IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.04.2022

PRONOUNCED ON : 13.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRIMINAL ORIGINAL PETITION NO.6797 OF 2019
AND
CRL.M.P.NO.3754 OF 2019

1. Gautam Kumar,
   Director of Baxter India Pvt. Ltd.,
   having registered office at 5th Floor, Tower A,
   Building No.9, DLF Cyber City,
   DLF Phase – III, Gurgaon – 122002,
   Haryana, India and regional office at Survey No.219-1A1B,
   225/4B, Block-C, Ground Floor,
   Kothari Warehouse, Madhavaram Redhills Road,
   Puzhal Village, Ambattur Taluk,
   Tiruvallur District, Chennai – 60.

2. Ravinder Pal Singh Dang,
   Managing Director of Baxter India Pvt., Ltd.,
   having registered office at 5th Floor, Tower A,
   Building No.9, DLF Cyber City,
   DLF Phase – III, Gurgaon – 122002,
   Haryana, India and regional office at Survey No.219-1A1B,
   225/4B, Block-C, Ground Floor,
   Kothari Warehouse, Madhavaram Redhills Road,
   Puzhal Village, Ambattur Taluk,
   Tiruvallur District, Chennai – 60.

... Petitioners

Versus

The State of Tamil Nadu,
Represented by Drugs Inspector,
Madhavaram Range,
O/o. The Assistant Director of Drugs Control,
Zone IV, Chennai – 600 006.

... Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, seeking to call for the records relating to the complaint in C.C.No.46 of 2019 on the file of the Chief Judicial Magistrate, Tiruvallur and quash the same.

For Petitioners	:	Mr.Sathish Parasaran Senior Advocate for Mr.R.Jawaharlal
For Respondent	:	Mr.S.Vinoth Kumar Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition had been filed to quash the Complaint in C.C.No.46 of 2019 on the file of the learned Chief Judicial Magistrate, Tiruvallur.

2.Learned Senior Counsel for the Petitioners Mr.Sathish Parasaran submitted his arguments. As per his submissions, the Drug Inspector/Respondent had filed the Criminal Complaint against the Company - M/s. Baxter India Pvt., Ltd., and its Managing Director - Mr.Ravinder Pal Singh Dang; the Director - Mr.Gautam Kumar and another person, who is the competent person, Mr.M.Raja. The complaint had been filed under Section 18 (c) of the Drugs and Cosmetics Act, 1940 read with Rules 65(3)(1), 65 (5)(1) of the Drugs and Cosmetics Rules, 1945, punishable under Section 27(d) of the said Act. It is the submission of the learned Senior Counsel for the Petitioners that the first Accused before the learned Chief Judicial Magistrate, Tiruvallur is the Company - M/s.Baxter India Private Limited which has multiple drug licence - one for the territory of the Delhi and another for the territory of Tamil Nadu. In this case, the fourth Accused is the competent person, who is a Pharmacist of the first Accused Company. Therefore, only the two Directors of the Company, who were arrayed as A-2 and A-3, had filed this Criminal Original Petition seeking to quash the Criminal Complaint against them on the ground that the complaint is bereft of details regarding the incriminating materials against the Accused 2 and 3, who were only Managing Director and Director of the Company. Mr.Ravinder Pal Singh Dang is the Managing Director and Mr.Gautam Kumar, Director of the Company. The complaint does not give specific averments regarding the role of the Director and Managing Director in maintaining the registers with particulars like the Doctor who prescribed the medicine, address of the Hospital, name of the distributor, purchase invoice number are not maintained in the Registers. The subject matter of the complaint are:

“During inspection, the purchase and sale of Schedule H and other drugs were verified by P.W-1 and the following contraventions were noticed.

1.The supply of the drugs by way of retail on the prescription of the registered Practitioner were not recorded at the time of supply in the prescription register specifically maintained for the purpose, and it is not continuously signed by the endorsed registered pharmacist from 1st March 2016 to 30 March 2017, Name of the prescriber and patient is mentioned but the address of the prescriber, patient is not mentioned in the prescription register, it is in contravention of Section 18(c) of the Drugs and Cosmetics Act, 1940 read with Rules 65(3)(1) of Drugs and Cosmetics Rules 1945 which is punishable under Section 27(d) of the said Act.

2.The supply of drugs by way of wholesales was made against cash or credit memo in which the name of the manufacturer is not mentioned, Drug license number of the licensee to whom the drugs were sold is incorrectly mentioned as listed in Table-I. It is in contravention under Section 18(c) of Drugs and Cosmetics Act, 1940 read with rule 65(5)(1) of Drugs and Cosmetics Rules 1945 which is punishable under Section 27(d) of the said Act.

