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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 20.09.2021

PRONOUNCED ON: 04.10.2021

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

Crl.O.P.Nos. 23409 & 23434 of 2016

And

M.P.Nos. 10946 & 10947 of 2016

Dr. Swati Ajay Piramal ... Petitioner in both Crl.O.Ps.

Vs.

State of Tamil Nadu

At the instance of Drug Inspector

Vadapalani Range

Office of the Assistant Director of the Drugs Control, Zone-II

Chennai - 600 006.

... Respondent in both Crl.O.Ps.

PRAYER IN BOTH CRL.O.Ps.: Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the impugned Summoning order dated 18.07.2016 passed by the Honourable IV Metropolitan Magistrate, Saidapet, Chennai in the complaint bearing CC.No.2795 of 2016 pending before the IV Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner in

both Crl.O.Ps. : Mr. Karthick Seshadiri

For Respondent in

both Crl.O.Ps. : Mr. E.Raj Thilak

Additional Public Prosecutor

COMMON ORDER

Both these Petitions have been filed by A-3 in C.C.No. 2795 of 2016 now pending on the file of the IV Metropolitan Magistrate, Saidapet, Chennai.

2. Crl.O.P.No. 23409 of 2016 has been filed to call for the records and to quash the said calendar case. Crl.O.P.No. 23434 of 2016 has also been filed seeking to quash the calendar case in view of the fact that summons to the petitioner/A-3 had been issued by order dated 18.07.2016.

3. C.C.No. 2795 of 2016 had been taken cognizance on a complaint filed by the respondent/defacto complainant, Drug



Inspector, Vadapalani Range, Office of the Assistant Director of the Drugs Control, Zone-II in Chennai, for contravention by the accused of Section 18(c) of the Drugs and Cosmetics Act, 1940 read with the conditions of license as stated in condition 3(ii) of 20B Drugs and Cosmetics Act and punishable under Section 27 (d) of the said Act.

4. The said complaint has been filed against four accused. A-1/ B. Sanjay Kumar was the Proprietor of M/s. Mahalaxmi Enterprises at Chennai. A-2 was M/s. Piramal Enterprises Ltd., and represented by its Managing Director. A-3 is the petitioner herein, who had been shown as the Managing Director of A-2/M/s. Piramal Enterprises Ltd., and A4 was V.Krishnan, the power of attorney of M/s. Piramal Enterprises Limited, Chennai.

5. It had been alleged that Drug Inspectors, had inspected the premises of M/s. Mahalaxmi Enterprises on 04.08.2014 in the presence of A-1. M/s. Mahalaxmi Enterprises held license in Form 20-B valid upto 30.12.2013 and license in Form 21-B valid upto 16.10.2017. It was claimed that A-1 had not renewed the license in Form 20-B within a period of six months from the date of expiry of the license on 30.12.2013. It was therefore stated that the license was deemed to have expired under Rule 63 of the Drugs and Cosmetics Act 1940. At that particular point of time, it was also found that M/s. Mahalaxmi Enterprises had stock for sale of Drugs other than those specified in Schedule -C, C-1 and X and those Drugs were also listed out in the complaint. It was claimed that those Drugs had been stated for sale and had also been sold without holding valid license in Form 20-B which was a contravention of Section 18(c) of Drugs and Cosmetics Act 1940. Necessary procedure for seizure of Drugs were undertaken by the Drugs Inspectors and they were also produced before the jurisdictional Magistrate Court. Samples were also taken. Show cause notice dated 30.10.2014 was issued to A-1. Subsequently, A-1 also obtained fresh license for Form B valid upto 24.08.2019. Thereafter, A-1 had also sought return of the Drugs and had filed necessary application before the Court and the Magistrate had also directed return of the Drugs to A-1.

