

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9153 of 2019**

Arising Out of PS. Case No.-1197 Year-2004 Thana- SAHARSA COMPLAINT CASE
District- Saharsa

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Kal Sundaran S/o N. Iyer Subramanian, the then Managing Director of M/s
Glaxo Smithkline Pharmaceuticals Ltd., having its registered office at M/s
252, Dr. Annie Basant Road, P.S - 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 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.

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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 08.10.2004 passed in
Complaint Case No. 1197(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 and subsequent amendment read with
Sections 17(b), 17(c), 18(a)(i), 18(a)(iv), 18(b) and 18(c) of the
Drugs and Cosmetics Act, 1940.



3. Learned counsel for the petitioner submits that the complainant alleges that on 07.07.2003 the premises of M/s Shivshakti Medical Agency, Bangaon Road, Saharsa who holds valid Drug Wholesale Licence was inspected when disposal of drugs manufactured by M/s Remidex Pharma Pvt. Ltd. (in short 'Ramidex') 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 mentioned in the inspection note. It is further alleged that when the premises was again inspected on 28.01.2004 minimum quantity of drug in question along with other drugs were seized. The drugs manufactured by Remidex and marketed by GSK seized were Depandal M Tablet, Depandal M Suspension 60 ml. three in numbers having expiry in between March, 2006 to January, 2007. It is next alleged that the name and logo of GSK are printed on the label of the drug which was in breach of the Drugs and Cosmetics Rules, 1945 (hereinafter referred to as '1945 Rules') as it breaches Rule 96 and 97 of the 1945 Rules. Further, GSK clarified on query that logo of GSK appearing on the bottle cap is only to inform its customers that a product which they are familiar with but which is manufactured by a company other than GSK under a third party manufacturing agreement continues to be of the same high quality



and standards which our customers used and thus has not violated any provisions of the Drugs and Cosmetics Act, 1940 or the 1945 Rules. It is alleged that the Remidex also furnished clarification that Dependal is manufactured by them and logo of GSK appears as GSK markets the product also that the name of the manufacturer is clearly visible on the packaging of the product and thus consumer will not be misled into believing that the product is manufactured by GSK. After seeking clarification, it is alleged that in 1945 Rules, there is no provision under which the name and logo of intended purchaser who purchases drugs from the manufacturer could appear on the purchased drug. Further, the labelling of drugs is covered under Rules 96 and 97 of 1945 Rules and labelling comes within the definition of manufacture as per Section 3(f) of the Drugs and Cosmetics Act, 1940, hence, Rules 96 and 97 of 1945 Rules concern the manufacturer of the drug and not the purchaser, thus, label by GSK violates Rules 96 and 97 of 1945 Rules and thus attracts provision of Section 17(b) of the 1940 Act. Further, labelling also violates Section 17(c) of the Drugs and Cosmetics Act, 1940 as the Doctors and the customers are misled into believing that these are the products of GSK. Further, there is no provision in the 1945 Rules permitting third party manufacturing agreement. Further, when the product is



manufactured under third party manufacturing agreement bypassing the provision of loan licences the government is put to revenue loss, next alleges that when drugs are manufactured in their own licenced factory or get their products manufactured in other licensee's factory under loan licence, they have certain legal obligations and responsibilities under 1945 Rules but there is no such responsibility when the product is manufactured under third party manufacturing agreement.

4. Learned counsel for the petitioner submits that from bare perusal of the allegation as alleged in the complaint, it would manifest that prima facie no offence is made out against the petitioner and in sum and substance the allegation against the company GSK is that drug Dependal is being manufactured by Remidex and is being marketed by GSK but then GSK is using its name and logo on the drug which violates Rules 96 and 97 of the 1945 Rules. Further, according to Section 3(f) of the Drugs and Cosmetics Act, 1940 labelling comes within the purview of manufacture as such whenever any labelling is done on a drug it is presumed that it is by the manufacturer but then in the present case the GSK uses its name and logo as label on the product creating an impression that the drug is being manufactured by GSK when it is not the case. Further that by indulging in such act the government



is put to revenue loss and at the same time Doctors and the intending purchasers of the medicine are also misled to believe that the medicine they prescribe and purchase is being manufactured by GSK.

5. Learned counsel for the petitioner submits that GSK is a reputed British Company and will not indulge in any activity which would bring disrepute to the brand. It is further submitted that the medicine on which the name and logo of GSK is being used merely records that it is being marketed by GSK whereas the name of the manufacturer is also recorded, as such, it cannot be alleged that merely using the logo and name of GSK the Doctors and the intended customer would be misled to believe that the medicine has been manufactured by GSK. It is next submitted that there is no question of putting government to any revenue loss as whatever medicine is being manufactured by Remidex for that Remidex is paying all the fee required under the Act and the Rules to the Government. It is submitted that Rules 96 and 97 of the 1945 Rules mandates labelling but then neither the Drugs and Cosmetics Act nor 1945 Rules prohibit marketing by a company of a product of another company. It is further submitted that since GSK is marketing the product of Remidex and if GSK would not have used its logo and name showing that the product is being



marketed by GSK then perhaps the same would have been offence under Rules 96 and 97 of the 1945 Rules.

6. Learned counsel for the petitioner next submits that the sole ground on which this application can be allowed is that the petitioner being the Managing Director of the Company is not alleged in the complaint petition that he was responsible for the affair of the company on day-to-day basis to attract the rigors of Section 34 of the Drugs and Cosmetics Act, 1940 which relates to offences by companies. It is further submitted that the complainant also in the complaint petition does not allege that petitioner being the Managing Director is responsible for the affairs of the company on day-to-day basis. Learned counsel next submits that even Section 27(d) of the Drugs and Cosmetics Act, 1940 in the nature of the allegation as alleged in the complaint petition is not made out against the petitioner.

7. Learned counsel for the petitioner 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** whereas the Hon'ble Supreme Court 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.....”

8. Learned counsel for the petitioner next relies on an order of this Court dated 10.10.2023 in Cr. Misc. No. 30516 of 2017 (Deepak Shanti Lal Parekh @ Deepak Parekh Vs. The State of Bihar) to submit that in the said case also the allegations were similar and the cognizance order was quashed.

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

10. 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 allege against the petitioner about his role in the company, the order dated 08.10.2004 passed in Complaint Case No. 1197(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 and subsequent amendment read with Sections 17(b), 17(c),



18(a)(i), 18(a)(iv), 18(b) and 18(c) 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

