

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL MISCELLANEOUS No.28899 of 2017**

Arising Out of PS. Case No.-732 Year-2004 Thana- GOVERNMENT OFFICIAL COMP.  
District- Saharsa

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Deepak Shanti Lal Parekh @ Deepak Parekh, Son of Sri Shanti Lal Parekh,  
The Ex-Chairman and Now Executive Director of M/s Glaxo Smithkline  
Pharmaceuticals Limited, having its registered office at M/s 252, Dr. Annie  
Basant Road, Police Station - Worli, Mumbai 400026, Maharashtra.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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**Appearance :**

|                          |   |                                                                                                                                                               |
|--------------------------|---|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For the Petitioner/s     | : | Mr. Ansul, Advocate<br>Mr. Sanjeev Kumar, Advocate<br>Mr. Rajeev Shekhar, Advocate<br>Mr. Prabho Shankar Mishra, Advocate<br>Mr. Akash Pratap Singh, Advocate |
| For the Opposite Party/s | : | Mr. Sujit Kumar Singh, A.P.P.                                                                                                                                 |

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**CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA  
ORAL JUDGMENT**

**Date : 10-10-2023**

Heard learned counsel for the petitioner and learned  
A.P.P. for the State.

2. The present quashing application has been filed  
seeking quashing of the order dated 14.07.2004 passed in  
Complaint Case No. 732(C) of 2004 whereby the learned Chief  
Judicial Magistrate, Saharsa has taken cognizance against the  
petitioner of the offence under Section 27(d) of the Drugs and  
Cosmetics Act, 1940 for violating the provisions of Sections 18(a)  
(i), 18(a)(iv), 18(b) and 18(c) of the Act, 1940.



3. Learned counsel for the petitioner submits that in the nature of allegation as alleged in the complaint, prima facie, it would manifest that no offence, against the petitioner, is made out.

4. It is next submitted that the complainant alleges that on 07.07.2003 the premise of M/s Shivshakti Medical Agency, Bangaon Road, Saharsa was inspected and disposal of drugs manufactured by Meghdoot Chemicals Limited and marketed by M/s Glaxo Smithkline Pharmaceuticals Limited (hereinafter referred to as the 'GSK') along with other drugs was stopped by issuing Form 15 for the irregularity mentioned in the inspection note. The drugs were found to be purchased by GSK, Patna. It is alleged that premise of M/s Shivshakti Medical Agency was again inspected and minimum quantities of drugs in question along with other drugs were seized. It is next alleged that Biduret tablets, Batch No. ME 106, Exp. Date Feb. - 2005 were seized. The tablet is manufactured by Meghdoot Chemicals Limited and marketed by GSK after purchasing the drugs on wholesale licence from the manufacturer. Further the name and logo of GSK are printed on the label of drug and cartoon of drug which is in breach of the Drugs and Cosmetics Rules, 1945 (hereinafter referred to as 'the 1945 Rules'). Accordingly, GSK by letter dated 15.07.2003 was requested to furnish relevant information on which GSK furnished



clarification by its letter dated 20.08.2003 clarifying that Biduret tablets were being manufactured by Croydon Chemical Works Limited (in short 'CCWL') and marketed by Biddle Sawyer Limited (in short 'BSL'). Further, CCWL was a 100% subsidiary of GSK and later merged with GSK and thus all the trade marks of CCWL have vested in and are now the property of GSK, thus, the owner of the brand name Biduret is now GSK and for operational convenience GSK entered into an arrangement with Meghdoot Chemicals Limited for manufacturing Biduret and, therefore, name of Meghdoot Chemicals Limited appears as manufacturer of the product since GSK is marketing the product as such by way of additional information the customers are informed that Biduret is GSK product. Further, logo of GSK appears on the label of the drug as the product is being marketed by GSK and Rules 96 and 97 of the 1945 Rules mandates labelling. After seeking clarification, it is alleged that GSK is purchaser and not manufacturer of the drug and labelling of drug is covered under Rules 96 and 97 of the 1945 Rules and labelling comes within the purview of manufacture as per Section 3(f) of the Drugs and Cosmetics Act, 1940, thus, Rules 96 and 97 concern the manufacturer and not the purchaser, hence, the name and logo of purchaser should not appear on the label of the drug purchased. It



is next alleged that the same violates Rules 96 and 97 of the 1945 Rules and thus Section 17(b) of the Drugs and Cosmetics Act, 1940 gets attracted. Further, the Doctors prescribes the medicine and purchaser who purchases the medicine are misled that the drug is manufactured by GSK which attracts violation of Section 17(c) of the Drugs and Cosmetics Act, 1940, thus, accused no. 1 to 11 have manufactured, distributed and sold misbranded drug by violating Rule 75A (Loan Licence), Rules 96 and 97 of the 1945 Rules which are prohibited under Sections 18(a)(i), 18(a)(iv), 18(b) and 18(c) of the 1940 Act.

