a copy of the order be forwarded to the concerned Director for information.

**27.08.2019**

D.Bansal

**( ANIL KSHETARPAL )  
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No