# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# BENCH AT AURANGABAD

## CRIMINAL APPLICATION NO.1927 OF 2021

1. Yusuf Khwaja Hamied,
Director, M/s. Cipla Ltd.,
Windsor Villa, 2nd Floor,
Westfield Estate,
Bhulabai Desai Road,
Mumbai – 06

2. Mustafa Khwaja Hamied,
Director, M/s. Cipla Ltd.,
Flat No.1C, Sommerset Palace,
Bhulabhai Desai Road,
Mumbai – 06

3. Vasant Chintaman Kotwal,
Age : ___, years,
Occ.Parviz Mansion, Cuballa Hill Road,
Mumbai – 36

4. M.R.Raghavan
(Raghavan Maruthiandan Rangachari)
Age: years, Occ.
2/97, Anugriha Arasevanankadu,
Sembangudi, P.O. Thiruvar Dt.
Tamil Nadu – 612 603 ..Applicants

Vs.

The State of Maharashtra,
Through Drugs Inspector,
Food and Drugs Administrtion,
Maharashtra State,
Aurangabad ..Respondent

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Mr.Aabaad Ponda, Advocate i/b. Mr.Aditya Sikchi, Advocate for applicants

Mr.S.P.Sonpavale, APP for respondent

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**CORAM : R.G. AVACHAT, J.**
**DATE : FEBRUARY 24, 2022**

**ORDER :-**

The challenge in this application under Section 482 of the Code of Criminal Procedure is to the order dated 03.01.2006 passed by learned Chief Judicial Magistrate, Aurangabad (C.J.M.) on application Exhibit-1 (complaint) in Summary Criminal Case No.23 of 2006. In short, the challenge herein is to the summons issued to the applicants herein pursuant to the order dated 03.01.2006 passed by learned C.J.M. in S.C.C. No.23 of 2006. The applicants herein are accused nos.1, 2, 6 and 9 in the said complaint-case.

2. It is a case instituted otherwise than on police report. To to be specific, it is a complaint lodged by the Drugs Inspector, Food and Drugs Administration, Aurangabad, alleging the applicants and others named in the complaint, to have committed offences punishable under Sections 18(a)(i) read with Section 16(1)(a) and Section 34 punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940 ("Act of 1940", for short).

3. It is the case of the complainant that he had received a complaint dated 04.04.2005 regarding adverse reaction occurred after taking the drugs, which were purchased from M/s. Laxmi

Medical and General Stores. He, lateron, received a letter dated 06.04.2005 regarding correction of the name of Medical Stores from where the drugs were purchased. Said letter clarified that the drugs were purchased from M/s. Vyankatesh Medical and General Stores, situated at N-6, near Dr.Agarwal's clinic. The complainant along with the then Drugs Inspector Shri.S.M.Dalal, visited Vyankatesh Medicals on 06.04.2005. The proprietor of said shop was present. She was approved pharmacist of said shop. She shown the empty blisters of the above two drugs. She confirmed the two drugs as follows:-

a) Nicip Cold Tablets, Mfr. M/s. Cipla Ltd., Jaipur

b) Paracetamol Tablets, Mfr. M/s.SGS Pharmaceuticals Pvt. Ltd. Ghaziabad

4. The complainant then took formal samples of Nicip Cold tablet, B.No.BE3059 (manufacturing date:Sept.03, Expiry date: Aug.06, Mfg. Lic. No.RAJ2089A) manufactured by Cipla Ltd., F-59-60, RIICO Indl. Area, Bindayaka, Jaipur under Form 17 dated 06.04.2005 and prohibited the remaining stock of said drugs under Form 15 dated 06.04.2005. The complainant also took informal

sample of Paracetamol tablets, B.No.PMK-054 (Mfg. Date : November, 2004, Expiry Date. Oct. 2008) Manufactured by M/s. SGS Pharmaceuticals Pvt. Ltd., Ghaziabad. The samples of the aforesaid drugs were sent to the Government Analyst, Drugs Control Laboratory, Maharashtra State, Mumbai. It is further case of the complainant that the sample of Nicip Cold Tablets, B.No.BE-3059, Mfd. by M/s.Cipla Ltd., Jaipur, was declared as not of standard quality, by Government Analyst, Drugs Control Laboratory, Maharashtra State, Mumbai his report no.M/693/2005, dated 02.05.2005, for the reasons that "the content of Phenylpropanolamine Hydrochloride is less than permissible limit (67.95% against limit of 90-110%).

5. The Proprietor of Vyankatesh Medicals was requested to disclose the name of supplier of the drugs. She, in turn, disclosed the name of supplier as M/s. Vikas Agencies, Aurangabad. The complainant, in turn, asked M/s. Vikas Agencies to disclose the name of the supplier. Ultimately, after communication with the intermediaries, it was found that the drugs were purchased from M/s.Cipla Ltd. (accused no.10). M/s. Cipla Ltd., in turn, informed that it had received said drugs from M/s.Elcon Drugs and

Formulations Ltd. It has been averred in paragraph 31 of the complaint that Cipla Ltd., Mumbai-18, forwarded documents in respect of manufacturing and analysis of the said drugs and also the documents of constitution of M/s.Cipla Ltd. and M/s.Elcon Drugs and Formulations Ltd. It has further been averred in paragraph 33 that from the documents produced by M/s.Cipla Ltd. (accused no.10), it was revealed that said drugs were manufactured and sold by accused nos.1 to 15. It has further been averred that accused nos.1 to 15 sold the said drugs, which were not of standard quality and manufacturing of which was prohibited as per Section 18(1)(i) of Act of 1940.

