IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32193 of 2017

Arising Out of PS. Case No.-724 Year-2004 Thana- GOVERNMENT OFFICIAL COMP. District- Saharsa

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Deepak Shanti Lal Parekh @ Deepak Parekh Son f Sri Shanti Lal Parekh, the Ex-Chairman and now Executive Director of M/S Glaxo Smithkline Pharmaceuticals Limited, having its registered Office at M/s 252, Dr. Annie Basant Road, Police Station-Worli, Mumbai 400026, Maharashtha.

... ... Petitioner

Versus

The State Of Bihar ... Opposite Party

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Appearance :

For the Petitioner : Mr.Chitranjan Sinha, Sr. Advocate
Mr. Sanjeev Kumar, Advocate
Mr. P.S.Mishra, Advocate

For the Opposite Party : Mr. Mayanand Jha, Addl Public Prosecutor

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL ORDER

3 08-12-2022 Heard learned counsel for the petitioner, the State and the complainant.

This application has been filed for quashing order dated 12.7.2004, passed in Complaint Case No. 724C/2004 by which the Court below has taken cognizance of the offence against the petitioner and other accused persons for the offence punishable under section 27(d) of the Drugs and Cosmetics Act, 1940 and issued processes against them.

As per the complaint, petitioner and other accused persons manufactured, distributed and sold misbranded drugs and thus violated different provisions of the Drugs and Cosmetics Rules, 1945.

It is submitted on behalf of the petitioner that the petitioner is the Non Executive Chairman of the Company in question and he is not responsible to look after the daily affairs of the Company. There is no averment in the entire complaint to the effect that petitioner was in-charge and responsible for the conduct of the business of the Company. In support of the same, a certificate issued by the General Manager, Administration and Company Secretary of the Company, has been annexed as Annexure 2 to the petition. He further submits that the present complaint on which cognizance has been taken by the Court below is pre-mature and not tenable in terms of the mandate of the Drugs and Cosmetics Act. He next submits that simply because the petitioner was executive Director of the Company, he cannot be fastened with the responsibility for the alleged offence. It is lastly submitted that sanction recorded by the Drugs Controller is without application of mind who approved the recommendations mechanically.

Section 34 (1) of Drugs and Cosmetics Act permits Prosecution of the following:

> *"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."

Learned counsel for the informant submits that since the petitioner is the Chairman of the Company, as such, he cannot escape the responsibility and in that view of the matter, learned Court below has rightly taken cognizance of the offence against him under the aforesaid sections of the Drugs and Cosmetics Act.

Law is well settled in this regard. It is necessary to aver in the complaint that at the time of commission of offence, present accused was in-charge of, or responsible for the conduct of the business of the company and in the case in hand there is no whisper in the entire complaint regarding the act on the part of the present petitioner. As such, merely the averment in the complaint that the petitioner was Director of the Company at the relevant time, would not *ipso facto* held him responsible for the alleged offence.

Considering the submissions of the parties, materials available on the record, aforesaid provision of law and also the fact that there is no averment in the complainant that the petitioner was the In-charge of daily affairs of the Company, this Court finds that continuance of criminal proceeding would be abuse of process of the Court. In the result, this quashing petition is allowed and the order of cognizance dated 12.7.2004, passed by the cjm, Saharsa in Complaint Case No. 724C/2004, is hereby, set aside so far as petitioner is concerned.

(Prabhat Kumar Singh, J)

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