

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26240 of 2017

Arising Out of PS. Case No.-1196 Year-2004 Thana- GOVERNMENT OFFICIAL COMP.
District- Saharsa

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Deepak Shanti Lal Parekh @ Deepak Parekh, son of Sri Shani Lal Parekh,
The Ex-Chairman and now Non Executive Director of M/s Glaxo Smithkline
Pharmaceuticals Limited, having its registered office at M/s 252, Dr. Annie
Basant Road, Police Station- Worli, Mumbai 400026, Maharashtra.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner/s	:	Mr. Anshul, Sr. Advocate Mr. Sanjeev Kumar, Advocate Mr. Rajeev Shekhar, Advocate
For the State	:	Mr. Sri Mayanand Jha, Sr. Advocate Mr. Sujeet Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 02-09-2025

Heard learned counsel for the petitioner and learned
counsel for the State.

2. This application has been filed for quashing
the order dated 08.10.2004 passed by the learned Chief Judicial
Magistrate, Saharsa, in Complaint Case No.1196 of 2004, by
which cognizance has been taken against the petitioner and
other accused persons for the offence punishable under section
27(d) of the Drugs and Cosmetics Act, 1940.

3. The present petitioner is the Non-Executive
Director of M/s Glaxo Smithkline Pharmaceuticals Limited
(hereinafter referred to as 'GSK'). The complainant - Rakesh



Nandan Singh, Inspector of Drugs, Saharsa had instituted the present complaint alleging therein that G.S.K. had manufactured, distributed and sold misbranded drugs and thus violated different provisions of the Drugs and Cosmetics Act, 1940 and the Drugs and Cosmetics Rules, 1945. The allegation is that the name and the logo of the wholesaler of the drugs i.e. M/s Glaxo Smithkline Pharmaceuticals Limited is printed on the labels of the drugs, carton and the same amounts to mislabeling.

4. It is submitted by learned Senior Counsel for the petitioner that the petitioner is the Non-Executive Director of G.S.K. and he is not responsible to look after the daily affairs of the company and there is no averment in the entire complaint to the effect that petitioner was in-charge and responsible for the conduct of the business of the company. It has further been submitted that the present complaint, based on which cognizance has been taken by the Court below, is pre-mature and not tenable in terms of the mandate of the Drugs and Cosmetics Act, 1940. It is emphasized that simply because the petitioner was the Non-Executive Director of the Company, on this sole ground, he cannot be fastened with the responsibility for the alleged offence.

5. It is vehemently submitted by the learned



Senior Counsel for the petitioner that the name/logo of G.S.K. appears on the pack of the drugs, only so as to inform the customers that the product is of the same high quality that the customers usually associate with G.S.K. but are manufactured by a company other than the aforesaid GSK under a third party manufacture agreement which is not in violation of the provisions of Drugs and Cosmetic Act, 1940 and the Rules made thereunder. The appearance of G.S.K. logo on the package is by way of giving additional information to the customers that the product is marketed by G.S.K. It is also argued by the learned Senior Counsel for the petitioner that the name of the manufacturer is clearly visible on the packaging of the product and therefore, the customers will not be misled into believing that the product is manufactured by G.S.K.

6. From bare perusal of the allegation as alleged in the complaint, it would manifest that the allegation hinges around the fact that G.S.K. is using its name and logo on the label which is an offence under Rules 96 and 97 of the 1945 Rules and by this act of G.S.K., the Government is put to loss in terms of revenue as well as the doctors and the intending customers are misled thinking that the drug in question is being manufactured by G.S.K. However, according to learned Senior



Counsel, this is not the case since labeling as incorporated under Rules 96 and 97 of the 1945 Rules comes within the definition of manufacture as per section 3(f) of the Drugs and Cosmetics Act, 1940 when G.S.K. is not the manufacturer of the drug in question. Therefore, no offence under Rules 96 and 97 of the 1945 Rules could be attracted.

7. Learned Senior Counsel for the petitioner submits that it absolutely does not stand to reason that on what basis it is being alleged in the complaint that the Government is put to loss when the manufacturer of the drug is paying all the requisite fee in terms of the Act and the Rules and for the same drug the Government cannot charge fee etc. twice. It is next submitted that the label on the drug is clear that the product is being manufactured under a third party agreement and is being marketed by G.S.K. It is thus submitted that it cannot be alleged that the labeling of the drug by using the name and logo of G.S.K. is being done in order to mislead the doctors or the intending customers. It is further submitted that the logo and the name of G.S.K. is being used by way of additional information to the customers that they be sure of the fact that though the drug is being manufactured by some other company but it is being marketed by G.S.K. and as such, the drug is maintaining



the high quality which is required and is associated with G.S.K.