Based on this complaint presented by the Drugs Inspector, learned C.J.M. passed the order impugned herein.

6. Learned Senior Counsel appearing for the applicants herein would submit that the order impugned herein does not disclose application of mind. The order dates back to January, 2006. The applicants received the summons for the first time in 2021. The applicants are Directors of M/s.Cipla Ltd. (accused no.10). The complaint is conspicuously silent to state that the applicants were, at the material time, in-charge of and also responsible to the company

for the conduct of its business. According to learned senior Counsel, the Apex Court has, time and again, observed that summoning a person as accused is a very serious matter. It is the question of personal liberty of an individual. Unless a case is made out for taking cognizance of the offence and issuance of process, no person shall be summoned to face a prosecution. Learned senior Counsel has relied on the Apex Court judgments in the cases of (i) **State of Maharashtra Vs. Brij Lal Mittal and ors., (1998)5 SCC 343**; and (ii) **Laborate Pharmaceuticals India Ltd. and ors. Vs. State of Tamil Nadu, (2018)15 SCC 93**, to ultimately urge for grant of application in terms of prayer clauses (C) and (D).

7. Learned APP would, on the other hand, submit that the applicants herein are, admittedly, the Directors of M/s.Cipla Ltd. (accused no.10). It has specifically been averred in paragraph 31 of the complaint that the documents of constitution of Companies namely, M/s.Cipla Ltd. and M/s.Elcon Drugs and Formulations Ltd. (accused nos.10 and 15), respectively, were supplied by themselves to the complainant. From those documents, it was realised that the applicants herein had manufactured and sold the questioned drugs. According to him, the complaint has been duly supported by the

relevant documents to fortify the averments therein. According to learned APP, the applicants may make out their case during trial. Learned APP relied on the judgment of this Court in the case of **Lalankumar Singh s/o. Shri Udit Narayan Singh and ors. Vs. State of Maharashtra (Criminal Writ Petition No.288 of 2015 decided on 25.06.2015**).

8. Considered the submissions advanced. Perused the complaint and the authorities relied on. The relevant averments in the complaint have already been reproduced herein above. It has simply been averred in paragraph 3 of the complaint that accused nos.1 to 9 (some of applicants herein) are Directors of M/s. Cipla Ltd., Mumbai, accused no.10. M/s. Cipla Ltd. is a company situated at Mumbai, registered under the Companies Act, 1956. There are no averments in the complaint that the applicants herein were, at the material time, in-charge of and were responsible to the company for the conduct of its business. Section 34 of the Act of 1940 reads thus:-

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

9. In the case of **Brij Lal Mittal** (Supra), it has been observed thus:-

> " 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. In the present case except a bald statement in the complaint 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. Therefore, the complaint is liable to be quashed.

10. Moreover, the Apex Court in **Dayle De'souza Vs. Government of India, through Deputy Chief Labour Commissioner (C) and ors., MANU/SC/1016/2021**, has referred the judgment in the case of **National Small Industries Corporation Limited Vs. Harmeet Singh Paintal and anr., MANU/SC/0112/2010** wherein, in paragraph 39, it is observed as under:-

> **39.** From the above discussion, the following principles emerge:
>
> (i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.
>
> (ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.

> (iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make the accused therein vicariously liable for offence committed by the company along with averments in the petition containing that the accused were in charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.
>
> (iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.
>
> (v) If the accused is a Managing Director or a Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.
>
> (vi) If the accused is a Director or an officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in the complaint.
>
> (vii) The person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases."

Clauses (i), (ii), (iv) and (vii) above apply with equal force in the present case as well, since the applicants herein are sought to be fastened with criminal responsibility on the principle of vicarious liability. Compliance of these clauses (i), (ii), (iv) and (vii) are lacking in this case. For want of averments in the complaint and supporting material, the applicants herein cannot be made to face the trial under the principle of vicarious liability.

11. In the result, the petition succeeds. The same is allowed in terms of prayer clauses (C) and (D), which run as under:-

(C) By issuing appropriate orders and directions the Summary Criminal Case No.107/2010 pending before the file of the Hon'ble Civil Judge, Senior Division and Judicial Magistrate, First Class (Corporation Court), Aurangabad, for offences punishable under Section 18(a)(i) of Drugs and Cosmetics Act, 1940 read with Section (1)(a) and Section 34 of Drugs and Cosmetics Act, 1940, punishable under Section 27(d) of Drugs and Cosmetics Act, 1940, may kindly be quashed and set aside qua the applicants.

(D) By issuing appropriate orders and directions the order dated 03.01.2006 passed below Exhibit 1 directing registration of case in Summary Criminal Case No.107 of 2010 pending before the file of the Hon'ble Civil Judge, Senior Division and Judicial Magistrate, First Class (Corporation Court), Aurangabad for the offences punishable under Section 18(a)(i) of Drugs and Cosmetics Act, 1940 read with Section 16(1)(a) and Section 34 of Drugs and Cosmetics Act, 1940, punishable under Section 27(d) of Drugs and Cosmetics Act, 1940, may kindly be quashed and set aside qua the applicants.

[**R.G. AVACHAT, J.**]

KBP