

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.72719 of 2018

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

Kal Sundaran Son of N. Iyer Subramanian, the then Managing 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

Appearance :

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

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 the petitioner is the Managing Director of GSK and does not participate in day-to-day functioning of the company and thus is not responsible for the affairs of the company. The petitioner has no role to play in manufacturing activities of the company.

6. It is next submitted that Section 27(d) of the Drugs and Cosmetics Act, 1940 in the nature of allegation as alleged in the complaint petition does not get attracted against the petitioner as Section 27(d) of the Drugs and Cosmetics Act, 1940 clearly records 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 Managing Director of the company liable under Section 27(d) of the Drugs and Cosmetics Act, 1940 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 the Managing 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 next relies on a judgment of the Hon'ble Supreme Court in the case of **State of Haryana Vs. Brij Lal Mittal & Ors.** reported in **1998 Cri LJ 13287** and submits that the Hon'ble Supreme Court in the said case had held that "...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.....”

9. It is next submitted that the complaint petition is completely silent with regard to the role of the petitioner in the day-to-day activity and there is neither any specific allegation nor any whisper in the entire complaint against the petitioner that he was involved in the day-to-day activities of the company making petitioner liable for the alleged offence and thus the petitioner would not come within the purview of Section 34 of the Drugs and Cosmetics Act, 1940.

10. Learned counsel for the petitioner next submits that the learned Coordinate Bench of this Court by order dated 08.12.2022 in Cr. Misc. No. 26457 of 2017 (Deepak Shanti Lal Parekh @ Deepak Parekh Vs. The State of Bihar) had quashed the order of cognizance taken under Section 27(d) of the Drugs and Cosmetics Act, 1940 by order dated 01.12.2004 in Complaint Case No. 1352C of 2004 on the ground that the complaint petition was lacking in detail with regard to the role of the accused i.e. there was no averment 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.



11. Learned counsel thus submits that in present case also the petitioner being the Managing Director of GSK has been roped as an accused in the present complaint when the allegation in the complaint petition is lacking in detail which are required under Section 34 of the Drugs and Cosmetics Act, 1940.

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

13. Considering the submissions made by the learned counsel for the petitioner as recorded hereinabove and the fact that the allegation as alleged in the complaint petition does not specifically alleges against the petitioner about his role in the company, 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 is hereby quashed.

14. Accordingly, this application is allowed.

(Satyavrat Verma, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	13.10.2023
Transmission Date	13.10.2023

