IN THE HIGH COURT OF ORISSA AT CUTTACK

<u>CRLMC No.2942 of 2014</u>

Bibek Goyal " Bibek Kumar Goyal & another. .... ***Petitioners***

M/s. H.S. Mishra, P. Agrawal,
Dr. A.K. Tripathy, K. Badhai, Advocates

-versus-

State of Odisha. .... ***Opposite Party***
Addl. Standing Counsel – For the State

CORAM:
JUSTICE S. PUJAHARI

<u>O R D E R</u>
13.05.2022

<u>Order No.</u>	
15.	**1.** The petitioners seek to invoke the power under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") for quashing of the order dated 07.04.2014 passed by the learned S.D.J.M., Balangir in 2(c) C.C. No.6 of 2013 vide which cognizance has been taken of the offences under Sections 18(a)(vi) and 27(d) of the Drugs and Cosmetics Act, 1940 (for short "the Act") directing the petitioners and the co-accused to be proceeded against thereunder.

2. Heard the learned counsel for the petitioners and the learned counsel for the State, and perused the relevant papers on record.

3. The impugned order has been passed on the basis of the complaint filed by the Drugs Inspector, Balangir Range against M/s. Harihar Pharmaceuticals Pvt. Ltd., NH-201, Sambalpur Road, Kharmunda, Balangir said to be represented by the Managing Director, namely, Kanhaiya Lal Agrawal, and the two Directors who are the petitioners herein on the allegation that they violated the provisions of Section 18(a)(vi) read with the Condition No.3 of Manufacturing Licenses granted under Rule-71 of the Drugs and Cosmetics Rules, 1945.

4. It is the contention of the learned counsel for the petitioners that since no material has been produced by the complainant to show the petitioner-Directors to be in charge of the company and responsible for the conduct of the business of the company, the impugned order of cognizance passed against them is illegal and liable to be quashed. It is his submission that as per the Resolution of the Board of Directors the Managing Director of the Company is responsible for the conduct of its business. It is further submitted by the learned counsel for the petitioners in course of hearing that taking of cognizance under Section 18(a)(vi) of the Act also speaks of non-application of judicial mind by the learned SDJM, Balangir, inasmuch as the said section does not carry any penal provision.

5. The learned counsel for the State, on the other hand, submits that since there is no dispute that the petitioners happened to be the Directors of the Firm, and no prior intimation having been given by the company specifying any particular person to be responsible for the conduct of business of the company, the plea taken by the petitioner-Directors at this stage is not tenable. In the context, the learned counsel makes a reference to Section 34 of the Act.

6. For a ready reference, Section-34 of the Act is reproduced here below:-

> "**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.
>
> Explanation.- For the purpose of this section –
>
> (a) "company" means a body corporate, and includes a firm or other association of individuals; and
>
> (b) "director" in relation to a firm means a partner in the firm."

7. No doubt, by virtue of the aforesaid provision, vicarious liability can be fastened on every person irrespective of his position in the accused company, for the purpose of launching a prosecution against a person associated with the company, it must be prima-facie shown by the prosecution / complainant that such person was in charge of, and responsible to the company for conduct of the business of the company at the time the offence was committed. To reiterate, in the case at hand, it is the specific contention of the petitioners that in view of the provisions of the Memorandum of Association and as per the resolution of the Board of Directors, it is the Managing Director of the company who is responsible for the conduct of the business of the company. While not disputing this fact, a contention is raised on behalf of the complainant-opposite party that there was no such intimation to the authority concerned under Section 34 of the Act. It be mentioned here that Section 34 of the Act does not contemplate giving of any such intimation. It speaks of specific vicarious liability and right of the accused to rebut the presumption. It needs no mention that it is the initial duty of the prosecution to produce prima-facie material as required by the sub-section (1) of Section

34 of the Act for launching the prosecution against any person for the offence committed by the company.

8. In the fact situation as above, this Court finds merit in the CRLMC which, accordingly, is hereby allowed. The impugned order qua the petitioners is quashed.

9. Urgent certified copy of this order be granted on proper application.

(S.Pujahari)
Judge

MRS