

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

CRM-M-35969-2018 (O&M)

Date of Order:05.09.2019

FALCK INDIA PRIVATE LIMITED

..Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jasjit Singh Bedi, Sr. Advocate, with
Barrister Rubal Garg and
Mr. Manish Dembla, Advocate and
Mr. Arnav Sood, Advocate, for the petitioner.

Mr. Manish Bansal, DAG, Haryana with
Mr. Vipin Mehta, Sr. Drug Officer, Gurugram.

ANIL KSHETARPAL, J(Oral)

Section 482 Cr.P.C enables the High Court to exercise its inherent powers in order to prevent abuse of the process of Court and otherwise to secure the ends of justice.

No doubt, exercise of powers by the High Court under the aforesaid provision has to be in rare and exceptional cases, however, the High Court would be abdicating from its duty, if the court does not exercise its powers in the cases where it is apparent from the case file that launch of prosecution was/is clearly abuse of process of law and it is necessary to pass orders in order to secure the ends of justice.

In the considered view of this court, this is one such case which require exercise of the powers.

Falck India Private Limited claims to be a subsidiary of Falack

Denmark A/S based in Denmark which is a global leader in providing emergency medical services for general public in partnership with the governments. It also claims that in India, it has worked with Gujarat State Disaster Management Authority, Tamil Nadu Fire and Rescue Services and Indian Railways for their requirements on safety and disaster management. It also caters to the needs of its clients in the specialized sectors across the Country in the areas of Rajasthan, Orissa, Chhattisgarh, Tamil Nadu, Andhra Pradesh and Delhi for providing them emergency medical services.

For this purpose Falck Indian Private Limited has opened a Call Centre and a office at Second Floor, The Peach Tree, Sushant Lok, Phase 1, Block C, Sector 43, Gurugram. The company operates a call centre with about 80 employees working in the said office.

On 21.03.2015, a Senior Drug Control Officer along with Drug Control Officer visited the office of the petitioner and seized certain allopathic medicines kept in an almirah in the medical room of the office. At that time, two doctors, namely Dr. Utkarsh V. Aggarwal and Dr. Akeel Shah with Mr. D.C.Nalik a male nurse were present. Various types of drugs which were found in an almirah is extracted as under:-

<i>Drug Name</i>	<i>Drug Type</i>	<i>Quantity of Drug</i>	<i>Clinical useae</i>
Absorbent Gauge	Consumables	6x90cm	For dressing
Readymade Dressing pad	Consumables	3x10x10cm	Used for dressing
Haemaccel	IV Fluids	1x500ml	In case of acute blood loss
Inj. Ciplox	Antibiotic	2x100ml	As an Antibiotic specially in diarrhoea
Inj. Mannitol IP	Sugar/Alcohol/Osmotherepeutic Agent	1x100ml	Used in acute head trauma
Ringer Lactate solution for Inj. IP	IV Fluids	1x500ml	As IV fluids
Ringer Lactate solution for Inj. IP	IV Fluids	1x500ml	As IV fluids

<i>Drug Name</i>	<i>Drug Type</i>	<i>Quantity of Drug</i>	<i>Clinical useae</i>
IV Sodium choride dextrose	IV fluids	1x500ml	As IV fluids
Xylocaine 2%	Local Anaesthetic	1x30ml	Used as local anaesthetic while suturing
Xylocaine 2%	Local Anaesthetic	1x30ml	Used as local anaesthetic while suturing
Ryncold	Anti Histamincs and Nsaids	9x60ml	For cold and cough
Crotorax lotion BP	AntiScabies	5x60ml	In treatment of Scabies
Citralka liquid	Urinary alkaliser	3x100ml	Used in Urinary/Renal Stones
Isoproply Rubbing alcohol	Disinfectant	4x100ml	Disinfecting skin
Ambrodil Syb	Mucolytic Agent	7x100ml	Cough relief
Bectosept	Antibiotic Ointment	2x100ml	For minor skin injuries and infections
Tab oflox 200	Antibiotic	3x10 tabs.	Antibiotics
Tab Aceclowoc SP	Pain Killer	2x10 tabs.	General pain relief
Tab Tiniba	Antibiotic	5x10 tabs.	Antibiotic
Inj. Fevastin	Paracetamol/Anti Pyretic	10x2ml	Used in fever
Inj. Febrinil	Paracetamol/Anti Pyretic	4x3ml	Used in fever
Tab. Ofloxacin IP	Antibiotic	2x10 tabs.	Antibiotic
Tab Vertin	Anti-Vertigo	5x10 tabs	Used in Vertigo and giddiness
Tab Allegra 120mg	Antihistaminic	15 tabs	Cold and cough
TabMetrogyl 400 mg	Antibiotic	3x15 tabs	Antibiotic
Cap Neugaba	Anticonvulsant and Anti Neuropathic Pain agent	2x10 caps.	Used in relief of neiropathic paid or neuroparthies.

