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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2022

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THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRL.O.P.NO.23629 OF 2015

AND

M.P.NO.1 OF 2015

- 1.M/s. Cassel Research Laboratories Pvt. Ltd.,
Rep. by Managing Director
Mr.R.Murugan
- 2.Mr.R.Murugan
Managing Director
- 3.Mr.K.Ravichandran,
Director
- 4.Mr.M.Venkatesan,
Director
- 5.Mr.R.Lakshmanan,
Director
- 6.Mr.R.Nehrudassan
Director
1 to 6 having address at
M/s. Cassel Research Laboratories Pvt. Ltd.,
Plot No.54, SIDCO Industrial Estate,
Thirmudivakkam, Chennai 600 044 ...Petitioners / Accused

Vs

Union of India
rep. by Drugs Inspector
Office of Deputy Drugs Controller (India)
Central Drugs Standard Control Organization,
South Zone , 2nd floor,
Shashtri Bhawan Annexe,
Chennai 600 006 ...Respondent / Complainant

Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records of the proceedings in C.C.No.2543 of 2015 on the file of the X Metropolitan Magistrate Court, Egmore, Chennai and quash the same.



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For Petitioner : Mr.A.R.L.Sundaresan,
Senior counsel,
for Mr.T.D.Selvan Babu

For Respondent : Mr.B.Sudhir Kumar
Senior Panel Counsel

ORDER

This Criminal Original Petition has been filed to quash the criminal proceedings in C.C.No.2543 of 2015 on the file of the X Metropolitan Magistrate Court, Egmore, Chennai.

2. The petitioners are facing trial for the offences under Sections 18(a)(i) of Drugs & Cosmetic Act, 1940 (herein after referred as "Act"), which is punishable under Section 27(d) of the Act.

3. The case of the complainant is that the first petitioner company engaged in manufacturing of drugs. On 31.12.2013, Drug Inspector visited the premises of Government Hospital for Women and Children, Egmore, who was distributing the drugs and taken samples of Diclofenac Sodium tables IP 50 mg, B.No.TDT-13012, which has been manufactured by the first petitioner company and the same was sent for analysis to the Central Drugs Testing Laboratory, Chennai, after following the procedure contemplated under Section 23 of the Drugs and Cosmetic Act. The Drug Inspector received a report from Laboratory stating that the samples are not of standard quality. The above report was received by the Drugs Inspector on 15.04.2014, thereafter, the complainant sent a letter on 26.05.2014 to the Warehouse in-charge, Drug warehouse, Tamilnadu Medical Services Corporation Ltd., Chennai informing the same along with the report and they sent a reply dated 30.05.2014 stating that they have got the drugs from the first petitioner. Thereafter, the complainant issued a show cause notice to the first petitioner on 02.06.2014, for which, the first petitioner sent a reply on 16.06.2014. Not being satisfied with the reply, the respondent/complainant has come to a conclusion that the first petitioner had violated the provisions of Section 18(a)(i) of the Act as they have manufactured and sold the drugs not of standard quality and filed a complaint before the learned X Metropolitan Magistrate, Egmore and the learned Judicial Magistrate has taken cognizance of the offence and issued process. Now, to quash the said criminal proceedings, the present petition has been filed. The 2nd petitioner/A2, who was the Managing Director, died on 07.02.2020, pending the quash petition.



4. Mr. A.R.L.Sundaresan, learned Senior Counsel, appearing for the petitioners submitted that so far as the allegation against A1 company is concerned, the first petitioner/A1 company will defend the same suitably before the trial Court. So far as the petitioners 3 to 6/A3 to A6, are concerned, admittedly, they are only Directors of the Company and they were not incharge of or responsible to the day to day affairs of the Company and they are only involved in the policy matters of the Company. Hence, they cannot be made vicariously liable for the offence alleged to have committed by the Company. Absolutely, there is no averments in the complaint that, A3 to a6 were incharge of the day to day affairs of the Company. That apart, there is no allegation that the offence has been committed with the consent or connivance of the Directors and the negligence is attributable on the part of the Directors . In the absence of any such averment in the complaint, the Directors, namely A3 to A6 cannot be made vicariously liable and on that aspect, the complaint is liable to be quashed against them.

5. Disputing the same, Mr. B.Sudhir Kumar, learned Senior Panel Counsel, appearing for the respondent submitted that admittedly, A3 to A6 are Directors of the Company and they have actively participated in the day to day affairs of the Company and only with their connivance, the offence has been committed and there is a specific averment in paragraph 17 of the complaint that A3 to A6 are Directors and they are taking active part in the business of manufacturing the drug products, which was declared as Not of standard quality and that is sufficient to implicate A3 to A6. The learned counsel also relying upon the judgment reported in 2010(11) SCC page 125, stating that even though they are not incharge of and responsible to the day to day affairs of the Company, it is sufficient that the offence has been committed with the consent or connivance of the Directors or the negligence is attributable to them , and hence, the complaint cannot be quashed against A3 to A6. Section 34 of the Act make the Directors of the Company vicariously liable for any of the offence committed by the Company. As per Section 34 (2) of the Act, even if they are not in-charge of and responsible for the day to day affairs of the Company, it is sufficient that the offence has been committed with the consent or connivance of the Directors or the negligence is attributable to them and submitted that in the instant case, only with the active consent and connivance of the Directors, the offence has been committed. In the above circumstances, the complaint need not be quashed against them.