8. Learned Senior Counsel for the petitioner advertng to Section 34(1) and the proviso thereto submits that the petitioner cannot be fastened with criminal liability merely because he occupied the position of Non-Executive Director of G.S.K. particularly when not even a whisper of specific allegation is alleged against him.

9. Learned Senior Counsel for the petitioner has submitted that the present complaint case alleges contravention of section 27(d). However, section 34(1) provides that every person or by any other person on his behalf whosoever is in-charge of and responsible to the company for conduct of its business is liable for offence committed by the company. On this aspect, leaned Senior Counsel for the petitioner has placed reliance on a decision of the Hon'ble Supreme Court in the case of *State of Haryana vs. Brij Lal Mittal and Ors.* reported as *(1998) 5 SCC 343* wherein it was held that 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 a company, it does not necessarily mean



that he fulfills both of the above requirements so as to make him criminally liable. Further, conversely even without being a Director a person can be in-charge of and responsible to the company for the conduct of its business.

10. Learned Senior Counsel has emphasized that the present complaint is silent on the role of this petitioner in the day-to-day activities of the company and in fact, there is neither any specific allegation nor any whisper in the entire complaint regarding the specific role of the petitioner. The necessary averments for making the petitioner liable for the alleged offences are totally lacking in the present complaint, since the complainant has failed to show in the complaint as to how this petitioner was responsible for the alleged offence or for that matter, failed to show any act, omission or negligence on the part of this petitioner which resulted in the commission of alleged offence, and in absence of any specific allegations in the complaint that the present petitioner was in-charge of the company and responsible for the conduct of its business, he cannot be prosecuted.

11. It has been submitted by learned Senior Counsel for the petitioner that apart from being Non-Executive Director of G.S.K. the petitioner is also the Chairman of



Housing Development Finance Corporation, Non-Executive Chairman of Infrastructure Development Finance Company Limited and also Member of various Committees set up by the Government of India and therefore, it cannot be said that the petitioner has any role in the day-to-day functioning of the company and thus is not responsible for the affairs of G.S.K. Moreover, in order to attract the rigors of section 34 of the Drugs and Cosmetics Act, 1940, which relates to offences committed by the company, there has to be necessary averments in the complaint with regard to the role of the officials of the company including the Director that at the relevant time of the occurrence he was responsible for the day-to-day affairs of the company but, from perusal of the complaint petition, it would manifest that the allegation does not even remotely whisper that the petitioner, at the time of commission of alleged offence, was in-charge or responsible for the conduct of the business of the company.

12. Learned Senior Counsel for the petitioner has drawn the attention of this Court to an order passed by a co-ordinate Bench of this Court vide order dated 15.12.2022 in Criminal Miscellaneous No.71339 of 2018 title as ***Kal Sundaran vs. The State of Bihar*** by which the order taking



cognizance arising out of the present complaint case was quashed and set aside against the petitioner therein.

13. Learned A.P.P. for the State opposes the present application by submitting that since the petitioner is the Non-Executive Director of G.S.K., he cannot escape from the responsibility and therefore, learned Court below has rightly taken cognizance of the offence against him under the aforesaid sections of the Drugs and Cosmetics Act.

14. I have considered the submissions of the parties and perused the materials available on record particularly the complaint petition.

15. The allegations levelled against the company and the accused persons including the present petitioner is that upon an inspection by the complainant-Drug Inspector, it was found that the drugs were allegedly mislabelled.

16. It is a settled position of law that criminal liability cannot be vicariously attached unless there exists a statutory provision, and even then the complainant must aver specifically the role or the act to fasten the accused with criminal liability.