The maximum retail prices of the allopathic drugs which were recovered/seized is Rs.4458.18/-. At the time when the drugs were seized, Managing Director gave a statement that the company is in the business of providing ambulance services and these drugs were procured with valid prescription issued by the company doctors and for emergency use in the hospital under medical supervision.

Thereafter, a show cause notice was given under Section 18(c) and Section 18-A of the Drugs and Cosmetics Act, 1940 to the petitioner company calling upon the company to show cause why action should not be

taken against the petitioner-company for contravening Section 18(c) and Section 18-A of the Drugs and Cosmetics Act, 1940 and Rules 1945. Reply to the show cause notice was given. It was replied that the drugs were not for sale and these medicines are not stocked for commercial purpose. These medicines are used for being used in the ambulances and also for the employees of the company who are 80 in number. The separate replies were also sent by the doctors pursuant to a separate show cause notice and both the doctors disclosed that they are consulted and on their advice the medicines are dispensed to the employees of the company and the medicines have been purchased for dispensing by the company for its employees on their advice. It was further stated that the drugs which have been seized have been procured by the company after following proper process and with authorization.

However, dissatisfied with the reply given, complaint was filed before the Court of Chief Judicial Magistrate. Basically, from the reading of the complaint, it is apparent that there are two allegations against petitioner-company; (i) the firm was found stocking the allopathic drugs for sale and distribution; (ii) Shri Vineet Bansal, Managing Director, was unable to produce the sale and purchase records of the seized drugs.

Petitioner company was summoned and the Chief Judicial Magistrate finding the case exclusively triable by the Court of Sessions, committed it to the Court of Sessions. Application filed by the petitioner Vineet Bansal for discharging him, was dismissed by the Court of Sessions on 07.06.2018 and framed charges.

From the reading of the chargesheet, it is apparent that the charges have been framed for alleged violation of Section 18(c) and 18-A

of the Drugs and Cosmetics Act, 1940.

This Court has heard learned counsels for the parties at length and with their able assistance gone through the file.

Learned senior counsel appearing for the petitioner has submitted that office of the petitioner company is on the second floor of a commercial building. The medicines seized were admittedly stocked in a locked almirah, keys whereof were with Dr. Utkarsh Aggarwal. He, hence submits that the medicines were not stocked for commercial purposes, sale or purchase or distribution and therefore, offence under Section 18(c) is not attracted. He relies upon the judgment passed by the Hon'ble Supreme Court interpreting Section 18(c) in the case of **Mohd. Shabir vs State Of Maharashtra, (1979) 1 SCC 568**. He further submitted that even offence under Section 18-A is not made out against the petitioner as the medicines were purchased against valid prescription from the doctor who had admitted that fact while submitted reply to the show cause notice. He further submitted that a bare look at the medicines, which have been seized, it is apparent that such medicines are only for emergency services and these medicines are not stocked for sale. He further drew attention of the Court to the quantity of each drug to prove that the drugs were not for commercial purpose.

On the other hand, learned counsel for the State with the assistance of official from the office of Drug Controller, has submitted that the petitioner, when the drugs were seized, had given in his own hand writing that these drugs are for emergency services in ambulances. He, hence, submitted that the petitioner has now changed its stand that the drugs were for rendering emergency services to its employees. He further

submitted that this Court should not interfere, at this stage, in exercise of its powers under Section 482 Cr.P.C.

