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Crl.O.P.No.22130 of 2023

In the High Court of Judicature at Madras

Reserved On : 30.1.2024	Delivered on : 01.2.2024
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Original Petition No.22130 of 2023
& Crl.M.P.Nos.15388 & 15389 of 2023

Mr.Paramjit Arora, Director,
M/s.Health Biotech Ltd.,
Unit II, Nalagarh Road,
Baddi, Dist. Solan,
Himachal Pradesh-173205

...Petitioner

Vs

State rep.by
The Drugs Inspector, Kottivakkam
Range, Office of the Assistant
Director of Drugs Control,
Zone IV, Chennai-6.

...Respondent

PETITION under Section 482 of the Criminal Procedure Code to
call for the records in C.C.No.526 of 2022 pending on the file of the
learned Chief Judicial Magistrate, Chengalpat and quash the same.

For Petitioner : Mr.Abudukumar Rajarathinam, SC
for Mr.V.Johnson Yuvaraj

For Respondent : Mr.A.Gopinath, GA (Crl.Side)



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ORDER

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This criminal original petition has been filed by the second accused to quash the proceedings in C.C.No.526 of 2022 on the file of the learned Chief Judicial Magistrate, Chengalpat.

2. The brief facts leading to filing of this case are as follows :

(i) The respondent had drawn sample of a drug manufactured by one M/s.Health Biotech Limited (A1) and it was sent for analysis to the Government Analyst on 30.5.2019. The Government Analyst declared that the sample was not of standard quality and that there was a violation of Section 18(a)(i) of the Drugs and Cosmetics Act, 1940 (for short, the Act) and the Rules framed thereunder.

(ii) Since the said sample was taken from a medical shop namely one M/s.Lakshmi Medicals, a show cause notice was issued along with the report of the Government Analyst. In turn, the proprietor of the said M/s.Lakshmi Medicals disclosed that the drug was purchased from one M/s.Kamalam Medical Corporation. In view of the same, a show cause notice was issued to the said M/s.Kamalam Medical Corporation along with necessary documents. In response to this notice, the proprietor of M/s.Kamalam Medical Corporation disclosed that the drug



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was purchased from one M/s.Gromax Health Care Private Limited.

(iii) Accordingly, a show cause notice was issued to the said M/s.Gromax Health Care Private Limited and their explanation was called for. Further, the said M/s.Gromax Health Care Private Limited informed that they had purchased the drug from the first accused - company under invoice dated 23.11.2018.

(iv) Thereafter, a show cause notice was issued to the first accused - company calling for explanation for contravention of Section 18(a)(i) of the Act. Along with the show cause notice, the Government Analyst's report was sent and a sealed portion of sample was also sent separately as mandated under Section 23(4)(iii) of the Act. The first accused - company was also requested to furnish various details. But, even after receipt of the notice, no reply was received from the first accused - company, which is the manufacturer of the drug. Hence, a reminder letter dated 14.8.2019 was sent to the first accused - company to offer an explanation for the show cause memo. Despite that, there was no response to the reminder letter. Further, yet another reminder dated 09.9.2019 was sent to the first accused - company.



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(v) On receipt of this reminder letter, a reply dated 18.9.2019 was received, in which, it was stated by the first accused - company that they are having a valid manufacturing licence issued by the State Licensing Authority and that they never manufactured nor marketed any product/drug, which is not of standard quality. The first accused - company also informed the respondent that they also tested the drug and it was found that the same satisfied all the requirements and was within the specified limits.

(vi) While giving the reply, the first accused - company did not furnish many of the details/particulars sought for by the respondent. Hence, the particulars were taken from the website of the Registrar of Companies, Chandigarh. It was found that the petitioner was the director of the first accused - company from the date of inception and therefore, he was arrayed as the second accused along with the first accused - company.

(vii) A sanction order was obtained from the Director of Drugs Control, Chennai-6 dated 11.11.2019. Thereafter, the complaint was filed by the respondent before the Chief Judicial Magistrate Court, Chengalpat on 17.12.2019 and it was taken on file in C.C.No.526 of 2022. This is put to challenge by the petitioner (A2) in this petition.



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3. Heard the learned Senior Counsel appearing on behalf of the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent.