Table-I

S.No.	Sales Invoice number	Date	D.L. Number
1.	INI1633006414	25.1.17	Incorrectly mentioned
2.	INI1633006881	27.03.2017	Incorrectly mentioned
3.	INI1633006142	08.02.2017	Incorrectly mentioned

Therefore, Thiru.M.Raja, competent person of M/s.Baxter India Pvt., Ltd, Survey No.219-1A1B, 225/4B, Block-C, Ground Floor, Kothari Warehouse, Madhavaram Redhills Road, Puzhal Village, Ambattur Taluk, Thiruvallur District, Chennai – 60 was requested to produce following original records and documents under Section 22(1)(cca) of the Drugs and Cosmetics Act, 1940 for verification.

1.Original Drug Licence in form 20, 21, 20B and 21B.

2.Purchase Invoices of the following:

(a) Purchase invoice of M/s.Baxter (India) Private Limited, Thane, Bhiwandi Maharastra India 421302. Invoice No.INI1632004494 date 17.03.2017 and Invoice No.INI1632004466 dated 14.03.2017.

(b) Purchase invoice of M/s.Baxter (India) Private Limited, Thane, Bhiwandi Maharastra India 421302. Invoice No.INI1632002706 date 20.10.2016.

(c) Purchase invoice of M/s.Baxter (India) Private Limited, Thane, Bhiwandi Maharastra India 421302. Invoice No.INI1631003526 date 25.01.2017.

(d) Purchase invoice of M/s.Baxter (India) Private Limited, Gurgaon, India 122002. Invoice No.INI1611001567 dated 06.12.2016.

(e) Purchase invoice of M/s.Baxter (India) Private Limited, Gurgaon, Haryana, India 123503. Invoice No.INI1621000385 dated 07.01.2017.

(f) Purchase invoice of M/s.Baxter (India) Private Limited, Gurgaon, Haryana, India 122056. Invoice No.INI162000073 date 18.03.2017.

3.Carbon copies of sales Bills maintained for the drugs which were sold invoice No.INI1633006178, date: 11.02.2017, INI1633006414 date: 25.02.2017, INI1633006561 dated 06.03.2017, INI1633006177 date: 11.02.2017, INI1633006881 date: 27.03.2017, INI1633006142 date: 08.02.2017, INI1633006170, date: 10.02.2017.

4.Prescription register from 01.03.16 to 30.3.17.

5.Address proof copy of competent person Mr.Raja, M.Com. All the above said documents produced under Section 22(1)(cca) of the said Act were returned to Thiru M.Raja, competent person of M/s.Baxter India Pvt., Ltd., Chennai – 60, after obtaining certified Xerox copies of the same as per Section 22 (2-A) of the said Act.

A show cause memo in the ref. No.1528/DI/MVM/ZIV/2017, dated 10.07.2017 and Erratum dt: 19.07.2017 for the showcause notice dt: 10.7.17 was issued to M/s.Baxter India Pvt., Ltd., Survey No.219-1A1B, 225/4B, Block-C, Ground Floor, Kothari Warehouse, Madhavaram Redhills Road, Puzhal Village, Ambattur Taluk, Thiruvallur District, Chennai – 60 and to Thiru M.Raja, competent person of M/s.Baxter India Pvt., Ltd., Chennai – 60, for seeking explanation for the violation of Section 18(c) r/w Rules 65(5)(1), 65

> (5)(1) of Drugs and Cosmetics Act, 1940 and Rules 1945 made thereunder and also requested to produce the details of Directors of the Firm."