5. Learned counsel for the petitioner submits that in nutshell the allegation against the petitioner is that petitioner being purchaser of Biduret tablets is marketing the same which is being manufactured by Meghdoot Chemicals Limited. The petitioner in course of his business is also using his name and logo on the product which according to the complainant is in violation of Rules 96 and 97 of the 1945 Rules. It is further submitted that Rules 96 and 97 of the 1945 Rules mandates labelling and in the event if labelling had not been done, in that view of the matter an offence would have been committed. It is next submitted that GSK is a reputed British Company and a company of repute will never bring any disrepute to its brand by indulging in misbranding. It is



submitted that the Biduret tablets which are sold in the market clearly records that the same is manufactured by Meghdoot Chemicals Limited and marketed by GSK. It is, thus, submitted that since the name and logo of GSK which is there on the Biduret tablet is only to keep the faith of its customer intact that GSK will never indulge in any misbranding of any product and would always maintain the high quality and standard which they maintain. It is next submitted that since the labelling clearly records that the product is being marketed by GSK as such it cannot be construed that the Doctors and the intended purchasers would be misled by thinking that the product is being manufactured by GSK.

6. Learned counsel for the petitioner submits that the petitioner in the present application is a Non-executive Director of GSK and does not participate in day-to-day functioning of the company and, therefore, is not responsible for the affairs of the company and thus will not come within the purview of Section 43 of the Drugs and Cosmetics Act, 1940. It is further submitted that petitioner has no role to play in manufacturing activities of the company when Section 27(d) of the Drugs and Cosmetics Act, 1940 clearly mandates that --- whoever, himself or by any other person on his behalf, manufactures for sale or for distribution, or



sells, or stocks or exhibits or offers for sale or distributes, --- any drug other than a drug referred to in clause (a)(b) or (c), in contravention of any other provision of this Chapter on any rule made therein shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to two years.

7. Learned counsel for the petitioner submits that in order to make any officials or the Director of the company liable under Section 27(d) of the Drugs and Cosmetics Act, the necessary averments have to be pleaded in the complaint with regard to the role of the person acting on behalf of the company. It is further submitted that this petitioner being a Non-executive Director is completely excluded from the purview of the company with regard to its business as the petitioner has no role to play in day-to-day activities of the company.

8. Learned counsel for the petitioner next submits that even from perusal of the complaint, it would manifest that the complainant does not allege anything about the petitioner that the petitioner at the time when the occurrence was committed was involved with the day-to-day affairs of the company.

9. Learned counsel for the petitioner further submits that though the petitioner being Non Executive Director of the



company is not associated with the day-to-day affairs of the company but then it is also submitted that Rules 96 and 97 of the 1945 Rules do not bar a company which markets the product from labelling. It is thus submitted that if labelling by a company which markets the products was not mandated as per Rules 96 and 97 of the 1945 Rules in that event perhaps it could have been alleged that the company violated the provisions of the Drugs and Cosmetics Act, 1945 but then that is not the case of the complainant as would manifest from the allegation itself.

10. Learned counsel for the petitioner next relies on an order of the learned Coordinate Bench of this Court dated 08.12.2022 in Cr. Misc. No. 30453 of 2017 (Deepak Shanti Lal Parekh @ Deepak Parekh Vs. The State of Bihar) wherein on similar allegation the order of cognizance dated 08.10.2004 in Complaint Case No. 1198C/2004 where cognizance was taken under Section 27(d) of the Drugs and Cosmetics Act, 1940 was quashed on the ground that it was necessary for the complainant to aver in the complaint that at the time of commission of offence, the accused was in-charge of, or responsible for the conduct of the business of the company and in the case in hand there is no whisper in the entire complaint regarding the act on the part of the present petitioner. As such, merely the averment in the complaint



that the petitioner was Director of the Company at the relevant time, will not ipso facto hold him responsible for the alleged offence.

11. Learned counsel for the petitioner submits that several cases came to be instituted against GSK and its Director and also against the manufacturers of different medicines and one of the cases was Complaint Case No. 1198C/2004 in which this Hon'ble Court interfered and quashed the order of cognizance.

12. Learned counsel for the petitioner, thus, submits that the allegation in the present complaint case is similar to the allegation which were alleged in Complaint Case No. 1198C/2004. In the present complaint case also there is averment regarding the petitioner about his involvement in the occurrence i.e. the complainant in the complaint does not specifically allege that petitioner at the time of commission of offence was in-charge of, or responsible for the conduct of the business of the company.

13. Learned A.P.P. for the State opposes the present application.

14. Considering the submissions made by the learned counsel for the petitioner as recorded hereinabove and also the fact that the complainant in the complaint petition does not allege specifically that the petitioner was in-charge of, or responsible for



the conduct of the business of the company when the occurrence is alleged to have taken place, the order dated 14.07.2004 passed in Complaint Case No. 732(C) of 2004 by the learned Chief Judicial Magistrate, Saharsa whereby cognizance has been taken against the petitioner of the offence under Section 27(d) of the Drugs and Cosmetics Act, 1940 for violating the provisions of Sections 18(a) (i), 18(a)(iv), 18(b) and 18(c) of the Act, 1940 is hereby quashed.

15. Accordingly, this application is allowed.

**(Satyavrat Verma, J)**

Kundan/-

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