6. On 24.11.2014, A-1 replied to the show cause notice and stated that he had purchased the listed Drugs from A-2/ M/s. Piramal Enterprises Ltd. It was therefore stated in the complaint that A-2 had also contravened Section 18(c) of the Drugs and Cosmetics Act 1940 read with condition 3(ii) of license in Form 20B for having sold the Drugs to a person, who did not have requisite license. A memo dated 09.12.2014 was then sent to A-2. A reply was received on 19.12.2014 wherein further time was sought to give a detailed reply. A further



reply dated 02.01.2015 was given by A-4, the power of attorney of A-2 and it was stated that they had been supplying Drugs to A-1 regularly from the year 2012 in the belief that A-1 had requisite license. It was stated that they did not violate any of the provisions of the Drugs and Cosmetics Act, 1940. A further memo dated 30.01.2015 was sent to A-2 for contravention of Section 18(c) of Drugs and Cosmetics Act 1940. A reply dated 23.02.2015 was received denying the averments made in the memo. Thereafter, a final report was submitted to the Director of Drugs Control, Tamil Nadu, Chennai, seeking sanction to institute prosecution against the accused persons and sanction was also accorded for contravention primary of Section 18(c) of the Drugs and Cosmetics Act 1940. The complaint was then lodged before the IV Metropolitan Magistrate, Saidapet, Chennai.

7. The present petitions have been filed by A-3, who has been described as the Managing Director of A-2/ M/s. Piramal Enterprises Ltd.

8. Heard arguments advanced by Mr. Karthick Seshadiri, learned counsel for the petitioner/A-3 and Mr. E.Raj Thilak, learned Additional Public Prosecutor for the respondent/de-facto complainant.

9. It is the contention of Mr. Karthick Seshadiri that the petitioner was never the Managing Director of A-2 / M/s. Primala Enterprises Ltd. She was only a whole time Director and was designated as Vice Chairperson of M/s. Piramal Enterprises Ltd. It was stated that she never had any role to play in the day-to-day affairs of A-2. She never had direct control and was not in charge of the activities of A-2 at Chennai. For that purpose, A-2 had constituted a power of attorney, namely, A-4, who was in charge of the day- to-day activities of the Chennai Office of A-2. It had been stated that even in the complaint, there has been no allegation or averment stated that the present petitioner was in charge of the day today activities of A-2. The learned counsel stated that in the absence of any such specific allegation, maintaining the complaint against the present petitioner would only amount of oppression and the petitioner should not be forced to undergo the ordeal of trial. The learned counsel further stated that in the website of the Ministry of Corporate Affairs had been mistakenly represented that the petitioner was the Managing Director but the said mistake was rectified and it was claimed that the respondent had not examined the website completely and in detail and had wrongly categorised the petitioner as Managing Director. When as a fact she had never held the post of Managing Director of A-2. The learned counsel therefore stated that both the petitions must be allowed and C.C.No. 2795 of 2016 must be quashed in so far as the present petitioner/A-3 is concerned.



10. Mr. E.Raj Thilak, learned Additional Public Prosecutor for the respondent on the other hand pointed out the fact that in the website of the Ministry of Corporate affairs, it had been very clearly mentioned that the present petitioner/A-2 was the Managing Director with date of appointment as 20.11.1997 and with period till 03.05.2016. The learned Additional Public Prosecutor stated that therefore the petitioner was responsible for any offence committed by the company and therefore stated that the petitioner had been rightfully arrayed as an accused. The learned Additional Public Prosecutor also pointed out that there cannot be any denial or dispute over the fact that the license of A-1 in Form 20 B had expired on the date of inspection by the Drugs Inspectors and that Drugs other than in Schedule C, C-1, X were found in the premises of A-1 and that those drugs had been admittedly supplied by A-2. The learned Additional Public Prosecutor therefore stated that the complaint is maintainable and that the petitioner herein should face trial.

11. I have carefully considered the arguments advanced and the materials available on record.

12. A complaint had been preferred for contravention of Section 18(c) of the Drugs and Cosmetics Act 1940 by the respondent herein in view of the fact that A-1/B.Sanjay Kumar, Proprietor of M/s. Mahalaxmi Enterprises had not renewed the license in Form 20-B which had expired on 30.12.2013. An inspection had been conducted on 04.08.2014 by the Drugs Inspectors at the premises of M/s. Mahalaxmi Enterprises and it was found that the Drugs which were not specified in Schedule C, C-1 and X were found stocked for sales and had also actually been sold. Those drugs had been admittedly supplied by A-2/M/s. Piramal Enterprises Ltd.

