



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.No.5381 of 2019

and

Crl.M.P.No.3088 of 2019

1.M/s.Aeon Formulations Pvt. Ltd.,
Represented by Director,
Sh.A.P.Vaitheeswaran,
S/o.Sh.A.Pachamuthu,
R.S.No.515/1, 515/2 & 514, No.152/7,
Vinayagar Koil Street, Thirubuvaniapalayam,
Mannadipet Commune,
Puducheery - 605 107.

2.A.P.Vaitheeswaran

3.Hasmukhlal Dhirajlal Vora

4.S.Suresh

5.Vijayarani Vaitheeswaran ... Petitioners/1 to 5 Accused

Versus

Union of India,
Represented by Drug Inspector,
Office of the Deputy Drugs Controller(India),
Central Drugs Standard Control Organization,
South Zone, 2nd Floor,
Shastri Bhawan Annex,
Chennai - 600 006.

... Respondent/Complainant

Prayer: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records in Calender Case No.1 of 2016 pending Special Judge (Principal District Judge) at Puducherry and quash the same.

For Petitioners: Mr.P.J.Sriganesh
For Respondent : Mr.B.Sudhir Kumar
Senior Panel Counsel



ORDER

This Criminal Original Petition has been filed seeking to quash the Calender Case No.1 of 2016 pending on the file of the learned Special Judge, Principal District Judge, Puducherry.

2. The learned Counsel for the Petitioners submitted his averments.

3. As per the submissions of the learned Counsel for the Petitioners, the Page No.170 of the typed set of papers is the complaint preferred by the Respondent. On perusal of the complaint, there is no specific averments regarding the overt act committed by each of the Directors. Therefore, this complaint presented before the Court of learned Principal District Judge, Puducherry is not at all maintainable.

4. In support of his contention, the learned Counsel for the Petitioners relies on the ruling of the Hon'ble Supreme Court reported in 1998 (5) SCC 342 in the case of State of Haryana Vs. Brijlal Mithal and others and in the light of the above ruling, the learned Counsel for the Petitioners seeks to quash the complaint preferred by the Respondent before the learned Principal District Judge, Puducherry.

5. The learned Counsel for the Respondent/defacto complainant vehemently objected to the submissions of the learned Counsel for the Petitioners/Accused on the ground that the reliance placed upon by the learned Counsel for the Petitioners is with regard to a different offence whereas the alleged acts in this case is an offence attracting Section 34 of the Drugs and Cosmetics Act. This is a serious offence as per the submissions of the learned Counsel for the Respondent.

6. It is the further submission that the medicine TEN-BOC had been manufactured in Japan. Subsequently, the Ministry of Drugs and Pharmaceuticals Government of India permitted manufacturing of the same in India under license in the year 2015 only.

7. The learned Counsel for the Respondent/defacto complainant invited attention of this Court to the counter affidavit filed by the Respondent/defacto complainant and he relied on the averments in paragraph No.12 of the counter affidavit and also paragraph No.25. The drug "Teneligliptin 20 mg", tablets was manufactured by A1 company, A2 to A5 are the Directors of the A-1 Company. Before proceeding with the manufacture of the drugs, they had not obtained license from the Drugs Controller of India. Therefore, the Drug Inspector of



Puducherry sought the details of the license, for which, they furnished some documents. On verification by the Drugs Inspectorate of Puducherry, it was found that neither the Drugs Inspector of Puducherry nor the Drug Inspector of Tamil Nadu had not granted any license to manufacture the said drug viz., Teneligliptin 20 mg tablets by the AI-Company. Therefore, the Directors of the Company are also liable.

8. The learned Counsel for the Respondent relied on the very same ruling at paragraph No.34 regarding the overt act committed by the Directors of the Company. Under the expression, "deemed to have been in the management of the Company.

