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CrI.O.P.No.24012 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.08.2025

Pronounced on : 01.09.2025

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

CrI.O.P.No.24012 of 2022
and CrI.MP.Nos.15245 & 15246 of 2022

Thiru Nimish Hasmukh Bhai Chugar
Managing Director of
M/s.Intas Pharmaceuticals India Ltd
O.No.31, New No.67, Poes Garden
Chennai – 600 086

.. Petitioner/A4

Versus

State Rep by
Drugs Inspector
Royapettah Range (i/c)
O/o.Assistant Director of Drugs Control
Zone III, DMS Campus, 259-261
Anna Salai, Teynampat, Chennai – 600 006

.. Respondent

Prayer:- Criminal Original Petition filed under Section 482 of Cr.P.C., seeking to call for the records in C.C.No.555 of 2022 pending on the file of the learned IV Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioner	:	Mr.K.P.Ananth Krishna
For Respondent	:	Mr.K.M.D.Muhilan
		Additional Public Prosecutor



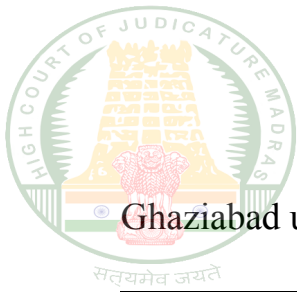
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ORDER

WEB COPY This petition has been filed to call for the records on the file of the IV Metropolitan Magistrate, Saidapet, Chennai in C.C.No.555 of 2022 and quash the same.

2. The petitioner is arrayed as A4. The crux of the allegations in the private complaint are as follows:

2.a. On 15.02.2016, an inspection was carried out by the then Drugs Inspector at the premises of M/s.Intas Pharmaceuticals Limited, O.No.31, New No.67, Poes Garden, Chennai – 600 086 in continuation of the investigation which had been carried out by the Drugs Inspector, Triplicane Range with the officials of NCB, Chennai. During the course of inspection, Thiru.Ajith Kumar Durga, authorised signatory cum competent person of the firm was present. During the inspection, the purchase and sale details of the drugs of the drugs ZOLAX 0.5 mg Zolax 1 mg, Intagra 100 mg for the period of June 2015 to February 2016 were verified. On verification of the purchase invoices, it was observed that the firm have purchased drug INTAGRA 100 mg tables from M/s.Intas Pharmaceuticals Ltd,



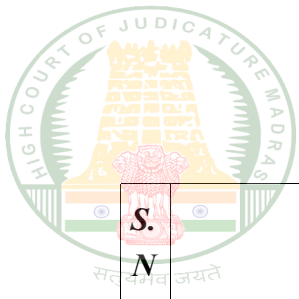
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Ghaziabad under the below mentioned invoices.

S. No	Purchased from	Product Name	Bill No. & Date	Quantity Purchased
1	M/s.Intas Pharmaceuticals Ltd, Delhi-Meerut Road, Vil, Basatpur-Saintali, Murad Nagar-Tehsil Modi Nagar, Dist.Ghaziabad – 201 206	Intagra-100 B.No.T-0112/15, E/D:05/2017	1002501542 Date: 31.07.2015	600x4's
2	M/s.Intas Pharmaceuticals Ltd, Delhi-Meerut Road, Vil, Basatpur-Saintali, Murad Nagar-Tehsil Modi Nagar, Dist.Ghaziabad – 201 206	Intagra-100 B.No.T-0112/15, E/D:05/2017	1002505570 Date: 11.08.2015	30000x4's
3	M/s.Intas Pharmaceuticals Ltd, Delhi-Meerut Road, Vil, Basatpur-Saintali, Murad Nagar-Tehsil Modi Nagar, Dist.Ghaziabad – 201 206	Intagra-100 B.No.T-0112/15, E/D:05/2017	1002531642 Date: 17.11.2015	15000x4's

and sold to the below mentioned firms under the following invoices.

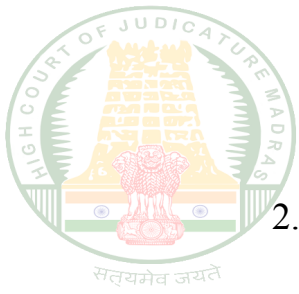
S. No	Purchased from	Product Name	Bill No. & Date	Quantity Purchased
1	M/s.Oekar Pharma & Surgicals, 57/1, Police Line, 3 rd Street, Panruti – 607 106	Intagra-100 B.No.T-0112/15, E/D:05/2017	0716985253 Date: 10.08.2015	600x4's
2	M/s.Kapital Care, Old No.257/1, New No.481/1, 1 st Street, Sydenhams Road, Chennai - 112	Intagra-100 B.No.T-0112/15, E/D:05/2017	0716985525 Date: 21.08.2015	28800x4's
3	M/s.Kapital Care, Old No.257/1, New No.481/1, 1 st Street, Sydenhams Road, Chennai - 112	Intagra-100 B.No.T-0112/15, E/D:05/2017	0716987182 Date: 30.09.2015	1200x4's
4	M/s.Kapital Care, Old No.257/1, New	Intagra-100	0716989272	15000x4's



