

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 851 OF 2023

Vikram Ambalal Vakil & others

Applicants

Versus

The State of Maharashtra

Respondent

Mr. D. R. Jethliya and Mr. Atit Thakore, Advocates for the applicants.

CORAM : R. M. JOSHI, J.

DATE : 21st AUGUST, 2023.

PER COURT :

1. This application is filed under Section 482 of the Code of Criminal Procedure for quashment of SCC No. 1/2012 pending before learned Judicial Magistrate First Class, Corporation Court, Aurangabad.

2. It is the contention of learned counsel for applicants that applicants No.1 and 2 were partners of M/s Priyal Pharma and applicant No.3 was working as Manufacturing Chemist and applicant No. 4 was the Quality Control Chemist in the said firm. It is his contention that the said partnership firm has been dissolved in the year 2016. It is alleged that the applicants are not responsible for

conduct of day to day business of the firm and were not incharge of the business of the firm. There is no dispute made about the fact that the complainant had purchased sample of Azithromycin Oral Suspension "Aziros-200" 15 ml. The said sample was sent to the Government Analyst, Drug Control Laboratory, Maharashtra State, Aurangabad in Form No. 18 on 29th July, 2011. Its report was received on 13th September, 2011. In the said report, it was found that the drug seized was not of standard quality. The said report was communicated to M/s Priyal Pharma on 1st October, 2011. The complainant thereafter visited the premises of applicant No. 2 as well as premises of M/s Priyal Pharma at Ahmedabad for obtaining information. The necessary information was provided by accused M/s Priyal Pharma. Learned Trial Court issued process against the accused by order dated 2nd January, 2012.

3. Learned counsel for applicants further submits that there is no averment in the complaint about the present applicants being responsible for day to day affairs of the partnership firm or were incharge for conduct of business at the time of commission of offence. He further submits that in the absence of such averment being made in the complaint, the complaint deserves to be dismissed.

He placed reliance on judgment of Hon'ble Apex Court in the case of Lalankumar Singh and others Vs. State of Maharashtra, MANU/SC/1301/2022, judgment of this Court in case of Mahendra Verma and others vs. State of Maharashtra, MANU/MH/1454/2021. It is his further submission that the learned Trial Court has not applied its mind to the facts of the case while issuance of process. It is his submission that even the learned Trial Court has not signed the said order. By drawing attention of Court to the addresses of the present applicants, it is submitted that they are residents of Ahmedabad and without conducting any enquiry under Section 202 of the Code of Criminal Procedure, process came to be issued against them which is not tenable. To support this contention, he placed reliance on judgment of this Court in the case of M. R. Wani & another vs. State of Maharashtra in Criminal Writ Petition No. 965/2021.

4. Learned APP supported the impugned order and opposed the application for quashment. He submits that when notice was issued to M/s Priyal Pharma for supply of documents, the applicants did not make the documents available. Learned counsel for the applicants opposed this contention by drawing attention of the Court

to the reply dated 11th October, 2021 given to the Drugs Inspector by M/s Priyal Pharma.

5. As far as quashment of proceeding is concerned, reference can be made to the judgment of the Hon'ble Apex Court in case of State of Haryana and others vs. Bhajan Lal and others, **AIR 1992 Supreme Court Cases 335** wherein scope of the powers of High Court under Section 482 of Code of Criminal Procedure or Article 226 of the Constitution of India, to quash proceeding is considered in detail. It is held therein that High Court should not embark upon inquiry into merits and demerits of the allegations. However, quashment may be permissible in following cases :-

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

- (4) *x x x*
- (5) *x x x*
- (6) *x x x*
- (7) *x x x*

Thus, law in this regard is fairly settled to say that if the complaint on the face of it fails to make out any offence, quashment thereof is permissible. The Court is not expected to sift and weigh evidence at this stage. In the instant case, though it is sought to be contended that as contemplated by Section 34 of Drugs and Cosmetics Act, there is no averment in the complaint about the present applicants being incharge and responsible for conduct of business of the company, prima facie perusal of the complaint shows that accused No. 3 and 5 were present at the time of visit of the Drugs Inspector in the premises of accused M/s Priyal Pharma on 11th October, 2011. Instant case is not the one wherein there is absolutely no averment in the complaint with regard to accused No. 3 and 4 being responsible for the affairs of the partnership firm. Apart from this, perusal of the application filed before this Court clearly shows that applicants No. 1 and 2 were partners of M/s Priyal

Pharma and applicant No. 3 was working as Manufacturing Chemist and applicant No. 4 was working as Quality Control Chemist in the said firm. These averments in the present application are more than sufficient to show that the present applicants were concerned with the business and activities of manufacturing drugs of M/s Priyal Pharma. Perusal of judgment in the case of Lalankumar (supra) clearly shows that there was absolutely no other averment in the complaint except stating the fact that the accused is director of the company. In view of the said fact, it was held by the Hon'ble Apex Court that considering the provisions of Section 34 of the Drugs and Cosmetics Act, the vicarious liability cannot be fastened upon the accused on the basis of such bald statement. In respectful view of this Court, since there is pleading in the complaint about presence of the accused at unit of company and as there is no denial of the fact that they were not responsible for the affairs of the company as stated in the present application, in view of this Court, the applicants are not entitled to take any benefit of the said judgment. Prima facie perusal of complaint does not show that no offence is made out against accused under provisions of the Act. Hence, this is not a fit case to quash proceedings.

6. However, regarding non-compliance of Section 202 of the Code of Criminal Procedure while issuance of process, there is substance in the contention of learned counsel for the applicants that the provisions of Section 202 of the Code of Criminal Procedure are mandatory in nature and ought to have been complied in this case. Perusal of title of the complaint demonstrates that accused persons were residents of the place which was beyond the jurisdiction of the learned Magistrate. In such circumstances, it was not open for the learned Magistrate to issue process against them without conducting an enquiry or calling upon the concerned police to conduct enquiry. Since the accused were not residing within the jurisdiction of the Court, it was obligatory on the part of the learned Magistrate to postpone issuance of process against those accused till such enquiry is conducted. It is also brought to the notice of the Court that order passed by the learned Magistrate is not reasoned order. Needless to say that order of issuance of process need not be a detailed order however, it should reflect that the learned Magistrate has applied mind. In both cases, it would not be open for this Court to quash the complaint but the complaint needs to be relegated back to Trial Court for issuance of process afresh.

7. Hence, by quashing order of issuance of process, matter deserves to be remanded to the concerned Magistrate for compliance of Section 202 of the Code of Criminal Procedure and to pass order of issuance of process indicating application of mind. Hence, Order dated 2nd January, 2012, passed by the learned Magistrate issuing process against the applicants is hereby set aside. The learned Magistrate is directed to comply with the mandatory provisions of Section 202 of the Code of Criminal Procedure before issuance of process and to pass order in accordance with law. Application is disposed of in aforesaid terms.

(R. M. JOSHI)
Judge

dyb