13. These facts not being disputed, the only issue which will now have to be examined is whether the petitioner, who had been arrayed as an accused only because it had been claimed by the respondent that she was the Managing Director, which fact she strongly disputes, was in control of the day-to-day activities of A-2 and therefore, could also be stated to be responsible or liable for any penal action owing to contravention of Section 18(c) of the Drugs and Cosmetics Act 1940.

14. It is a fact that in the website of the Ministry of Corporate affairs, the petitioner had been shown as Managing Director. But however, it is claimed that the website contained mistaken information. When the details were uploaded, it was mistakenly uploaded that the petitioner was the Managing Director. It is claimed that she was never the Managing Director. It is claimed that she never knew anything about the day today activities of A-2. It is claimed that she never



participated in the day today activities of A-2.

15. The respondent, to maintain the complaint against the present petitioner/A-2, irrespective of the fact whether she is either the Managing Director or whole time Director or Vice Chairperson or Director simplicitor must specifically aver in the complaint that she was in charge of and had direct control of the day-to-day activities of A-2. It must be specifically averred that she knew that A2 had supplied Drugs to A-1 with the knowledge that the license of A-1 in Form 20-B had expired. This specific averments of knowledge and the further allegation that the petitioner was in control of the affairs of A-2 must be stated in the complaint. Mere categorisation of the petitioner as the Managing Director would not accrue to the advantage of the respondent.

16. In allied matters relating to prosecution under Section 138 of the Negotiable Instruments Act, 1881, or any other prosecution, the Hon'ble Supreme Court had laid down specific guidelines when a Managing Director / Director could be held responsible for the conduct of the business of the company.

17. In 2007 (3) SCC 693 [Saroj Kumar Poddar Vs. State (NCT of Delhi) and Another], the Hon'ble Supreme Court had held as follows:-

"12. A person would be vicariously liable for commission of an offence on the part of a company only in the event the conditions precedent laid down therefor in Section 141 of the Act stand satisfied. For the aforementioned purpose, a strict construction would be necessary."

18. In 2010 (11) SCC 203 [Central Bank of India Vs. Asian Global Ltd., and Others], the Hon'ble Supreme Court had held as follows:-

"16. It was further held that while a Managing Director or a Joint Director of the company would be admittedly in charge of the company and responsible to the company for the conduct of its business, the same yardstick would not apply to a Director. The position of a signatory to a cheque would be different in terms of sub-section (2) of Section 141 of the 1881 Act. That, of course, is not the fact in this case.

18. In this case, save and except for the statement that the respondents, Mr Rajiv Jain



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and Sarla Jain and some of the other accused, were Directors of the accused Companies and were responsible and liable for the acts of the said Companies, no specific allegation has been made against any of them. The question of proving a fact which had not been mentioned in the complaint did not, therefore, arise in the facts of this case..."

19. In 2011 (1) SCC 176 [Pepsico India Holdings Pvt. Ltd., Vs. Food Inspector and Another], the Hon'ble Supreme Court had held as follows:-

"50. It is now well established that in a complaint against a company and its Directors, the complainant has to indicate in the complaint itself as to whether the Directors concerned were either in charge of or responsible to the Company for its day-to-day management, or whether they were responsible to the Company for the conduct of its business. A mere bald statement that a person was a Director of the Company against which certain allegations had been made is not sufficient to make such Director liable in the absence of any specific allegations regarding his role in the management of the Company. "

20. In 2018 (14) SCC 202 [Ashoke Mal Bafna Vs. Upper India Steel Manufacturing and Engineering Company Ltd.,], the Hon'ble Supreme Court had held as follows:-

"9. To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of a defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the Company and in charge of and responsible for the conduct of the business at the time of commission of an offence will be liable for criminal action. (See Pooja Ravinder Devidasani v. State of Maharashtra [Pooja Ravinder Devidasani v. State of Maharashtra,



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(2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378 : AIR 2015 SC 675] .)

