IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.06.2023

Pronounced on : 14.07.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.20151 of 2022
and
Crl.M.P.Nos. 13244 & 13245 of 2022

Sanjeev Wasan ... Petitioner / Accused No.3

Vs.

Union of India
Rep by its Drugs Inspector,
C.Arunachalam,
Office of the Deputy Drugs Control (India),
Central Drugs Standard Control Organization,
South Zone, 2nd Floor, Shastri Bhawan Annex,
Chennai – 600 006. ... Respondent / Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.6 of 2022 pending on the file of the learned 3rd Additional Sessions Judge, City Civil Court, Chennai and quash the complaint.

For Petitioner	:	Mr.Abudu Kumar Rajarathinam Senior Counsel For Mr.V.Johnson Yuvaraj
For Respondent	:	Mr.B.Sudhir Kumar, SPC.

ORDER

Seeking to quash the proceedings in C.C.No.6 of 2022 pending on the file of the learned 3rd Additional Sessions Judge, City Civil Court, Chenna, the petitioner is before this Court with this petition.

2. The gist of the case is that 1st Accused Company viz., M/s.Maxmed Lifesciences Pvt.Ltd., at Uttarakhand, is a manufacturer of the drug I.e. Cloxacillin Capsules I.P.250 mg, Batch No; MBC-18017, D/M: 04/2019, D/E-03/2020. The 1st accused Company distributed the said drugs to various places. On 09.12.2019, the then Drugs Inspector, lifted samples of Drug "Cloxacilin Capsules I.P. 250 mg" Batch No. MBC-18017, for test and analysis from the premises of Medical Store K.P. Park Urban Primary Health Centre (UPHC), Corporation of Chennai, situated at old Slaughter House, Choolai, Chennai and sent for analysis. The Government Analyst, Chennai, vide its Report dated 23.12.2019, in Form 13 has declared the drug in question as "Not of Standard Quality and Spurious Drug", as the sample doesn't conform to I.P. Standards with respect to description and test for Identification of "cloxacillin sodium". In this regard, the present impugned complaint has been filed against the petitioner, as he is one of the Director of the 1st accused Company for the offences under Sections 17-B and 18(a)(i) r/w s.16 and s.27(c) of Drugs and Cosmetic At, 1940. The said complaint taken on file in C.C.No.6 of 2022, which was pending on the

file of learned 3rd Additional Sessions Judge, City Civil and Sessions Court Chennai.

3. Mr.Abudu Kumar Rajarathinam, the learned Senior Counsel appearing for the petitioner would submit that a careful reading of the impugned complaint would clearly show that there are no specific allegations as against the petitioner and he made an accused just on the capacity that the petitioner is the Director of the Company. The petitioner further submits that admittedly he is not in charge of the day-to-day affairs of the Company and as such, the impugned complaint as against the petitioner is against the prevailing law in force. It is a settled proposition of law that no individual shall be liable to be prosecuted just for being the Director of the company, there should be specific averments made against each and every individual, if they have be prosecuted. It is submitted that as per Section 34 of Drugs & Cosmetics Act, 1940, every person who at the time of offence was committed, was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against the and punished accordingly.

4. He would further submit that a bare reading of the impugned complaint is more than sufficient to state that the petitioner neither in charge nor responsible Further, there is specific allegation that the petitioner is in charge and responsible for the conduct of business of manufacturing and production of

drugs under Drugs and Cosmetics Act 1940. There is no reference to the actual role played by the petitioner in the alleged offence, which is the subject matter of the instant case and in the absence of any such specific role being attributed to the petitioner, he cannot be made an accused person merely on the ground that he is the Director of the manufacturing company. The respondent nowhere in the impugned complaint has specifically averred that at the time when the offence was committed, the person accused was in charge of manufacture and sale of the drug in question. The manufacturing of the drug is under the direct supervision of the personnel/technical staff appointed by the Company. Further he would submit that the impugned complaint before the learned 3rd Additional Sessions Judge, City Civil Court, is bad in law. As per the provisions of the Act, the Sessions Court alone have the power to try the offences.

5. The learned Senior Counsel would further submit that the Technical Director Mr. Dharmender Kumar Singh is responsible under Section 34 of the said Act, for manufacturing of drugs and therefore, no liability can be attributed to the petitioner. The respondent has failed to prove and establish the alleged actual role played in the commission of alleged offence i.e. manufacturing of spurious drug and as such, in the absence of any such specific proof attributed to the person arrayed as an accused, no criminal proceedings can be initiated against him. Further, the Joint Investigation Report would reveal that the petitioner neither in charge nor responsible for the day-to-day activities of the

Company and the drug was manufactured under the supervision of technical persons and Technical Director i.e., Dharmender Kumar Singh , who passed away in 2021, due to medical ailment. The learned Senior Counsel for the petitioner further submitted that the Company has supplied drugs to the Tamil Nadu Medical Services Corporation Limited and they upon testing the drug, satisfied, distributed the drugs.

