



the Company called M/s Teen Pharmaceuticals and A2 is the Managing Partner of the 1st Accused Firm and other partners are already arrayed as A3 to A6. Similarly the other Company M/s.A.V.M.Health Care Private Limited and the persons incharge of the Company are arrayed as A7 to A11. Now, an application has been filed by A3 mainly on the ground that he was never incharge of A1 Company at any point of time and he was arrayed as accused only because he was shown as one of the partner in the partnership deed. It is his contention that at the time of filing the complaint, he was a student and pursuing education. Therefore, his contention is that he has never participated in the company affairs or firm's business. Merely because, he was a partner, he cannot be prosecuted for the false allegation. Hence, the petitioner herein / A3 prays to quash the criminal proceedings pending on the file of the learned III Additional Judge, City Civil Court, Chennai in C.C.No.9 of 2014.

3. The learned Government Advocate (Crl.side) submitted that A1 and A7 namely M/s Teen Pharmaceuticals and M/s.A.V.M.Health Care Private Limited are the manufacturers of pharmaceutical products and tablets namely Neycin 500 & 650 and sold them as if the tablets were manufactured by the original licensee M/s.Dynamic Formulations Private Limited and the same was unearthed during the investigation besides there were no proper records for manufacturing the capsules Teenmox-250, Amocylin and Cloxallin. Hence, he further submitted that the petitioner herein /A3, is also a partner in the Company and the complaint has been rightly filed. Hence, he opposes the application.

4. It is relevant to refer to section 34(1) of the Drugs and Cosmetics Act, 1940

"When 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."

5. On perusal of the above, this application for initiation for prosecution and it should be shown that every person at the time of commission of offense were incharge and were responsible for the Company's conduct of the business. On perusal of the entire records, as far as A3 is concerned, there is no whisper as to the manner in which he was



responsible for the affairs of the firm or he was incharge of the firm at the time of commission of offence. Whereas it is the contention of the applicant that he was a student pursuing B.Sc., Nursing education at the relevant point of time. The original complaint was lodged on 09.09.2015 before the learned Judicial Magistrate, Poonmallee and it is the submission of the applicant that at the relevant point of time, he was pursuing the education. In support of his submission, he placed school records from the Vinayaka Mission's College of Nursing which indicated that from 18.11.2004 to 24.11.2008, he was a student of the above said College which has not been disputed by the prosecution.

6. 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 Cr.O.P.(MD) No.3328 of 2006 by order dated 06.04.2006, wherein it was held as 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 offense under the Drugs and Cosmetics Act, 1940."

7. 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) and the same 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 rectors 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 quality, 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 its knowledge or that he exercised at due diligence to prevent the commission of such offence."



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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 baid 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."

8. The same proposition was followed in a similar case, wherein the petition was allowed and the charge sheet was quashed in Crl.O.P.Nos.19446 &19539 of 2014 dated 07.03.2019.

9. Having regard to the fact that A3 was a student and not in charge of the Company at the time of alleged offence, the complaint in C.C.No.9 of 2014 as against A3 alone is quashed. Accordingly, this Criminal Original Petition stands Allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

gd/sts
To:

1. The III Additional Judge,
City Civil Court, Chennai
2. The Drugs Inspector,
Intelligence Wing,
Office of the Director of
Drugs Control, No.259-261, Anna Salai,
Chennai-600 006
3. The Public Prosecutor, High Court Madras.

+1cc to Mr.E.Kannadasan, Advocate SR.No.58334

Crl.O.P. No.13135 of 2017

KSM(CO)

CMY(08/12/2021)