IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.73146 of 2018

Arising Out of PS. Case No.-724 Year-2004 Thana- GOVERNMENT OFFICIAL COMP. District- Saharsa

==

Kal Sundaran Son of N. Iyer Subramanian, the then Managing Director of M/s Glaxo Smithkline Pgarmaceuticals Limited, having its registered office at M/s 252, Dr. Annie Basant Road, Police Station -Worli District-Mumbai 400026

... ... Petitioner/s

Versus

The State Of Bihar

... ... Opposite Party/s

==

Appearance :

For the Petitioner/s	:	Mr. Ansul, Sr. Advocate
		Mr. Sanjeev Kumar, Advocate
		Mr. Pravashankar Mishra, Advocate
		Mr.Rajeev Shekhar, Advocate
For the State	:	Mr.Sri Shyameshwar Dayal, APP

==

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

6 27-06-2025 Heard learned counsel for the petitioner and learned counsel for the State.

2. This application has been filed for quashing order dated 12.07.2004, passed in Complaint Case No. 724C of 2004 by which cognizance has been taken against the ten accused persons including the present petitioner, who was then then Managing Director of M/s Glaxo Smithkline Pharmaceuticals Limited (hereinafter refereed to as the 'GSK') for the offence punishable under section 27(d) of the Drugs and Cosmetics Act,

1940.

3. The complainant one Rakesh Nandan Singh, Inspector of Drugs, Saharsa had instituted the present complaint alleging therein that petitioner and other accused persons 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, that is, 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 on behalf of the petitioner that the petitioner is the Managing Director of the Company in question and he is not responsible to look after the daily affairs of the Company. 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. He further submits 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. He next submits that simply because the petitioner was the Managing Director of the Company, on this sole ground, he cannot be fastened with the responsibility for the alleged offence.

5. It is vehemently submitted that the name/logo of Glaxo Smithkline Pharmaceuticals Limited appears on the pack only so as to inform the customers that the product is of the same high quality that the customers associate with GSK but are manufactured by a company other than the aforesaid GSK under a third party manufacture agreement which is not a violation of the provisions of Drugs and Cosmetic Act, 1940 and the Rules made thereunder. The appearance of GSK Limited logo on the package is by way of giving additional information to the customers that the product is marketed by GSK. It is also argued by the learned counsel for the petitioner that the name of the manufacturer is clearly visible on the packaging of the product and thereafore the customers will not be mislead into beveling that the product is manufactured by Glaxo Smithkline Pharmaceuticals Limited.

6. Learned counsel for the petitioner submits that from bare perusal of the allegation as alleged in the complaint, it would manifest that the allegation hinges around the fact that the GSK is using its name and logo on the label which is an offence under Rules 96 and 97 of the 1945 Rules. Further by this act of GSK the Government is put to loss in terms of revenue, the Doctors and the intending customers are misled thinking that the

drug in question is being manufactured by GSK when it is not the case and labelling 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 GSK is not the manufacturer of the drug in question.

7. Learned 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. It is further submitted that for the same drug the Government cannot charge 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 marked by GSK. It is thus submitted that it cannot be alleged that the labelling of the drug by using the name and logo of GSK is being done in order to mislead the Doctors or the intending customers. It is further submitted that the logo and the name of GSK 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 since it is being marketed by GSK as such the drug is maintaining the high quality which is required and also as is associated with GSK.

8. Learned counsel for the petitioner adverting to Section 34(1) and the proviso thereto submits that the petitioner cannot be fasten with criminal liability merely because be occupied the position to Managing Director particularly not even a whisper of specific allegation is alleged against him.

9. Learned 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 a company. Leaned counsel for the petitioner has placed reliance on **State of Haryana v/s Brij Lal Mittal and Ors.** (**1998 Cri LJ 13287**) wherein it was held by the Hon'ble Supreme court 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. The learned counsel has emphasized that the complaint is silent on the role of this petitioner in the day to day activity of the company and in fact there is neither any specific allegation nor any whisper in the entire complaint regarding the role of this 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.

10. Learned counsel for the petitioner submits that the petitioner in the present application is the Managing Director and does not participate in day-to-day functioning of the company and thus is not responsible for the affairs of the company. It is further submitted that 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 offence, was in-charge or responsible for the conduct of the business of the company.

11. Learned counsel has drawn the attention of this Court to an order passed by a co-ordinate Bench of this Court vide order dated 08.12.2022 in Cr. Misc. No. 30453 of 2017 title as **Deepak Shanti Lal Parekh @ Deepak Parekh Vs. The State of Bihar** by which the order taking cognizance under Section 27(d) of the Drugs and Cosmetics Act, 1940 was quashed and set aside in a similar complaint bearing Complaint Case No. 1198 C of 2004. Learned counsel submits that the facts of the aforesaid complaint case i.e., 1198C of 2004 is not verbatim is akin to the present case.