6. This Court considered the submissions made on either side and perused the materials available on records carefully.



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7. Before considering the rival submissions, it would be useful to refer the relevant portion of Section 34 of the Act, which reads as follows:-

" 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 shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. "

8. It is true that, under Section 34 of the Act, the Directors of the Company deemed to be committed offence, if it is proved that, A3 to A6 are all in-charge of and responsible for the conduct of the business of the Company at the time of commitment of offence, and if it is proved that the offence has been committed with the consent and connivance of the Directors or negligence, they are also liable for prosecution. However, there should be a specific averment to that effect in the complaint that all the Directors are incharge of and responsible in the day to day affairs of the Company and the offence has been committed with their connivance and consent. But, in the complaint, the complainant only stated that the Directors are taking active part in the business of manufacturing drugs. Apart from that absolutely, there is no averment that A3 to A6 are actively involved in the day to day affairs of the Company, and with their connivance the offence has been committed.

9. The Honourable Supreme Court in the matter of S.M.S. Pharmaceuticals Ltd Vs. Neeta Bhatla reported in (2005) 8 SCC 89, while considering Section 141 of the The Negotiable Instruments Act, 1881, which is almost pari materia to Section



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34 of the Drugs and Cosmetics Act, 1940, has held as follows:-

"19.(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that 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.

(c) The answer to Question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141."

10. While dealing with Section 34 of the Drugs and Cosmetics Act, 1940, the Honourable Supreme Court in State of Karnataka v. Pratap Chand, 1981 (2) SCC 335 has held that merely because the directors have right to participate in the business of the firm, they cannot be made liable. The relevant portion of the judgment reads as follows:-

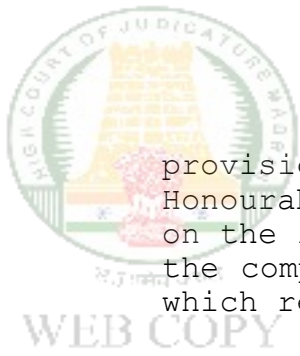


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"7. It is seen that the partner of a firm is also liable to be convicted for an offence committed by the firm if he was in charge of, and was responsible to, the firm for the conduct of the business of the firm or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of the partner concerned. In the present case the second respondent was sought to be made liable on the ground that he along with the first respondent was in charge of the conduct of the business of the firm. Section 23-C of the Foreign Exchange Regulation Act, 1947 which was identically the same as Section 34 of the Drugs and Cosmetics Act came up for interpretation in *G.L. Gupta v.D.H. Mehta* [(1971) 3 SCC 189, 190 : 1971 SCC (Cri) 279, 280 : (1971) 3 SCR 748] where it was observed as follows: [SCC p. 190: SCC (Cri) p. 280, para 6]

"What then does the expression 'a person in-charge and responsible for the conduct of the affair of a company' means? It will be noticed that the word 'company' includes a firm or other association, and the same test must apply to a director in-charge and a partner of a firm in-charge of a business. It seems to us that in the context a person 'in-charge' must mean that the person should be in overall control of the day to day business of the company or firm. This inference follows from the wording of Section 23-C(2). It mentions director, who may be a party to the policy being followed by a company and yet not be in-charge of the business of the company. Further it mentions manager, who usually is in charge of the business but not in overall charge. Similarly the other officers may be in charge of only some part of business."

11. Recently, in the matter of *Dayle De'souza v. Government of India* through Deputy Chief Labour Commissioner reported in 2021 SCC OnLine SC 1012, while dealing with an *pari materia*



provision as contained in the Minimum Wages Act, 1948, the Honourable Supreme Court after considering its various judgments on the issue has held that there should be a specific averment in the complaint to satisfy the mandate of the provision of the Act which reads as under:-

"23. In the factual context present before us it is crystal clear that the complaint does not satisfy the mandate of subsection (1) to Section 22C of the Act as there are no assertions or averments that the appellant before this Court was in-charge of and responsible to the company M/s. Writer Safeguard Pvt. Ltd. in the manner as interpreted by this Court in the cases mentioned above. The proviso to sub-section (1) in the present case would not apply. It is an exception that would be applicable and come into operation only when the conditions of sub-section (1) to Section 22C are satisfied. Notably, in the absence of any specific averment, the prosecution in the present case does not and cannot rely on Section 22C(2) of the Act."

12. Considering the same, in the absence of any such averment to that effect in the complaint, the Directors of the company cannot be made liable for the offence committed by the company, and A3 to A6 cannot be prosecuted for the offence committed by the Company and hence, the complaint is liable to be quashed to that extent.

13. In the result, this Criminal Original Petition is partly allowed and the criminal case in C.C.No.2543 of 2015 on the file of the learned X Metropolitan Magistrate Court, Egmore, Chennai is quashed in respect of A3 to A6 alone. Since A2 died, the case against A2 is dismissed as abated. The Trial Court is directed to proceed with the trial in respect of A1 and it is always open to A1 to raise all the defects available to them before the Trial Court. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

mrp



To

1.The X Metropolitan Magistrate Court,
Egmore, Chennai.

2.(do through) The Chief Metropolitan Magistrate.
Egmore, Chennai.

3.The Drugs Inspector,
Office of Deputy Drugs Controller (India)
Central Drugs Standard Control Organization,
South Zone , 2nd floor, Shashtri Bhawan Annexe,
Chennai 600 006.

4.The Public Prosecutor,
High Court,
Madras.

+lcc to Mr.B.Sudhir Kumar, Advocate Sr.No.3827

Crl.O.P.No.23629 of 2015

GPL (CO)
RVM(24/02/2022)