6. The learned Senior Counsel, in support of his contentions, relying on the Judgment of the Hon'ble Supreme Court in ***Ravindranatha Bajpe Vs. Mangalore Special Economic Zone Ltd. & Others Etc.***, reported in ***AIR 2021 SC 458***, and would contend that summoning of an accused in a criminal case is a serious matter. Criminal Law cannot be set into motion as a matter of course. Further, the Hon'ble Apex Court in the Judgment in ***Shanmugam and others vs. Inspector of Police and Another***, reported in ***(2019 SCC OnLine Mad 2667)***, has held that taking cognizance is a judicial act which requires application of mind and the Court must give some reasons for taking cognizance. Failing which, the cognizance itself becomes bad in the eye of law. Further, relying on the Judgment of the Apex Court in ***Anand Kumar Mohatta and Anr Vs. State (Govt. of NCT of Delhi) Department of Home and Anr*** reported in ***2019 (1) JIC 1 (SC)***, would contend that High Court can analyse the material to secure the ends of justice and to prevent the use of process of any Court.

7. The learned Senior Counsel, in support of his contentions, relied on the Judgment of the Hon'ble Supreme Court in ***State of Haryana Vs. Brij Lal Mittal and Others*** reported in ***(1998 (5) SCC 343)***, wherein in paragraph No.8, it has been held as follows:-

> 8. Nonetheless, we find that the impugned judgment of the High Court has got to be upheld for an altogether different reason. Admittedly, the three respondents were being prosecuted as rectors of the manufacturers with the aid of Section 34(1) of the act which reads as under:
>
> > "OFFENCES BY COMPANIES: (1) Where an offence under this Act has been committed by a company/every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be quality, of the offence and shall be liable to be proceeded against and punished accordingly. Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without its knowledge or that he exercised at due diligence to prevent the commission of such offence."
>
> It is thus seen that the 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. From the complaint in question we, however, find that except a baid statement that the respondents were directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were in-charge of the company and also responsible to the company for the conduct of its business.

8. The learned Senior Counsel referring to the Judgment of this Court in Crl.O.P.(MD)Nos.23409 & 23434 of 2016 submitted that in the absence of any specific averments against the Director that he was incharge of and had direct control of the day-to-day activities with specificity, such person cannot be made as an accused vicariously. Further, when the power of attorney has been constituted, who was incharge of the day-to-day activities of the Company, then, it cannot be said that the Director is vicariously liable. Further submitted that in the case of Zee Laboratories Ltd, this Court finding that the Managing Director did not involve in day-to-day affairs of the Company, he cannot be fastened with the liability of prosecution. Further, placing reliance on the Judgment of the Apex Court in ***Gangula Ashok and Another Vs. State of A.P.,*** reported in ***(2000) 2 Supreme Court Cases 504,*** the learned Senior Counsel submitted that Special Court under this Act is essentially a Court of Sessions and it can take cognizance of the offence, when the case is committed to it by the

Magistrate in accordance with the provisions of the Code.

9. The learned Senior Counsel for the petitioner, referring to the cognizance order, dated 08.02.2022, he submitted that the order is without application of mind. The orders states as follows, "complaint and records perused. Taken on file. For further proceedings adjourned to 24.02.2022", which is nothing but rubber stamped order. The Apex Court in the case of ***Pawan Kumar Sharma Vs. State of Uttaranchal i***n ***Crl.Appeal No.1692 of 2007 (ASLP (Crl.) No.4701 of 2007*** given distinction between an order taking cognizance and an order issuing process. The Magistrate taking cognizance of offence must show there is "sufficient ground for proceeding", which suggest that an opinion is formed only after due application of mind and the opinion is to be stated in the order itself, otherwise, it would amount to a rubber stamped order and the Apex Court has deprecated the practice of taking cognizance through rubber stamped orders. The learned Senior Counsel further submitted that in this case, A2 / Managing Director had given power of attorney to A4 / Dharmendra Kumar Singh, who is a technical person to carry-out the Management of the Company and its day-to-day affairs, who was incharge all its activities. This power of attorney was given on 27.05.2009. Thus, looking at the case from any angle, the continuation of criminal case against the petitioner would amount to abuse of process of law and prayed for quashing of the case.