12. Learned A.P.P. for the State opposes the present application. It is submitted that since the petitioner is the Managing Director of the Company, as such, he cannot escape the responsibility and in that view of the matter, learned Court below has rightly taken cognizance of the offence against him

under the aforesaid sections of the Drugs and Cosmetics Act.

13. I have heard the submission of the parties and perused the materials available on record.

14. The allegations levelled against the Company is that the accused persons including the present petitioner is that upon inspection by the Drug Inspector, Drugs which were allegedly mislevelled were found and a complaint case was filed.

15. 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.

16. The Hon'ble Supreme Court in the case of ***Sanjay Dutt & Ors. vs. State of Haryana & Anr.*** reported as ***2025 INSC 34*** 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 Court had categorically held that there can be no automatic vicarious liability merely because the individual was occupying the position of Director specially 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, which should be sufficient enough to attract such provisions. The Hon'ble Court had held 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.***

17. 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 Bhulla*** reported as ***(2005) 8 SCC 89*** while considering section 141, 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 weds 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 wilt 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)

18. In the case of ***National Small Industries Corporation Ltd. vs. Harmeet Singh Paintal*** reported as ***(2010) 3 SCC 330***, the Hon'ble Court had summarized the legal position 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 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."*

19. Further in the case of ***Maksud Saiyed vs. State of***

Gujarat & Ors. reported as ***(2008) 5 SCC 668 = AIRONLINE 2007 SC 332***, 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**."*

20. At this stage it would be apposite to refer to the section 34 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.

21. The Hon'ble Supreme Court in the case of State of **Haryana v. Brij Lal Mittal** reported as **(1998) 5 SCC 343**, 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 and also being responsible are squarely met. The same principle was also reiterated by the Hon'ble Supreme Court in the case of **Lanankumar Singh & Ors. vs. State of Maharastra** reported as **(2022) SSC OnLine SC 1383**.

22. Turning to the facts of the present case, the complainant had not made any specific allegations as against the present petitioner petitioner who was the Managing Director.

23. On the conspectus of 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 variciously liable. It is necessary to aver in the complaint that at the time of commission of offense, the accused was in-charge of, or 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 Managing Director of the Company at the relevant time, would not *ipso facto* hold him responsible for the alleged offence.

24. It is also noted that a co-ordinate Bench of this Court vide order dated 08.12.2022 passed in ***Cr. Misc. 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 co-accused, petitioner therein, 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 incharge of, or responsible for the conduct which was found lacking.

25. It is also noted that a co-ordinate Bench of this Court vide order dated 10.10.2023 passed in ***Cr. Misc. No. 9153 of 2019*** titled as ***Kal Sundaran vs. State of Bihar*** while considering an application preferred by the instant petitioner for quashing the order taking cognizance in a similar complaint case, the Court had quashed the impugned order therein on the ground that the complaint does not allege any specific role of the petitioner.

26. It is also noted that this Court vide order dated 08.12.2022 passed in Cr. Misc. 32193 of 2017 had quashed and set aside the impugned order *qua* the petitioner therein. Further this Court vide order dated 10.10.2023 passed in Cr. Misc. 9153 of 2019 had also quashed the order taking cognizance in a similar complaint case against the same present petitioner.

27. Two more orders both dated 15.12.2022 passed in ***Cr. Misc. No. 71339 of 2018*** and ***Cr. Misc. No. 71180 of 2018*** titled as ***Kal Sundaran vs. State of Bihar*** passed by a co-ordinate Bench of this Court is also noticed wherein the co-ordinate Bench had exercised jurisdiction under Section 482 Cr. P.C. to quash the order taking cognizance in similar complaint

cases on the ground that no specific averment was forthcoming to fasten the petitioner being the Managing Director with criminal liability.

28. Therefore, considering the afore-quoted decisions and the fact that the complainant has not alleged any specific role/allegation against the present petitioner attributable at the relevant time of occurrence together with the decisions of the co-ordinate Bench of this Court in similar complaint cases as well as the order passed in the case of co-accused, noticed herein-above, I am of the considered view that it would be an abuse of the process of the Court to allow the present proceedings to continue against the present petitioner.

29. Accordingly, the present application is allowed.

30. The impugned order taking cognizance dated 12.07.2004, passed in Complaint Case No. 724C of 2004 is hereby quashed.

(Sandeep Kumar, J)

P. Kumar

U		T	