4. The main ground that was urged by the learned Senior Counsel appearing on behalf of the petitioner is that the petitioner is not in any way involved in the day-to-day affairs of the first accused - company, that there were no specific allegations made against the petitioner in the complaint, that the requirements of Section 34 of the Act have not been satisfied and that therefore, the continuation of the proceedings as against the petitioner will result in abuse of process of court.

5. The learned Senior Counsel appearing on behalf of the petitioner further submitted that one Mr.Rohini Raman Pathak is the responsible person to act and conduct the affairs of the first accused - company, that this fact is very much available in the licence that was issued and that instead of adding this person as the second accused, the petitioner has been arrayed as the second accused just because he is one of the directors in the first accused - company.



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6. In order to substantiate his submissions, the learned Senior Counsel appearing on behalf of the petitioner relied upon the judgments of the Apex Court

(i) in the case of ***Cheminova India Ltd. Vs. State of Punjab [reported in 2021 SCC OnLine SC 573]***; and

(ii) in the case of ***Lalankumar Singh Vs. State of Maharashtra [reported in 2022 SCC OnLine SC 1383]***.

7. Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent submitted that no particulars were furnished by the first accused - company and its directors, that therefore, the particulars were collected from the website and that the petitioner was added as the second accused in the complaint since he is a director right from inception of the first accused - company. He further submitted that necessary averments were made in the complaint against the petitioner, that the drug was found not of standard quality and that therefore, the petitioner, as the second accused, should necessarily undergo the trial and establish his defence.



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8. To substantiate his submissions, the learned Government Advocate (Crl.Side) appearing for the respondent relied upon the order passed by a learned Single Judge of this Court in the case of ***Vikas Rambal, Director, Sunrise International Labs Ltd & Others Vs. The State Rep. by, The Drugs Inspector, Udumalpet Range, O/o.The Assistant Director of Drugs Control, Coimbatore Zone, 219, Race Course Road, Coimbatore [Crl.O.P.No.11184 of 2019 dated 12.10.2022]***.

9. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

10. On carefully reading the complaint, it is seen that the petitioner has been shown as the director of the first accused - company and that there is not even a single averment in the entire complaint as to how and in what manner the petitioner was responsible for the conduct of the business of the first accused - company. It is also seen from the available materials that the State Drugs Controller, who is the Licensing Authority, specifically named



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Shri.Rohini Raman Pathak, who is working as the Technical Director, as the person responsible for the conduct of business of the first accused - company. Even in the relevant forms that are available, the Licensing Authority recognized the said Mr.Rohini Raman Pathak as the responsible person for the conduct of business of the first accused - company.

11. In the decision rendered by me in the case of ***Crescent Therapeutics Ltd. Vs. Union of India [reported in 2024 (1) MLJ (Crl.) 107]***, this Court had an occasion to deal with a similar issue. Apart from going into the scope of Section 34 of the Act, this Court took note of the judgment of the Apex Court in the case of ***Lalankumar Singh***. This Court held that the person, whose name has been approved in the relevant form by the Licencing Authority, must be the person, who is in-charge and responsible for manufacturing and testing the drug, that if such a technical staff has already been fixed under the relevant form, he alone can be added as an accused along with the company and that apart from that person, if any other person is added in the capacity as a director, there must be specific averments in the complaint as to how and in what manner the director



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of the company was responsible for the conduct of the business of the company.

12. The relevant portions in the decision of this Court in the case of **Crescent Therapeutics Ltd.**, read as follows :

"11. The recent judgment of this Court in Crl.O.P. No.11184 of 2019, dated 12.10.2022 was brought to the notice of this Court. Learned Single Judge of this Court had an occasion to deal with the scope of Section 34 of the Act. The learned Single Judge after considering the law and issue came to the following conclusion:

'24. The offences and the offenders in the case of this nature is manufacturing and distribution of sub-standard drugs by a Company which is managed by its Board of Directors. The decision to manufacture the drugs is the collective decision of the Board of Directors. Therefore, the Directors cannot claim that they are not directly involved in the product of the drugs, when the decision to produce the drugs itself is the out come of their decision. Therefore, the case of Directors signing the cheque on behalf the Company and the case of Directors participating in the decision to produce sub~standard drugs are not one and the same to hold that these petitioners are not involved in day-to-day affairs of the Company.'