Based on the said lapses, a detailed report was submitted by the Drugs Inspector of Madhavaram Range on 24.05.2018 to the Director of Drugs Control, Chennai – 600 006, Tamil Nadu, stating that it is a fit case for prosecution and requested to accord necessary sanction to prosecute the Accused. The responsibility of the Director of the Company is not at all mentioned in the complaint. The Director and Managing Director of the Company were found liable for the lapses in issue of receipts. There are no specific averments against the Petitioners 1 and 2/Accused 2 and 3 before the learned Chief Judicial Magistrate, Tiruvallur. The averments regarding the Petitioners herein, who are arrayed as A-2 and A-3, are vague. Therefore, this complaint is to be quashed. Further, the learned Counsel for the Petitioners submitted that the Drugs and Cosmetics Act was enacted in the year 1940. At that time, the Act mentioned about the Registers maintained by the responsible persons dealing with drugs and cosmetics as per the Drugs and Cosmetics Act, 1940. The Criminal Complaint was filed in the year 2019 as C.C.No.46 of 2019 on the file of the learned Chief Judicial Magistrate, Tiruvallur. Therefore, from 1940, nearly 79 years had been passed and from the year 2000, we have been using computers, lap-tops for our day-to-day work thereby unnecessary paper works is reduced. What are all stated in 1940 Act had become obsolete. Therefore, the gist of the complaint itself is not maintainable. As per the present working condition in India, where every office has paper less work. The details mentioned in the complaint are found in the computers maintained by the first Accused Company. The day-to-day work is done by the competent person/fourth Accused. What is the role of the Directors in maintaining the said Registers is not mentioned anywhere in the complaint. Therefore, the learned Counsel for the Petitioners seeks to quash the criminal complaint.

3.The learned Government Advocate (Crl. Side) appearing for the Prosecution vehemently objected to the submission of the learned Counsel for the Petitioners seeking to quash the criminal complaint on the ground that the criminal complaint is bereft of details of the role played by the Directors/A-2 and A-3 of the first Accused Company before the learned Chief Judicial Magistrate, Tiruvallur. Further, it is the submission of the learned Government Advocate (Crl. Side) that when the show cause notice was issued to the Company and the Directors, the first Petitioner Mr.Gautam Kumar, had clearly admitted the lapses by written reply and also submitted that hereafter he will set right the defects pointed out in the show-cause notice. Therefore, when there is clear admission by Mr.Gautam Kumar, who is arrayed as A-3 in the complaint, it does not warrant any indulgence of this Court under Section 482 of Cr.P.C. using the extraordinary powers of the Hon'ble High Court. Not only that, the Drugs and Cosmetics Act deals with the drugs that is used by the general public for their health. By not following the mandatory provisions, the Petitioners are endangering the lives of the general public, who used the drugs sold by the first Accused Company. The Drugs and Cosmetics Act prescribes safety measures to be taken from the stage of manufacture by the Company till it reaches the general public who are patients. Therefore, the entire procedure from manufacturing till it reaches the general public through pharmacies, all details had to be furnished to the Drugs Inspector, who inspect the Pharmacy or the agency where the drugs are stored. If there are violations and any untoward incident happened regarding medicines used by the patients. At that time, the person who had violated the procedures could not be found or detected. Therefore, these are all the safety measures that cannot be treated leniently by the Courts. The violations of safety measures have to be treated as lapses by the Company those attracts seriously and it cannot be treated lightly or leniently by the Court because it is endangering the lives of the patients who consumes the drugs manufactured by the Drugs Manufacturers by the Drugs Company. If the Petitioners' arguments are to be accepted not even a single complaint can be lodged by the Drugs Inspector. What had been agitated on behalf of the Petitioners can be considered only by the learned trial Judge during trial and not at this stage. The complaint had clearly stated the lapses and show-cause notice was clearly issued regarding the lapses. The first Petitioner Mr.Gautam Kumar had clearly in his reply to the show cause notice admitted the lapses. Therefore, this Court need not exercise its extraordinary powers under Section 482 of Cr.P.C. to quash the Criminal Complaint.

4.On consideration of the rival submissions, it is found that the learned Counsel for the Petitioners arguments regarding registers are outmoded. If this case had been filed as per the Drugs and Cosmetics Act, in the year 1950 or 1960 Registers should have been maintained by the persons dealing with Drugs and Cosmetics Act. But, now we are in the age of computers. Everything is done through computers. Therefore, the details as stated by the Drugs Inspector can be maintained in the computers. Still in the computers, the Petitioners had not maintained the details sought by the Drugs Inspector regarding the drugs that were sold through its agencies, the details of the invoices had not been maintained.

5.If the submissions of the learned Counsel for the Petitioners is accepted, then, the Directors are interested only in earning their salary through the business of the Company. The business is in dealing with drugs either manufactured by them or procured by them or distributed through their agencies. If so, it is one of the duties of the Directors that whether the business of the first Accused Company had been carried out as per the provisions of Drugs and Cosmetics Act. They cannot claim that they are not liable. They are only entitled to get advantages and not to get disadvantages. Here is the case, where based on the drug licence given to the first Accused Company and having its office as per the licence maintained by them, the Drugs Inspector had issued show cause notice pointing out specific lapses regarding details of the prescription where the Doctor who prescribes medicines, the Doctors name and address not properly maintained. The carbon copies of the sale bill for the drugs, which were sold, the invoice number, purchase invoice details are not maintained. The complaint had specifically mentioned about the first Accused Mr.Gautam Kumar accepting the responsibility and admitting the same lapses pointed out in the show cause notice.

