

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
Criminal Writ Petition No.2134 of 2018**

Paresh Chawla
S/o Mahendra Singh Chawla
Age-43, Occu.Service
33/2, A.B. Road, Pigdamber,
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... Petitioner

Versus

The State of Maharashtra
At the instance of R.V. Pongle.
The then Drugs Inspector,
Food & Drugs Administration (M.S.)
Solapur

... Respondent/
Ori. Complainant.

Mr Sanjeev Kadam a/w Raju M.Yamgar, Bharti Lokhade and
Prahsant Raul for the petitioner.
Mr AR Kapadnis, APP for Respondent/State.

Coram : R. N. Laddha, J.
Reserved on : 27 October 2023.
Pronounced on : 2 January 2024.

Order :

The petitioner (accused No.1), a director of Alpa Laboratories Limited (for short, 'the company'), has filed the present petition to quash and set aside the complaint bearing Regular Criminal Case No.445 of 2007 filed by the respondent

before the learned Judicial Magistrate First Class, Solapur, under sections 18(a)(i) read with 16(1)(a), 34 and 27(d) of the Drugs and Cosmetics Act, 1940 (for short, 'the Act'), and orders dated 10 December 2008 and 26 May 2010 whereby the learned Magistrate issued summons against the petitioner. He also seeks to quash and set aside the order dated 12 September 2017 passed by the learned Additional Sessions Judge, Solapur, in Criminal Revision Application bearing No.37 of 2017.

2. The company manufactured eye/ ear drops using the drug 'Ciprofloxacin' and sold them to Anupama Distributors, who supplied them to various stores. On 28 September 2005, the drug inspector drew a sample of this product, having batch No.VE-439, with a manufacturing date of July 2005 and an expiry date of June 2007, from the SCSM Hospital, Solapur drug store. On the same day, he sent a sealed portion thereof for testing to the Government Analyst at the Drug Control Laboratory, Mumbai. In his report dated 27 January 2007, the Government Analyst stated that the drug was not of standard quality and contained a colourless liquid with suspended particles visible to the unaided eye in normal daylight. After conducting an enquiry, on 11 April 2007, the drug inspector filed the impugned complaint. Consequently, the learned Magistrate summoned the petitioner and other accused by its Orders dated 10 December 2008 and 26 May 2010.

3. On entering an appearance, the petitioner and the co-accused filed an application (Exh.12) before the learned Magistrate for quashing the complaint for want of jurisdiction, which stood rejected by an Order dated 19 December 2016. Aggrieved thereby, the accused filed Criminal Revision Application No.37 of 2017 before the learned Additional Sessions Judge, Solapur, which stood dismissed by an Order dated 12 September 2017. Being aggrieved, the petitioner has filed the present petition before this Court.

4. I have heard Mr Sanjeev Kadam, the learned Counsel appearing on behalf of the petitioner, and Mr AR Kapadnis, the learned Additional Public Prosecutor appearing on behalf of the respondent-state, and perused the material placed on record.

5. Mr Sanjeev Kadam, the learned Counsel appearing on behalf of the petitioner, submitted that the respondent arraigned the petitioner as an accused without verifying whether he was the company's managing director or in charge of its day-to-day affairs or involved in the manufacturing process of the eye/ear drops. He submitted that there is no averment in the complaint to indicate the petitioner's role in committing the alleged offence. He further submitted that the learned Magistrate erred in issuing a summons against the petitioner as there is no formal order of issuance of a process. He further contended that the respondent did not store the samples in a cool place as required under the Act, and the lack of

such a storage facility may have resulted in the formation of particles in the product. To support his contentions, he relied upon the decision of *(i) Narendrakumar Dani Vs State of Maharashtra*¹; *and (ii) Lalankumar Singh Vs State of Maharashtra*². Further, the learned Counsel made a grievance that the learned Magistrate, without passing an issuance of process order, directly summoned the petitioner.

6. Mr AR Kapadnis, the learned Additional Public Prosecutor appearing on behalf of the respondent, submitted that the company, by its letter dated 21 March 2006, named the petitioner as the person responsible for the conduct of business and one Mr PC Soni as the person in charge of manufacturing the Ciprofloxacin eye/ ear drops. According to the information given by the company, the petitioner was arraigned as an accused. He invited the attention of this Court to section 34 of the Act to contend that the petitioner, being a director and person responsible for the company's conduct of business, was liable to be prosecuted for the offence.

7. This Court has given anxious consideration to the rival contentions and examined the record with reference to the applicable law.

8. Section 18(a)(i) of the Act prohibits the manufacturing and

1. 2001 (4) Mh.L.J. 341

2. 2022 SCC Online SC 1383

selling of any drug not of a standard quality. Section 27(d) of the Act prescribes the punishment for this offence. Section 34 of the Act provides for offences by companies. It holds the company and two categories of persons liable for the offence committed by the company under the Act. The first category of persons, as enumerated under sub-section (1) of section 34, includes those in charge and responsible for the company's conduct of business at the time of the commission of the offence. If a person in this category proves that the offence was committed without his knowledge or exercised all due diligence to prevent the commission of such offence, he would not be held guilty. The other category of persons, as enumerated under sub-section (2) of section 34, includes the director, manager, secretary or other officer of the company when the commission of the offence with the consent or connivance of such persons or its commission was attributable to any neglect on their part is proved.

9. The contention of the petitioner that the learned Magistrate directly summoned him without passing an issuance of process order is not disputed by the learned APP. The impugned summoning Orders dated 10 December 2008 and 26 May 2010 are difficult to approve since the petitioner was directly summoned without issuing the process order. In this respect, it is a settled position in law that before passing an order of issuance of process,

the Magistrate is required to apply his mind. The non-compliance of this step by the Magistrate may result in grave consequences and prejudice to the complainant. In such a situation, the respondent/complainant should not endure consequences due to the Magistrate's failure. This Court has not discussed or examined the other merits of the case, mainly because the Magistrate directly summoned the petitioner without issuing a process order. In the absence of such compliance, the impugned orders of summoning the accused would not be considered legal.

10. Given the above, the Orders dated 10 December 2008 and 26 May 2010 passed by the learned Judicial Magistrate First Class, Solapur in Regular Criminal Case No.445 of 2007, are quashed and set aside, and the learned Magistrate is directed to pass an appropriate order in accordance with the law. It is clarified that this Court has not examined the other aspects of the case, and the contentions of the parties are left open.

11. The petition stands disposed of accordingly in the above terms.

[R. N. Laddha, J.]