10. Mr.B.Sudhir Kumar, the learned Senior Panel Counsel, appearing for the respondent would submit that one D.Hemalatha, Drugs Inspector of Central Drugs Standard Control Organization, South Zone, drawn legal sample of the drug, on 09.12.2019. She is the investigation officer for the same. As per Office Order No.F.No.A22013/01/2017-D, dated 13.08.2020, issued by the O/o. Drugs Controller General of India, Central Drugs Standard Control Organization, Ministry of Health and Family Welfare, Directorate General of Health Services, Government of India FDA Bhavan, ITO, Kotla Road, New Delhi – 110002. The Manufacturer of the drug 'Cloxacillin Capsules I.P. 250Mg', Batch No.: MBC-18017, D/M: 04/2018, D/E-03/2020, running under the name and style of M/s Maxmed Lifesciences Pvt Ltd., Factory situated at. Plot No.54, Sector IIDC, SIDCUL, Rudrapur (Uttarakhand) and duly licensed by State of Uttarakhand . The said Hemalatha, the then Drugs Inspector of Central Drugs Standard Control Organization, South Zone, Chennai, received the test report on Form-13 (in triplicate) from CDTL, Chennai vide Report No. CDTL/375/Form-18/2019-20/2472, dated 23.12.2019 with respect to the drug 'Cloxacillin Capsules I.P. 250Mg', Batch No.:MBC-18017, D/M: 04/2018, D/E-03/2020, wherein the Government Analyst declared the said drug as “Spurious Quality” as the sample does not conform to IP standards with respect to Description and Test for Identification of “Cloxacillin Sodium” .

11. The then Drugs Inspector of Central Drugs Standard Control Organization South Zone, Chennai, received a copy of letter from the Director I/c, Central Drugs Laboratory, Calcutta-700 016 vide letter No.2-1/2019-SS/CC-484/1375, dated 23.03.2020 stating that the sample does not conform to I.P. with respect to the test for identification and assay/content of Cloxacillin and is also not of standard quality for the reason stated under 'Description'. The sample is deemed to be spurious under section 17-B of Drugs and Cosmetics Act & Rules and also enclosed the test report in Form-2 received from the Director i/c, Central Drugs Laboratory, Calcutta. M/s Maxmed Lifesciences Pvt Ltd., Factory situated at. Plot No.54, Sector IIDC, SIDCUL, Rudrapur (Uttarakhand) was manufacturing for sale and distributing the impugned drug i.e 'Cloxacillin Capsules I.P. 250mg', which was reported as “Not of Standard Quality and Spurious Drug”, Batch No.: MBC-18017, D/M: 04/2018, D/E-03/2020, as such ,the Accused Nos. 1,2,3& 4 committed an offence Under Section 17-B and 18(a)(i) read with Section 16 and punishable U/S-27(c) of Drugs and Cosmetic Act, 1940. Hence, the complaint was filed before the Hon'ble III Additional Session and City Civil Court, Chennai, on 08.12.2021, vide CC.No. 06 of 2022.

12. The Petitioner is the Director of the Pharmaceutical drug product manufactured company i.e. M/s Maxmed Lifesciences Pvt Ltd., and responsible person for the manufacturing and conduct of business of the said company at the time when the drug in question was manufactured i.e. Month of April 2018. From

the Memorandum of Association and Article of Association it is proved that the petitioner is one of the Directors of A1 Company. The petitioner along with A2, who is the Managing Director of A1 Company, who is none other than the petitioner's father, were having control over the policy and the day-to-day affairs of A1 Company. The petitioner, as Director, had benefited in the financial aspect in the sale of drug viz., “Cloxacillin Capsules I.P250mg”. Further. The petitioner holds shares in the A1 company. The petitioner along with other accused are equally responsible for the business of the Company and also liable for the misdeeds committed by the Company in manufacturing and supply of spurious drugs. Having enjoyed the benefit of spurious drug, now the petitioner attempt to wriggle out on technical plea. The learned counsel, in support of his contentions, relied on the Judgment of the Hon'ble Apex Court in the Judgment in Harshad S.Mehta and Others vs. State of Maharashtra reported in 2001 (8) SCC 257, and would contend that the Special Court enjoys all the powers of Court of original jurisdiction and it hold dual capacity and powers both of Magistrate and Court of Sessions depending upon the stage of the case. The relevant portion of the Judgment reads as follows:-

> “22. The Special Court may not be a criminal court as postulated by Section 6 of the Code. All the same, it is a criminal court of original jurisdiction. On this count the doubt, if any, stands resolved by the decision of Constitution Bench of this Court in A.R. Antulay v. Ramdas Sriniwas Nayak & Anr. ([1984] 2 SCC 500). In Antulay's case the Constitution Bench said that shorn of all

embellishment, the Special Court is a court of original criminal jurisdiction and to make it functionally oriented some powers were conferred by the statute setting it up and except those specifically conferred and specifically denied, it has to function as a court of original criminal jurisdiction not being hide bound by the terminological status description of Magistrates or a Court of Session. Under the Code, it will enjoy all powers which a court of original criminal jurisdiction enjoys save and except the ones specifically denied."