6.In support of his contention, the learned Senior Counsel Thiru.Satish Parasaran, appearing for the Petitioners relied on the rulings of the Hon'ble Supreme Court in the case of State of Haryana -vs- Brij Lal Mittal and others reported in (1998) 5 SCC 343. The relevant portion of the said judgment reads as under:

> "B.Drugs and Cosmetics Act, 1940 – S. 34 – Offences by companies – Simply because a person is Director of the Company he does not vicariously become liable for offence committed by the Company – It must be shown that he was in charge of the Company and also responsible to the Company for the conduct of its business – Prevention of Food Adulteration Act, 1954, S.17.
>
> 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. In the present case except a bald statement in the complaint

that the respondents were Director 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.”

7. He further relied on the decision of the Hon'ble Supreme Court in the case of Dayle De'souza -vs- Government of India through Deputy Chief Labour Commissioner and another reported in 2021 SCC OnLine SC 1012. The relevant portion of which reads as under:

“11. Sub-section (1) to Section 22C states that where an offence is 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, as well as the Company itself shall be deemed to be guilty of the offence. By necessary implication, it follows that a person who do not bear out the requirements is not vicariously liable under Section 22C(1) of the Act. The proviso, which is in the nature of an exception, states that a person who is liable under sub-section (1) shall not be punished if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. The onus to satisfy the requirements to take benefit of the proviso is on the accused, but it does not displace or extricate the initial onus and burden on the prosecution to first establish the requirements of sub-section (1) to Section 22C of the Act. The proviso is to give immunity to a person who is vicariously liable under sub-section (1) to section 22C of the Act. In S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla,1 in relation to pari materia proviso in Section 141 of the Negotiable Instruments Act, 1881, this Court observed:

“4… A Company being a juristic person, all its deeds and functions are the result of acts of others. Therefore, officers of a Company who are responsible for acts done in the name of the Company are sought to be made personally liable for acts which result in criminal action being taken against the Company. It makes every person who, at the time the offence was committed, was in charge of, and was responsible to the Company for the conduct of business of the Company, as well as the Company, liable for the offence. The proviso to the sub-section contains an escape route for persons who are able to prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent commission of the offence.

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9. The position of a Managing Director or a Joint Managing Director in a Company may be different. These persons, as the designation of their office suggests, are in charge of a Company and are responsible for the conduct of the business of the Company. In order to escape liability such persons may have to bring their case within the proviso to Section 141(1), that is, they will have to prove that when the offence was committed they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence."

(Emphasis added)

12. In Aneeta Hada v. Godfather Travels and Tours Private Limited,[2] this Court had reiterated that the proviso to general vicarious liability under Section 141 of the Negotiable Instruments Act, 1881, applies as an exception, by observing:

"22. On a reading of the said provision, it is plain as day that if a person who commits the offence under Section 138 of the Act is a Company, the Company as well as every person in charge of and responsible to the Company for the conduct of business of the Company at the time of commission of offence is deemed to be guilty of the offence. The first proviso carves out under what circumstances the criminal liability would not be fastened. Sub-section (2) enlarges the criminal liability by incorporating the concepts of connivance, negligence and consent that engulfs many categories of officers. It is worth noting that in both the provisions, there is a "deemed" concept of criminal liability."

(Emphasis added)

13. The proviso being an exception cannot be made a justification or a ground to launch and initiate prosecution without the satisfaction of conditions under sub-section (1) of Section 22C of the Act. The proviso that places the onus to prove the exception on the accused, does not reverse the onus under the main

provision, namely Section 22C(1) of the Act, which remains on the prosecution and not on the person being prosecuted.

15. ....

"6. What then does the expression "a person in-charge and responsible for the conduct of the affairs of a Company" mean? 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 over-all 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 over-all charge. Similarly, the other officers may be in-charge of only some part of business."

18. Way back in 1982, in Municipal Corporation of Delhi v. Ram Kishan Rohtagi,5 this Court had quashed criminal proceedings under the Prevention of Food Adulteration Act, 1954 against the Directors of a manufacturing Company at the summoning stage, observing that the presumptive assertion made in the complaint that the Directors of the accused Company 'as such' were in-charge of and responsible for the conduct of the business of the Company at the time of sampling was vague. The use of the words "as such" in the complaint indicated that the complainant had merely presumed that the Directors must be guilty because they held the office of the Director. ..."