17. The Hon'ble Supreme Court in the case of *Sanjay Dutt & Ors. vs. State of Haryana & Anr.* reported as



2025 SCC OnLine SC 32 while considering the appeal against rejection of a petition filed under section 482 Cr.P.C. for quashing the complaint which was lodged under the Punjab Land Preservation Act, 1900, the Hon'ble Supreme Court had categorically held that there can be no automatic vicarious liability merely because the individual was occupying the position of Director especially when the statute does not provide for such vicarious liability. For the present purpose, it may be emphasized that, further even where the statute does create a legal fiction to fasten criminal liability vicariously, there needs to be specific and substantiated allegations attributable to such Directors/persons, which should be sufficient enough to attract such provisions. It will be relevant to quote paragraph no.11 of the aforesaid decision, which reads as under :-

“11. It appears that the Courts below proceeded on the erroneous assumption that the three appellants herein being responsible officers of the company are liable for the alleged offence. While a company may be held liable for the wrongful acts of its employees, the liability of its directors is not automatic. It depends on specific circumstances, particularly the interplay between the director's personal actions and the company's responsibilities. A director may be vicariously liable only if



the company itself is liable in the first place and if such director personally acted in a manner that directly connects their conduct to the company's liability. Mere authorization of an act at the behest of the company or the exercise of a supervisory role over certain actions or activities of the company is not enough to render a director vicariously liable. There must exist something to show that such actions of the director stemmed from their personal involvement and arose from actions or conduct falling outside the scope of its routine corporate duties. Thus, where the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. There has to be a specific act attributed to the director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company.

12. At the same time, wherever by a legal fiction the principle of vicarious liability is attracted and a person who is otherwise not personally involved in the commission of an offence is made liable for the same, it has to be specifically provided in the statute concerned. When it comes to penal provisions, vicarious liability of the managing director and director would



arise provided any provision exists in that behalf in the statute. Even where such provision for fastening vicarious liability exists, it does not mean that any and all directors of the company would be automatically liable for any contravention of such statute. Vicarious Liability would arise only if there are specific and substantiated allegations attributing a particular role or conduct to such director, sufficient enough to attract the provisions constituting vicarious liability and by extension the offence itself.

13. *It is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, if the statute provides for such liability and if there is sufficient evidence of his active role coupled with criminal intent. The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening criminal liability on an officer of a company, there is no presumption that every officer of a company knows about the transaction in question.” (emphasis supplied)*

18. It would be gainful to refer to analogous



provision of law wherein the Hon'ble Supreme Court in the case of *S.M.S Pharmaceuticals Ltd. vs. Neeta Bhalla & Anr.* reported as **(2005) 8 SCC 89** while considering section 141 of the Negotiable Instruments Act, 1881, which is *pari materia* to section 34 of the Drugs and Cosmetics Act, 1940 had held as under:-

“4. ... *A company being a juristic person, all its deeds and functions are the result of acts of others. Therefore, officers of a company who are responsible for acts done in the name of the company are sought to be made personally liable for acts which result in criminal action being taken against the company. It makes every person who, at the time the 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, liable for the offence. **The proviso to the sub-section contains an escape route for persons who are able to prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent commission of the offence***

.....

9. *The position of a Managing Director or a Joint Managing Director in a company may be different. These persons, as the designation of their office suggests are in*



charge of a company and are responsible for the conduct of the Business of the company. In order to escape liability such persons may have to bring their case within the proviso to Section 141(1), that is they will have to prove that when the offence was committed they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence.” (emphasis supplied)

19. Again, the Hon’ble Supreme Court in the case of *National Small Industries Corporation Ltd. vs. Harmeet Singh Paintal & Anr.* reported as (2010) 3 SCC 330, while considering section 141 of the Negotiable Instruments Act had summarized the legal position, which is *pari materia* to section 34 of the Drugs and Cosmetic Act. It will be relevant to quote paragraph no.39 of the aforesaid decision, which reads as under:-

“39. From the above discussion, the following principles emerge:

1. The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.



2. *Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.*
3. *Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make the accused therein vicariously liable for offence committed by the company along with averments in the petition containing that the accused were in charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.*
4. *Vicarious liability on the part of a person must be pleaded and proved and not inferred.*
5. *If the accused is a Managing Director or a Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.*
6. *If the accused is a Director or an officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in the complaint.*



7. *The person who sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases.*”
(emphasis supplied).

20. Further in the case of *Maksud Saiyed vs. State of Gujarat & Ors.* reported as (2008) 5 SCC 668 the Hon’ble Supreme Court had had as under –

“13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. Indian Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such



vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.”
(emphasis supplied).

21. At this stage it would be relevant to refer to the section 34(1) of the Drugs and Cosmetics Act, 1940 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.”