9. Further, the learned Counsel for the Respondent submits that when the Company manufactures a drug without obtaining license from the Competent Chief Drugs Controller, Government of India, which is a serious offence as per Drugs and Cosmetics Act. It is a serious offence and each of the Directors deemed to have committed the same offence as the offence committed by the Company. Therefore, the reliance placed by the learned Counsel for the Petitioners in the above ruling is not helpful to the Petitioners' case. The other averments in this petition is to be considered as valuable defence only at the time of trial. Therefore, the learned Counsel for the Respondent seeks to dismiss this petition as not maintainable.

10. If the Petition is allowed it may cause dangerous consequences as the effective steps by the Drugs Controller of India to initiate criminal action for violation of mandatory provisions of the Drugs and Cosmetics Act in the manufacturing of drugs without license and sale of the same. Therefore, the learned Counsel for the Respondent vehemently objects to the arguments of the learned Counsel for the Petitioners and seeks indulgence of this Court to dismiss as not maintainable under Section 482 of Cr.P.C.

11. The learned Counsel for the Petitioners further submits that there are four witnesses, only three witnesses to be examined by the Prosecution and therefore, the case is part-heard before the Court of Principal District Judge, Puducherry. Therefore, the relief sought by the learned Counsel for the Petitioners cannot at all be accepted by this Court.

12. Considering the rival submissions of the reliance placed by the learned Counsel for the Petitioners and the learned Counsel for the Respondent, it is found that the arguments submitted by the learned Counsel for the Respondent has more force. Considering the stage of the trial before the learned Principal District Judge and also the reliance placed upon by the learned Counsel for the Respondent on the same



ruling cited by the learned Counsel for the Petitioners, this petition is dismissed as having no merits. The learned Principal District Judge is directed to proceed with the trial and dispose of the same within a reasonable time. The learned Counsel for the Petitioners is granted liberty to raise the points in this petition as valuable defence before the learned Special Judge (Principal District Judge), Puducherry.

13. The learned Counsel for the Petitioners relied on the ruling of the Hon'ble Supreme Court reported in (1998) 5 SCC 343 in the case of State of Haryana Vs. Brij Lal Mittal and others for the offence committed by the company, relevant portion is extracted hereunder:

"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 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."

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 fulfils 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 bald 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.

In this case regarding the complaint in Page No.170 of the typed sets of papers shows that nowhere the specific overt acts committed by the Directors of the Company by attracting the



offences under Section 34 of the Drugs and Cosmetics Act had been stated by the complainant. Under those circumstances, the complaint itself is vague against the overt acts attributed by each of the Directors of the Company. Therefore, the complaint is not at all maintainable and is to be quashed in the light of the ruling of the Hon'ble Supreme Court relied on by the learned Counsel for the Petitioners in (1998) 5 SCC 343 in the case of State of Haryana Vs. Brij Lal Mittal and others.

14. The learned Central Government Standing Counsel for the Respondent/defacto complainant relied on the very same ruling relied by the learned Counsel for the Petitioner. In support of his contention, the offence alleged against the Petitioners attracts Section 34 of the Drugs and Cosmetics Act. Section 34 (2) of the said Act which is serious offence and shall not be taken lightly by the Court exercising discretion under Section 482 of Cr.P.C., Further the learned Counsel for the Respondent submitted that the reported ruling relied by the learned Counsel for the Petitioner is for a different offence, even though under the Drugs and Cosmetics Act. At the same time, here is the case, where A-1 was the Company manufacturing the Drug by name, Teneligliptin 20 mg tablets before the learned Principal District Judge, Pondicherry which was manufactured in Japan under the permission of the Government of Japan. Subsequently, the Drugs Controller of India granted permission to manufacture the same in India from the year 2015 onwards. The Petitioners herein who are A-1 to A-4, the first Petitioner is the first Accused before the learned Principal District Judge, Pondicherry had manufactured the drugs and sold it in open market affecting the health of the general public which may result in dangerous consequences. The Drug Controller, Pondicherry sought details of the license obtained from the competent Authorities by A-1 company. On demand of license by the Drugs Controller, Pondicherry, A-1 submitted the documents which were found to be fictitious. On verification with the Drug Controller, Pondicherry and the State Drug Controller of Tamil Nadu, it was found that no license had been granted to A-1 company by either the Drug Controller, Pondicherry or the State Drug Controller of Tamil Nadu. Under those circumstances, Drug Controller had preferred a complaint before the Special Court under the Drugs and Cosmetics Act, learned Principal District Judge, Pondicherry. On receipt of summons, the Accused 1 to 4 had approached this Court by filing this petition under Section 482 of Cr.P.C., He relied on the ruling of the Hon'ble Supreme Court reported in (2010) 11 SCC 125 in the case of Dinesh B.Patel and others Vs. State of Gujarat and another and placed reliance on the ratio laid down in that case. Further, learned