46. It is not possible to accept that the legislature could ever intend to create such a anomalous position where a Magistrate will have power to grant pardon at pre-cognizance stage but after cognizance the Special Court will not have that power. It makes no sense. It is not possible to attribute such an absurdity to the legislature. It does not flow from the provisions of the Act. For this purpose we are assuming that at pre-cognizance stage, all aspects are required to be dealt with by normal courts although as dealt with later, in our view, at that stage too power vests in Special Court.

13. Further, the learned Senior Panel Counsel relying on the Judgment of the Apex Court in ***Dinesh B Patel and Others Vs. State of Gujarat and Another*** reported in ***(2010) 11 SCC 125*** and would further contend that the matter involves an offence, which has a direct impact on the public health and therefore, it will be open to the petitioner to agitate all the points available to

him before the trial Court. The relevant portion of the Judgment reads as follows:-

> "10.Under the peculiar circumstances of this case and realising the seriousness of the allegations, we would not take a technical view based on pleadings in the complaint. Mr Raichura contended that as per the settled law by this Court in complaints under Section 138 of the Negotiable Instruments Act, 1881 against a company and its directors also specific averment about the active role of directors in running the company has to be made, failing which the directors cannot be proceeded against. The same logic should apply even in the present case. We cannot agree. Firstly, the language of Section 34(2) of the Act substantially differs from the language of Section 141 of the Negotiable Instruments Act. Secondly, here we are dealing with an offence which has a direct impact on public health. We, therefore, would choose not to interfere with the order of the High Court. It will be open for the Directors to show to the trial court that they had nothing to do with the manufacturing process and, therefore, they should not be held liable under Section 34(2) of the Act. "

14. Further, placing reliance on the Judgment of the Apex Court in the case

of ***Anand Kumar Mohatta And Anr. Vs. State (Govt.of NCT of Delhi), Department of Home and Anr*** in ***SLP (Crl.)No.3730 of 2016*** in ***Criminal Appeal No.1395 of 2018*** submitted that the Apex Court time and again reiterated the principles of Bajanlal's Case and given 7 guidelines on which circumstances, power under Section 482 can be invoked. The case on hand does not fall under any of the guidelines. Further he submitted that in the case of ***Dinesh B.Patel and Others Vs. State of Gujarat and Another*** reported in ***(2010) 11 Supreme Court Cases 125***, wherein in the case of ***State of Haryana Vs. Brij Lal Mittal and Others*** reported in ***(1998 (5) SCC 343)*** relied by the Senior Counsel has been considered and thereafter held that Drugs and Cosmetics Act deals with offences which have direct impact on public health and that the Director can be proceeded. Hence, the learned Senior Panel Counsel for the respondent prays for dismissal of the petition.

15. By way of reply, the learned Senior Counsel for the petitioner submitted that the citations relied on by the learned Senior Panel Counsel would not be applicable to the facts and circumstances of the present case. As regards ***Harshad S.Mehta*** case, it was the case under the Securities Act. Further, with regard to ***Dinesh B Patel's*** case ***(2010) 11 SCC 125*** (cited supra), he submitted that though it has referred to ***Brij Lal Mittal*** case, it clearly made a distinction stating that the factual position in both the cases are quite different. Further found the directors in ***Dinesh B Patel's*** case privy to manufacturing of

medicine by the Company, he further submitted that in the present case there is no such averments, on the other hand the entire manufacturing power was entrusted with responsibility to A4 / Dharmender Kumar Singh.