10. In other words, the law laid down by this Court is that for making a Director of a Company liable for the offences committed by the Company under Section 141 of the Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company. "

21. In AIR 2019 SCC 2518 [A.R.Radha Krishna Vs. Dasari Deepthi and Ors.], the Hon'ble Supreme Court had held as follows:-

"9. In a case pertaining to an offence under Section 138 and Section 141 of the Act, the law requires that the complaint must contain a specific averment that the Director was in charge of, and responsible for, the conduct of the company's business at the time when the offence was committed. The High Court, in deciding a quashing petition under Section 482 CrPC must consider whether the averment made in the complaint is sufficient or if some unimpeachable evidence has been brought on record which leads to the conclusion that the Director could never have been in charge of and responsible for the conduct of the business of the company at the relevant time. While the role of a Director in a company is ultimately a question of fact, and no fixed formula can be fixed for the same, the High Court must exercise its power under Section 482 CrPC when it is convinced, from the material on record, that allowing the proceedings to continue would be an abuse of process of the Court. [See Gunmala Sales (P) Ltd. v. Anu Mehta [Gunmala Sales (P) Ltd. v. Anu Mehta, (2015) 1 SCC 103 : (2015) 1 SCC (Civ) 433 : (2015) 1 SCC (Cri) 580]

10. A perusal of the record in the present case indicates that the appellant has specifically averred in his complaint that Respondents 1 and 2 were actively participating in the day-to-day affairs of Accused 1 company. Further, Accused 2 to 4 (including Respondents 1 and 2 herein) are



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alleged to be from the same family and running Accused 1 company together. The complaint also specifies that all the accused, in active connivance, mischievously and intentionally issued the cheques in favour of the appellant and later issued instructions to the bank to "stop payment". No evidence of unimpeachable quality has been brought on record by Respondents 1 and 2 to indicate that allowing the proceedings to continue would be an abuse of process of the court. "

22. In a very recent Judgment, in Crl.A.No. 750 of 2021 [M/s. Cheminova India Limited., and another Vs. State of Punjab & Ors], by a Judgment delivered on 04.08.2021, the Hon'ble Supreme Court had examined an appeal filed by former Managing Director, who had been shown as an accused in a complaint for offences under Sections 3(k)(i), 17, 18 and 33, punishable under Section 29 of the Insecticides Act, 1968. The Hon'ble Supreme Court had held as follows:-

In view of the specific provision in the Act dealing with the offences by companies, which fixes the responsibility and the responsible person of the Company for conduct of its business, by making bald and vague allegations, 2nd Appellant - Managing Director cannot be prosecuted on vague allegation that he being the Managing Director of the 1st Appellant - Company, is overall responsible person for the conduct of the business of the Company and of quality control, etc."

23. It had been further held:-

"Section 33 of the Companies Act is as follows:-

A reading of Section 33(1) of the Act, makes it clear that whenever 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, 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 the offence and shall be liable to be proceeded against and punished accordingly."



24. A reading of the instant complaint also reveals that the complainant had stated the facts but had never stated at any point of time that the petitioner herein was directly in charge of the company and was responsible to the company for the conduct of its business. There is also no allegation that the petitioner herein was responsible to the company for its day-to-day management. There is also no averment regarding the manner in which the petitioner was responsible for the conduct of the business of the company. Further unimpeachable evidence has not been brought on record leading to a conclusion that the petitioner was responsible for the conduct of the company at the relevant time.

25. It is a fact that in the website of the Ministry of Corporate affairs, the name of the petitioner was shown as a Managing Director but that has been explained by the petitioner, who pointed that if the said website has been examined in detail, it would have been evident that she was not the Managing Director. As a matter of fact, it is also seen that A-4 is the power of attorney agent of A-2 in Chennai. He has already been arrayed as an accused.

26. In view of these facts, I hold that the continuation of the calendar case against the petitioner/A-3 would only be an exercise in futility. The possibility of conviction is also very remote as there is no averment at all that the petitioner/A-3 was in charge of, or in control of or was responsible for the day today activities of A-2 / M/s. Piramal Enterprises Ltd., at Chennai.

27. In view of the above reasons, both the Criminal Original Petitions are allowed and C.C.No. 2795 of 2016 on the file of the IV Metropolitan Magistrate Court, Saidapet, Chennai, is quashed in so far as the petitioner/A-3 is concerned. The calendar case shall proceed against the other accused. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

vsg



To

1. Drug Inspector
State of Tamil Nadu
Vadapalani Range
Office of the Assistant Director of the Drugs Control,
Zone-II, Chennai - 600 006.

2. The Public Prosecutor, (Crl.Side)
High Court, Madras.

Crl.O.P.Nos. 23409 & 23434 of 2016
And
M.P.Nos. 10946 & 10947 of 2016

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