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Central Government Standing Counsel for the Respondent submitted that very serious offence of this nature committed by the Company cannot be treated leniently, lightly by any Court having consideration for the health of the general public. A-1 is the Company involved in the manufacture of the drugs without obtaining permission from the competent Authorities under the Drugs and Cosmetics Act, the Petitioners viz., A-1 to A-4 before the learned Special Judge, Principal District Judge, Pondicherry had indulged involved in the manufacture of Drugs, without obtaining prior permission and marketed the same to the public causing dangerous consequence to the members of the public to their health to the life. Under those circumstances, the Company is criminally liable for the Acts done by the Company. The Company is managed in its day to day affairs by the Directors of the Company cannot claim as a defence that the overt acts specified by the Drugs Controller in the private complaint has affecting the maintainability of the private complaint. It is enough, if the Company is shown as an Accused and the directors are also arrayed as Accused in their capacity as directors of the Company, are responsible to day to day management of the Company. Under those circumstances, what had been raised in this Petition by the Petitioner is considered as valuable defence that can be agitated during trial before the learned Principal District Judge, Pondicherry and exercising discretion under Section 482 of Cr.P.C., will result in miscarriage of justice and violation of guidelines issued by the Hon'ble Supreme Court reported in 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426 in the case of State of Haryana Vs. Bajanlal wherein the Hon'ble Supreme Court had deprecated the conduct of the High Courts in exercising discretion under Section 482 of Cr.P.C., liberally affecting investigation and affecting the disposal of the cases by the learned Principal District Judge, Pondicherry.

15. On consideration of the rival submission of the learned Counsels appearing for the Petitioners and the Respondent, the submission of the learned Central Government Standing Counsel appearing for the Drug Controller of Government of India is found acceptable and reasonable in the circumstances of this case as gathered from the records. Therefore, reliance placed by the learned Counsel for the Petitioner on the reported ruling of the Hon'ble Supreme Court in (1998) 5 SCC 343 in the case of State of Haryana Vs. Brij Lal Mittal and others will not help the case of the Petitioner. As rightly pointed out by the learned Counsel for the Respondent, A-1/Company is represented by the Directors of the Company/A-2 to A-5. Therefore, they are aware that without obtaining license from the competent



authorities under the Drugs and Cosmetics Act, they are manufacturing and selling the drugs without license. Therefore each of the directors are responsible cannot be ignored or treated lightly. Therefore, the arguments of the learned Counsel for the Petitioners is rejected. In the light of the above and in the ruling relied on by the learned Central Government Standing Counsel, this Criminal Original Petition is dismissed as having no merits as per the reported ruling of the Hon'ble Supreme Court in 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426 in the case of State of Haryana Vs. Bajanlal. If the Petition is allowed, it amounts to abuse of process of Court. What are all argued by the learned Counsel for the Petitioners is to be considered as valuable defence during trial by the learned trial Judge. In the result, this Criminal Original Petition is dismissed as having no merits.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

sp/dh

To

The Drug Inspector,
Office of the Deputy Drugs Controller (India),
Central Drugs Standard Control Organization,
South Zone, 2nd Floor,
Shastri Bhawan Annex,
Chennai - 600 006.

+1cc to Mr.B.Sudhir Kumar, Advocate SR.No.25142

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and
Crl.M.P.No.3088 of 2019

AK II(CO)
GN(05/05/2022)