

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-43905-2022 (O&M)

Decided on 17.07.2024

Ashwani Kumar Dhawan & Anr.

... Petitioners

VS.

State of Punjab & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Saurabh Singla, Advocate for the petitioners

Mr. Rajiv Verma, DAG Punjab

Sandeep Moudgil, J.

(1). This order shall disposed of CRM-M-20206-2021; CRM-M-43905-2022; CRM-M-47356-2022; CRM-M-56407-2022; CRM-M-4091-2023 as identical issues are involved. For the sake of order, CRM-M-43905-2022 is treated as the lead case.

CRM-26526-2024

Allowed as prayed for. Annexures P22 to P24 are taken on record.

Main case

(2). The petitioner has filed the present petition under Section 482 CrPC seeking quashing of the criminal complaint bearing COMA-71-2022 (Annexure P1) dated 09.06.2022 titled as "State through Drug Inspector Faridkot vs. Ashwani Kumar Dhawan & Ors." pending before CJM, Faridkot as well as the order dated 04.08.2022 vide which cognizance has been taken by the Court and summons have been issued to the petitioners for commission of offence under Section 18(a)(i) read with Section 17-A & B read with 27(c)

of the Drugs and Cosmetics Act, 1940 (in short, the 1940 Act) (Annexure P2).

(3). Learned counsel for the petitioner submits that the petitioners are partners in the firm, namely, M/s Ramson Remedies and accused No.3 in the complaint, namely, Mr. Kusum Kumar Sharma, is the person incharge and responsible for manufacturing process under the said firm. He contends that the petitioners being the partner of the firm cannot be held liable for any illegality committed inasmuch as a criminal complaint against any partner or partnership firm or director of a company does not lie in the absence of specific averments and role specified in the complaint and the complainant has failed to establish the extent of vicarious liability and role, if any, played by the petitioners for commission of the alleged offence under Section 34 of the 1940 Act. Reliance is placed on **Dayle De'souza v. Government of India through Deputy Chief Labour Commissioner (C) and Another, 2021 SCC OnLine SC 1012.**

(4). Reply dated 30.11.2022 has been filed by Harjinder Singh, Drugs Inspector, Faridkot wherein it has been averred that upon inspection 3 types of drugs were taken for test from M/s Lovely Medicos and after analysis, the same were found as not of standard quality. During investigation, it came out that the said drugs were manufactured by M/s Ramson Remedies – the petitioners' firm, who upon notice, submitted its reply wherein it was specifically averred that ...It is agreed by and between the parties hereto that the partners shall devote their time and attention in the conduct of affairs of the firm.." which contradicts the assertion made by the

petitioners and establishes the fact that petitioners are very much involved in the business of manufacturing firm.

(5). In the reply dated 13.06.2023 filed by Pankaj Sareen, Government Analyst, Punjab, it has been categorically averred that both the petitioners are the partners by manufacturing the concerned sub-standard quality drug for sale, sold and distributed the said not of standard quality drugs, the company and its directors had committed the breach of act. It is submitted that the decision of manufacturing and distribution of the drug is a collective decision of the Board of Directors or partners.

(6). Heard learned counsel for the parties.

(7). Where an offence under the Act has been committed by a company, every person who was in charge of and was responsible to the company for the conduct of the business of the company is also made guilty of the offence by the statutory creation. Any Director, Manager or other officer of the company, who has consented to or connived in the commission of the said offence, is made liable for the punishment of the offence. This is clearly discernible from Section 34 of the 1940 Act which reads as under:-

34. 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 guilty 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 his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(a) “company” means a body corporate, and includes a firm or other association of individuals; and

(b) “director” in relation to a firm means a partner in the firm.

(8). Section 34 of the Act provides for prosecution of a company and of the person who, at the time when the alleged offence was committed was in charge and responsible for the conduct of the day to day business of the said company. In the present case, it is an admitted case, petitioner No.1 was the partner and manufacturing chemist of the firm under whose supervision the sub-standard drugs in question was manufactured and as such, in the complaint itself, it has been categorically mentioned that both the petitioners were privy to the manufacturing of the drug, sold and distributed by the company.

(9). In ***U.P. Pollution Control Board vs M/S Mohan Meakins Ltd. And Others, (2000) 3 SCC 745***, the Supreme Court, in a case relating to Distillery unit of the company at Daltonganj, Lucknow, discharging noxious trade effluents into the River Gomti and causing continuous pollution of the river, took note of Section 47 of the Water (Prevention And Control Of Pollution) Act, 1974 and observed that “...*what is to be looked at during the*

stage of issuing process is whether there are allegations in the complaint by which the Managers or Directors of the company can also be proceeded against, when the company is alleged to be guilty of the offence...”

(10). When an offence committed against the Society at large and the said offence is committed by the Company, all the Directors who accrued benefit out of the said act of crime ought to be prosecuted and they are all vicariously liable. They cannot escape from criminal liability by indicating one of the Director as a person responsible for the offence of the Company and they are not connected with the day-to-day affairs of the Company. As long as their names are in the Board of Directors, violation of the provision of the Act concern with the products criminal liability shall fall on all the Directors/partners for an offence committed by the Company as against the society at large. Furthermore, it is the company, its director, and partners who reap the financial rewards from the substandard drugs they manufacture and sell with collective intent. As such, the onus lies with them to demonstrate during the trial that these events occurred without their knowledge or consent. As the facts in question are within their exclusive knowledge, they must establish these facts themselves, as mandated by Section 106 of the Evidence Act by facing trial.

(11). In the light of the above discussion, there is no merit in the present petition which is accordingly dismissed.

17.07.2024
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No