16. I have heard the learned counsels appearing on either side and perused the materials available on record.

17. It is not in dispute that the petitioner, who is arrayed as A3, since he happens to be Director of the first accused Company viz., M/s.Maxmed Lifesciences Pvt.Ltd., at Uttarakhand, a manufacturer of the drug i.e. "Cloxacillin Capsules I.P.250 mg", The 1st accused Company distributing the drugs to various places. On 09.12.2019, the then Drugs Inspector, lifted samples of Drug "Cloxacilin Capsules I.P. 250mg" Batch No. MBC-18017, for test and analysis from the premises of Medical Store K.P. Park Urban Primary Health Centre (UPHC), Corporation of Chennai, situated at old Slaughter House, Choolai, Chennai and sent for analysis. The Government Analyst, Chennai, vide its Report dated 23.12.2019, in Form 13, has declared the drug in question as "Not of Standard Quality and Spurious Drug", as the sample doesn't conform to I.P. Standards with respect to description and test for Identification of "cloxacillin sodium". In this regard, the present impugned complaint has been filed against the petitioner, as he is one of the Directors of the 1st accused Company, for the offences under Sections 17-B and 18(a)(i) r/w s.16 and s.27(c) of Drugs and

Cosmetic At, 1940. The said complaint taken on file in C.C.No.6 of 2022, which was pending on the file of learned 3rd Additional Sessions Judge, City Civil and Sessions Court Chennai.

18. On perusal of the complaint it is seen that the complaint consist of 30 paragraphs, in paragraph 30 it is found that A1, A2, A3 and A4 had committed an offence under Section 17-B and 18(a)(i) r/w Section 16 punishable under Section 27(c) of Drugs and Cosmetics Act, 1940. There is no semblance of any other reference in respect of the petitioner / A3. Further, it is not in dispute that a power of attorney was executed by A2 / Managing Director, in favour of A4, who was the General Manager–Works of A1 Company. In the power of Attorney, dated 27.05.2009, the responsibilities and duties are enlisted. From this, it is seen that the power of attorney a technical person to check and satisfy that the product sent to the market comply with highest safety and manufacturing standard and to ensure that batch satisfy that the drugs so supplied meet the standard prescribed by law.

19. Further, to comply with the standards of manufacture as per the Drugs and Cosmetics Act and to comply with the various provisions of the Act, he was placed incharge and responsible for all the activities. Thus, it is clear that though the petitioner was the Director, he was never incharge of and was responsible for A1 Company for the conduct of its business. The petitioner

roped in on the strength of Drugs and Cosmetics Act. Section 34, which is in *pari materia* with Section 33 of the Companies Act. Section 17(1) of the Prevention of Food Adulteration Act, 1954; Section 141 of Negotiable Instruments Act and some more special Acts. The Apex Court in a catena of Judgments held that to rope in a person under vicarious liability, there must be specific overt act and the role played by the Directors to be clearly mentioned in the complaint. Mere reproduction of magical words would not suffice. The Three Judge Bench of the Apex Court in ***S.M.S. Pharmaceuticals Ltd Vs Neeta Bhalla And Anr*** reported in ***(AIR 2005 SC 3512)*** held that

> "19. In view of the above discussion, our answers to the questions posed in the Reference are as under:
>
> (a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied."

20. In this case, on a bare perusal of the complaint it is clear that there is absolutely no averments or any materials whatsoever manner against the

petitioner. There is no averment in Annexure-1 that the petitioner was in charge of day-to-day business of the Company and was the person responsible for the conduct of the business of the Company. The petitioner is the Chairman of the Company and simply because a person becomes Chairman or a Director of the Company does not mean that he is fully responsible for the day-to-day affairs of the Company. Vicarious liability can be inferred against a company or its Directors only after satisfying the condition under Section 34 of the Drugs and Cosmetic Act. Person made liable should be in charge of the company at the relevant time, which cannot be presumed from the complaint. Otherwise it may result in implication of innocent Directors, who have no connection with the offence and thereby cause miscarriage of justice. For the purpose of quashing a complaint prima facie case is the litmus test. The inherent jurisdiction under this code can be exercised to prevent "abuse of the process" of any Court. The Apex Court in ***Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque*** reported in ***(2005 (1) SCC 122)*** held as follows:

> "It would be an abuse of process of Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be

quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

In view of the above, this Court finds continuation of proceedings against the petitioner will be an abuse of process of Court, hence, inclined to quash the proceedings as against the the petitioner / A3 alone.

21. In fine, this Criminal Original Petition is allowed and the proceedings in C.C.No.6 of 2022 pending on the file of the learned 3rd Additional Sessions Judge, City Civil Court, Chennai, is hereby quashed as against A3 alone. Consequently, the connected miscellaneous petitions are closed.

14.07.2023

Index : Yes/No
Internet : Yes / No

To

1.The 3rd Additional Sessions Judge,
City Civil Court, Chennai

2.Mr.C.Arunachalam,
The Drugs Inspector,
Office of the Deputy Drugs Control (India),
Central Drugs Standard Control Organization,
South Zone, 2nd Floor
Shastri Bhawan Annex,
Chennai – 600 006.

3.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

VV2/MPK

CRL.O.P.No.20151 of 2022

14.07.2023