12. It is also brought to the notice of this Court that there is a recent judgment of the Hon?ble Apex



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Court on this issue in the case of Lalankumar Singh and Others vs. State of Maharashtra reported in 2022 SCC OnLine SC 1383 and the relevant portions are extracted hereunder:

'33. It can thus be seen that there are no specific averments insofar as the present appellants are concerned. It is further to be noted that the present appellants are neither the managing director nor the whole-time directors of the accused company.

34. It is further to be noted that, in accordance with the provisions of Rule 76 of the said Rules read with Form 28, the Accused Nos.9 and 10 have specifically been approved by the licensing authority in Form 28, Accused No.9 was approved as a person under whose active direction and personal supervision the manufacture would be conducted as required under Sub-Rule (1) of Rule 76 of the said Rules. Similarly, Accused No.10, who was approved as a head of the testing unit, was to be in-charge for carrying out the test of the strength, quality and purity of the substances as may be required under the provisions of Part X of the said Rules. We are therefore of the considered view that the complaint is totally lacking the requirement of Section 34 of the said Act.'

13. The Apex Court while dealing with the scope on Section 34 of the Act has rendered the following finding:

'28. It could thus clearly be seen that this Court has held that merely reproducing the words of the section without a clear statement of fact as to how and in what manner a director of the company was responsible for the conduct of the business of the



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company, would not ipso facto make the director vicariously liable.'?

14. In terms of the above finding, the Apex Court applied the facts of that case and came to a conclusion that there are no specific averments against the Directors as mandated under Section 34 of the Act.

15. The above judgment of the Hon?ble Apex Court is binding on this Court. Therefore, the judgment of the learned Single Judge in Crl.O.P.No.11184 of 2019, dated 12.10.2022 cannot be pressed into operation, in the light of the judgment of the Hon-ble Apex Court referred to supra.

16. It is apparent from the above judgment that the Hon?ble Apex Court has also considered the relevant Form that is issued at the time of granting license to the company and has dealt with the same in paragraph 34 of the judgment. The Hon-ble Apex Court has held that the person whose name has been approved under the relevant Form must be the person who is in-charge for carrying out the test of the strength, quality and purity of the drug as required under the relevant Rules. The Hon-ble Apex Court held that the same was lacking in the said case and hence the requirement under Section 34 of the Act was not fulfilled."

13. The judgment rendered by me in the case of **Crescent Therapeutics Ltd.,** squarely covers the issue that is involved in this case.



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14. In the instant case, the Licensing Authority already identified the said Mr.Rohini Raman Pathak, who is working as the Technical Director, as the person responsible for the conduct of business of the first accused - company under Section 34 of the Act. This person has not been made as an accused in this case. Instead, the petitioner has been arrayed as the second accused since he is the director of the first accused - company. However, while doing so, there are absolutely no averments in the complaint as to how and in what manner the petitioner was responsible for the conduct of business of the first accused - company. In view of the same, the continuation of the criminal proceedings against the petitioner will result in abuse of process of court, which requires the interference of this Court.

15. In the light of the above discussions, the above criminal original petition is allowed and the proceedings in C.C.No.526 of 2022 on the file of the learned Chief Judicial Magistrate, Chengalpat is quashed in so far as the petitioner (A2) is concerned. The Court below does not take cognizance of the offender and what is taken cognizance is the offence. That has already been done in this case and the said M/s.Health Biotech Limited has already been arrayed as the first



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accused. Hence, it is left open to the respondent to add the said Mr.Rohini Raman Pathak, who is working as the Technical Director, as the second accused in the complaint and proceed further. The Court below shall issue summons to the newly added accused person and proceed with the complaint in accordance with law. Consequently, the connected Crl.M.Ps. are closed.

01.2.2024

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes

To

- 1.The Chief Judicial Magistrate,
Chengalpat.
- 2.The Drugs Inspector, Kottivakkam
Range, Office of the Assistant
Director of Drugs Control, Zone IV,
Chennai-6.
- 3.The Public Prosecutor,
High Court, Madras.

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N.ANAND VENKATESH,J

RS

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