

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.72370 of 2018

Arising Out of PS. Case No.-1005 Year-2004 Thana- SAHARSA COMPLAINT CASE
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 27.08.2004 passed in Complaint Case No. 1005(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.

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. Learned counsel for the petitioner submits that the complainant alleges that on 12.06.2003 the premises of M/s Popular Agencies, Mahavir Chowk, Saharsa, who holds valid Drugs Wholesale Licence, was inspected and disposal of drugs manufactured by Dr. Reddy's Laboratories Ltd. (in short 'Dr. Reddy') and marketed by M/s Glaxo Smithkline Pharmaceuticals Limited (in short 'GSK') along with other drugs was stopped by issuing Form 15 for the irregularities committed as mentioned in the inspection note. The premise of M/s Popular Agencies was again inspected on 29.01.2004 and minimum quantity of drug in question along with other drugs were seized. On 07.07.2003, the complainant inspected the premises of M/s Shivshakti Medical Agency, Bangaon Road, Saharsa and disposal of drugs manufactured by Dr. Reddy and marketed by GSK along with other drugs was stopped by issuing Form 15. The premises of M/s Shivshakti Medical Agency, Bangaon Road, Saharsa was again inspected on 28.01.2004 and minimum quantity of drug in question along with other drugs were seized. It is next alleged that the drug, namely, Stibs manufactured by Dr. Reddy and marketed by GSK were found in the premise of Popular Agencies and Shivshakti Medical Agency and the expiry date of the drugs were in between August and September, 2004. Further, alleges that the



name and logo of GSK are printed on the label of the drug when GSK is purchaser and not manufacturer thus the same is in breach of Drugs and Cosmetics Rules, 1945 (hereinafter referred to as 'the 1945 Rules'). Accordingly, clarification was sought from GSK by letter dated 15.07.2003, thereafter GSK furnished no clarification by its letter dated 19.07.2003 with regard to the issue in question but subsequently furnished clarification by letter dated 20.08.2003 stating that logo of GSK appears on labels of drugs manufactured by other companies because the product is marketed by GSK and labelling is mandated as per Rules 96 and 97 of the 1945 Rules. Further, by logo additional information is furnished to the customers that product is marketed by GSK manufactured by a company other than GSK under a third party manufacturing agreement but the product continues to be of the same high quality and standard that our customers used to. After seeking clarification, it is alleged that by this act of the GSK and other companies there is loss to government revenue, as, when they manufactured drug in their own licence factory or get their product manufactured in other licensee's factory under loan licence they have to deposit prescribed amount under the Drugs and Cosmetics Act, 1940 and Rules 1945 in government account towards licence fee, inspection fee and additional product approval fee but under



third party manufacturing agreement government gets no fee. Further, when drug is manufactured in their own licence factory they have certain legal obligation and responsibility but when they get their product manufactured under third party manufacturing agreement they are free from those legal obligations thus GSK has probably resorted to the unfair practice of third party manufacturing. Further, there is no provision in the 1945 Rules where name and logo of intended purchaser could appear on purchased drug, thus Rules 96 and 97 of the 1945 Rules stand violated which mandates labelling of drugs but label comes within the purview of manufacture as per Section 3(f) of the Drugs and Cosmetics Act, 1940 but then GSK is not manufacturer of drug in question. Further, by labelling it the Doctors and customers get misled that drug is being manufactured by GSK which violates Section 17(c) of the Drugs and Cosmetics Act, 1940. Further, GSK also availed the manufacturing facility of Dr. Reddy to get their product manufactured under third party manufacturing agreement but without any legal obligation under 1945 Rules.

5. Learned counsel for the petitioner submits that from bare perusal of the allegation as alleged in the complaint, it would manifest that the allegation hinges around the fact that GSK being purchaser of medicine from Dr. Reddy Laboratories is using its



name and logo on the label which is an offence under Rules 96 and 97 of the 1945 Rules, further by this act of GSK the government is put to loss in terms of revenue, the Doctors and the intending customers are misled thinking that the drug in question is being manufactured by GSK when it is not the case and labelling as incorporated under Rules 96 and 97 of the 1945 Rules comes within the definition of manufacture as per Section 3(f) of the Drugs and Cosmetics Act, 1940 when GSK is not the manufacturer of the drug in question.

6. Learned counsel for the petitioner submits that it absolutely does not stand to reason that on what basis it is being alleged in the complaint that the government is put to loss when the manufacturer of the drug is paying all the requisite fee in terms of the Act and the Rules. It is further submitted that for the same drug the government cannot charge twice i.e. once from Dr. Reddy and thereafter by GSK. It is next submitted that the label on the drug is clear that the product is being manufactured by Dr. Reddy Laboratories and is being marked by GSK. It is thus submitted that it cannot be alleged that the labelling of the drug by using the name and logo of GSK is being done in order to mislead the Doctors and the intending customers. It is submitted that GSK is a very reputed British Company and has its brand name world over



and thus would not indulge in any act which would bring disrepute to the brand. It is further submitted that the logo and the name of GSK is being used by way of additional information to the customers that they be sure of the fact that though the drug is being manufactured by some other company but since it is being marketed by GSK as such the drug is maintaining the high quality which is required.

7. Learned counsel for the petitioner submits that the petitioner in the present application is the Managing Director of GSK and is not responsible for the day-to-day affairs of the company. It is further submitted that even the complaint petition does not specifically allege with regard to the role of the petitioner in the company at the time of the alleged occurrence as such rigors of Section 34 of the Drugs and Cosmetics Act, 1940 will not apply, which is with respect to the offences by companies.

8. Learned counsel for the petitioner next relies on an order passed by this Court in Cr. Misc. No. 30516 of 2017 (Deepak Shanti Lal Parekh @ Deepak Parekh Vs. The State of Bihar) to submit that the present case is also similar to the case of Deepak Shanti Lal Parekh who had moved before this Court in Cr. Misc. No. 30516 of 2017 and the Court after recording in detail the submissions of the learned counsel for the petitioner quashed the



order of cognizance. It is thus submitted that the submissions made in Cr. Misc. No. 30516 of 2017 is adopted in the present case also.

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

10. Considering the submissions made by the learned counsel for the petitioner and taking into consideration the order dated 10.10.2023 in Cr. Misc. No. 30516 of 2017 and the fact that in the complaint petition there is no specific allegation with respect to the petitioner alleging his role in the company at the time of the occurrence, the order dated 27.08.2004 passed in Complaint Case No. 1005(C) of 2004 by the learned Chief Judicial Magistrate, Saharsa whereby cognizance of the offence against the petitioner has been taken under Section 27(d) of the Drugs and Cosmetics Act, 1940, is hereby quashed.

11. 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