22. The Hon’ble Supreme Court in the case of ***Brij Lal Mittal (supra)*** has held that simply because a person is a Director of a Company, it does not necessarily meet the twin



requirement of section 34(1) as to make him criminally liable, i.e., the deeming provision is not attracted unless both the conditions of being in-charge of and also being responsible to, are squarely met. The same principle was also reiterated by the Hon'ble Supreme Court in the case of ***Lalankumar Singh & Ors. vs. State of Maharastra*** reported as ***2022 SSC OnLine SC 1383***.

23. Now, turning to the facts of the present case, the complainant had not made any specific allegation as against the present petitioner who was the Non-Executive Director of the company. Therefore, considering the cases referred hereinabove and the provision contained under section 34(1) of the Drugs and Cosmetics Act of 1940, what becomes clear is that the aforesaid Act does provide for a deeming provision for fastening criminal liability vicariously, however, a bald and general allegation devoid of any specific role attributable to the accused is not sustainable in the eyes of law. As has been held in ***Sanjay Dutt (supra)*** the primary responsibility lies on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. It is necessary to aver in the complaint that at the time of commission of offence, the accused was in-charge of and was



responsible for the conduct of the business of the company, however, in the present case at hand, there is not even a whisper in the entire complaint regarding the act on the part of the present petitioner. As such, merely the averment in the complaint that the petitioner was the Non-Executive Director of the company at the relevant time, would not *ipso facto* hold him responsible for the alleged offence.

24. It is required to be noted that in a complaint case based on same and similar facts wherein the present petitioner was also made an accused, a co-ordinate Bench of this Court vide order dated 08.12.2022 passed in ***Criminal Miscellaneous No. 32193 of 2017*** titled ***Deepak Santi Lal Praekh @ Deepak Parekh vs. State of Bihar*** while considering an application under section 482 praying for quashing the order taking cognizance against the present petitioner, the Court had quashed the aforesaid order noting that it is necessary to aver in the complaint that at the time of commission of offence the accused was in-charge of, and responsible for the conduct which was found lacking. Further, a coordinate Bench of this Court vide order dated 10.10.2023 passed in ***Criminal Miscellaneous No. 28899 of 2017*** titled as '***Deepak Santi Lal Praekh @ Deepak Parekh vs. State of Bihar***' had quashed and set aside



the order taking cognizance emanating from the similar complaint case *qua* the present petitioner.

25. Pertinently, a coordinate Bench of this Court vide order dated 15.12.2022 passed in ***Criminal Miscellaneous No.71339 of 2018*** titled as ***Kal Sundaran vs. State of Bihar*** had also quashed the impugned order taking cognizance against the co-accused person who was the petitioner therein.

26. Considering the law laid down by the Hon'ble Supreme Court in the cases of ***Brij Lal Mittal (supra)***, ***Sanjay Dutt (Supra)***, ***S.M.S. Pharmaceutical Limited (supra)***, ***National Small Industries Corporation (supra)*** and ***Maksud Saiyed (supra)*** together with the aforementioned decisions of the co-ordinate Bench of this Court and the fact that the complainant has not alleged any specific role/allegation against the present petitioner attributable at the relevant time of occurrence makes the complaint unsustainable.

27. Moreover, it also appears that the impugned order taking cognizance is also otherwise bad in law as the learned Magistrate had mechanically taken cognizance on a pre-prepared printed format, which is wholly unsustainable in view of the law laid down by the Hon'ble Supreme Court in the case of ***Pepsi Foods Ltd. vs. Special Judicial Magistrate***, reported as



(1998) 5 SCC 749 as well as the decision of this Court passed in *Dharmesh Prasad Verma vs. The State of Bihar* reported as *2017 (1) PLJR 401* and *Varun Berry & Anr. vs. The State of Bihar & Ors. (Criminal Miscellaneous No.14921 of 2023)*.

28. Considering the aforesaid facts, I am of the considered view that it would be an abuse of the process of the Court to allow the present proceeding to continue against the present petitioner. Accordingly, the present application is allowed and the impugned order taking cognizance dated 08.10.2004 passed in Complaint Case No.1196 of 2004 pending in the Court of learned Chief Judicial Magistrate, Saharsa, is hereby quashed *qua* the present petitioner.

(Sandeep Kumar, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A
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