8.The learned Senior Counsel for the Petitioners also relied upon the order passed by this Court in Crl.O.P.No.23375 of 2016, dated 31.01.2022 [Gul Raj Bhatia and others -vs- The State of Tamil Nadu] regarding the liability of the Directors in which the criminal complaint filed by the Drugs Inspector was quashed by this Court.

9.The submission of the learned Senior Counsel for the Petitioners cannot at all be accepted in the light of the specific averments in the complaint that on the show cause notice issued by the Drugs Inspector, the first Petitioner had admitted the lapses by giving in writing and stated that they will rectify those defects.

10.The submission of the learned Senior Counsel for the Petitioner that the Drugs and Cosmetics Act was enacted in the year 1940. In those days, Registers had to be maintained. But in the year 2020, we are using computers for paper less work. Therefore, the criminal complaint stating Registers were not maintained will not hold good and hence, the same has to be quashed, cannot be accepted because by reducing paper work does not mean that the importance given to Registers had to be thrown to the winds. All professionals are using computers in their day-to-day work and the Drugs and Cosmetic Act and Rules specify the insistence of maintaining details regarding drugs procured, drugs supplied to agents/franchisees and maintaining the details of the Doctors who prescribe those medicines. The details including the name and address of the Hospital and also regarding details of the manufacturer, the registered Office of the Manufacturer, etc., as per the invoices. It is a safety measure as pointed out by the learned Government Advocate (Crl. Side) that the common man, who is the consumer of the drugs based on prescription by the Doctors who is the end user who are the sufferers for the violations of the statutory provision by the drugs Company either as manufacturer or as dealers for not maintaining the details. If something goes wrong somewhere and patients died due to consumption of some drugs which were not either manufactured properly or had been sold after expiry dates or drugs which were substandard. Under those circumstances, action can be taken by the Drugs Controller only if details are maintained when details are not maintained it gives presumption that they are wantonly diluting the safety measures ignoring the safety of the gullible public.

11.In the light of the vehement objection of the learned Government Advocate (Crl. Side) pointing out that in the Criminal Complaint the Complainant - Drugs Inspector had specifically mentioned the lapses and the issuance of show cause notice to the Accused herein and the reply received by the Drugs Inspector from the first Petitioner herein viz., Mr.Gautam Kumar admitting to the lapses is sufficient to prosecute the Accused. Further, the above rulings cited by the learned Senior Counsel for the Petitioners are not applicable to the facts of this case because the first Petitioner herein had specifically admitted the lapses pointed out in the show cause notice issued by the Drugs Inspector as per the complaint which reads as under:

> "In response to the show cause memo a reply letter dated 28.07.2017 was received from M/s.Baxter India Pvt., Ltd., Chennai - 60 singed by Mr.Gautam Kumar Director and from Thiru M.Raja, competent person of the said concerned in which both of them has stated that the Firm has taken immediate correction by

maintaining the prescription register and the sales invoices produced at the time of inspection were reviewed as part of response to reported contraventions, Invoice No. INI1633006881, INI1633006414 belongs to distributor M/s.Lakshmi Enterprises, Coimbatore respective invoice consist of two licence number, during verification it is observed there is typographic error in writing the licence No. observed error have been corrected on immediate basis for future supplies."

12.In the light of the above, the First Petitioner, as a Director, and the Second Petitioner, as Managing Director of the Company, are responsible in the light of the specific admission by the First Petitioner. Therefore, the submission of the learned Senior Counsel for the Petitioners are rejected.

13.In the result, this Criminal Original Petition is dismissed as having no merits.

The learned Chief Judicial Magistrate, Tiruvallur is directed to proceed with the trial and dispose of the case within a reasonable period of three months from the date of receipt of a copy of this order or from the date of uploading of the order in the website of the High Court. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

SRM

To:
1. The Chief Judicial Magistrate, Tiruvallur.
2. The Drugs Inspector,
   Madhavaram Range,
   O/o. The Assistant Director of Drugs Control,
   Zone IV, Chennai - 600 006.
3. The Public Prosecutor,
   High Court, Chennai.

+1cc to M/s.R.Saravanakumar Advocate, S.R.No.35175

Crl.O.P.No.6797 of 2019

RR(CO)
RLP(11/07/2022)