As regards applicability of Section 18(c) of the Drugs and Cosmetics Act, 1940, the Hon'ble Supreme Court has dealt with the aforesaid issue in detail. The offence under Section 18(c) of the Drugs and Cosmetics Act, 1940 is punishable under Section 27. The Supreme Court went on to hold that on interpretation of Section 27 and Section 18(c) collectively, the provision postulates following three separate categories of cases and no other. (1) manufacture for sale, (2) actual sale; (3) stocking or exhibiting for sale or distribution of any drugs.

The Hon'ble Supreme Court went on to hold that absence of comma after the words 'stocks' clearly indicate that the clause stocks or exhibit for sale is one indivisible part. Relevant discussion of the Hon'ble Supreme Court is in para 4 of the judgment, which is extracted as under:-

“4. On an interpretation of Section 27, it seems to us that the arguments of Mr. Singh is well founded and must prevail. The words used in Section 27, namely, "manufacture for sale", sells, have a comma after each clause but there is no comma after the clause "stocks or exhibits for sale". Thus the section postulate three separate categories of cases and no other. (1) manufacture for sale; (2) actual sale; (3) stocking or exhibiting for sale or distribution of any drugs. The absence of any comma after the word "stocks" clearly indicates that the clause "stocks or exhibits for sale" is one indivisible whole and it contemplates not merely stocking the drugs but stocking the drugs for the purpose of sale and unless all the ingredients of this category are satisfied, Section 27 of the Act would not be attracted. In the present case there is no evidence to show that the

appellant had either got these tablets for sale or was selling them or had stocked them for sale. Mr. Khanna appearing for the State, however, contended that the word "stock" used in section is wide enough to include the possession of a person with the tablets and where such a person is in the possession of tablets of a very huge quantity, a presumption should be drawn that they were meant for sale or for distribution. In our opinion, the contention is wholly untenable and must be rejected. The interpretation sought to be placed by Shri Khanna does not flow from a true and proper interpretation of Section 27. We, therefore, hold that before a person can be liable for prosecution or conviction under Section 27 (a) (i) (ii) read with Section 18 (c) of the Act, it must be proved by the prosecution affirmatively that he was manufacturing the drugs for sale or was selling the same or had stocked them or exhibited the articles for sale. The possession simpliciter of the articles does not appear to be punishable under any of the provisions of the Act. If, therefore, the essential ingredients of Section 27 are not satisfied the plea of guilty cannot lead the Court to convict the appellant."

In the present case, it is apparent from the quantity of drugs which have been seized, drugs having been stored in an almirah under the lock and keys of the doctor and location of office of the company, it is apparent that no other conclusion is possible except that the drugs were not stored for sale. Although, learned counsel for the State has make an attempt to divert the attention of the Court by saying that such drugs are admittedly used in ambulance service, however, on a pointed question, he failed to draw attention of the Court to any provision under the Drugs and Cosmetics Act, which makes it mandatory for the ambulance service provider to get a licence for the drugs to be used in emergency service in the ambulances

when these are stored in its office.

In view of the aforesaid discussion, this Court has come to a definite conclusion that the launch of prosecution under Section 18(c) was clearly abuse of the process of law.

Now let us come to the next part which is inability of the Managing Director to disclose the names of the persons from whom the drugs were procured.

It may be mentioned here that once the doctors employed by the company have declared in reply to the show cause notice that the medicines were procured under their prescription and supervision, there was no occasion for the Drug Controller to doubt correctness of the aforesaid statement. Both the doctors have not been impleaded in the complaint. Complaint has only been filed against the company. Managing Director of the company cannot be expected to keep record of every small medicine which is purchased from time to time. It will not be proper for the Drug Controller to continue prosecution of the company on this small issue.

Keeping in view the nature of drugs seized and their quantity, it is apparent that the drugs were not for sale.

Consequently, the criminal complaint as also consequential proceedings shall stand quashed.

Petition allowed.

September 05, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned
Whether reportable

:YES/No
:YES/No