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S. N o	<i>Purchased from</i>	<i>Product Name</i>	<i>Bill No. & Date</i>	<i>Quantity Purchased</i>
	No.481/1, 1 st Street, Sydenhams Road, Chennai - 112	B.No.T- 0112/15, E/D:05/2017	Date: 30.11.2015	

2.b. The Authorised Signatory had given a statement that no stocks of drug INTAGRA 100 mg were available in the premises of the company. Further, on verification from the premises of M/s.Kapital Care, Old No.257/1, New No.481/1, 1st Street, Sydenhams Road, Chennai – 112, it was found that they have purchased 28800x4's and 15000x4's from the M/s.Intas Pharmaceuticals Ltd, Chennai – 86. On enquiry, regarding the invoice raised to the firm M/s.Kapital Care dated 30.09.2015 quantity 1200x4's, Thiru. Ajith Kumar Dugar, Authorised Signatory of M/s.Intas Pharmaceuticals Ltd, Chennai stated that they did not receive strips instead of 30000 strips from the company, further they did not receive 1200 strips of drug INTAGRA 100 Mg from the company, since, it was lost during shipping but the stock was not deducted in the system, hence, they have wrongfully raised the sales invoice to the firm M/s.Kapital Care even without receiving the full stock as mentioned in their invoice.



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2.c. Therefore, a show cause notice was issued to M/s.Intas

Pharmaceuticals Ltd and a reply letter dated 29.08.2016 was received and was found not satisfactory. It was found that only 600 strips have been handed over the company, though it is stated that the remaining 600 strips has been destroyed, the match number of the product varies which is of different numbers. Therefore, according to the complainant, since, INTAGRA 100 mg mentioned in destruction certificate submitted by the respondent varies from the expiry date and B.No of the product and the firm M/s.Intas Pharmaceutical Ltd, O.No.31, New No.67, Poes Garden, Chennai has contravened Section 18(c) of Drugs and Cosmetic Act 1940 r/w Rule 65 r/w condition no.3(ii) of drug license in Form 20-B of Drugs and Cosmetic Rules 1945 for having sold various drugs to unknown person who is not holding the requisite drug license. After, obtaining sanction, the present complaint has been filed for the offences punishable under Section 27(d) of the Drugs and Cosmetic Act, 1940.

3. The complaint is sought to be quashed by the learned counsel for the petitioner/fourth accused on the grounds that the address has been wrongly given as



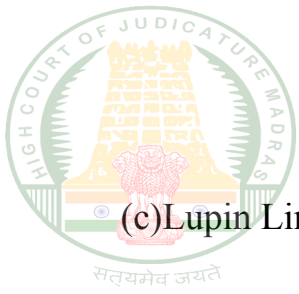
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Chennai address, whereas, the accused head office is at Ghaziabad. The learned

Metropolitan Magistrate No.4, Saidapet has not followed the mandatory procedure under Section 202 of CrPC for taking cognisance. Further, the entire reply has not been properly considered, in fact, the affidavit of the transporter with regard to loss of 1200 strips has not been taken note of and reply notices and other materials submitted by the petitioner. The petitioner was not submitted before the Screening Committee before obtaining for proper orders. Further, there is no averments whatsoever in the entire private complaint to show that the present petitioner was in charge of the affairs of the company. The very complaint itself indicates that one Ajith Kumar Dugar was in charge of the firm, therefore, in the absence of averments that the so-called offences said to have been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, cognisance cannot be taken against them as per Section 34 of the Drugs & Cosmetics Act, 1940. In support of his submissions, he placed reliance on the following judgments:

(a) Cheminova India Limited & Anr. vs. State of Punjab & Others reported in 2021 SCC Online SC 573

(b) Sanjeev Wasan vs. Union of India reported in MANU/TN/4085/2023



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(c)Lupin Limited vs. State reported in 2023 SCC Online Mad 7527

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Crl.O.P.Nos.4419 of 2017 dated 22.10.2021

4. Whereas, it is the stand of the respondent in the counter that the inspection was carried on 15.02.2016, wherein, it is found that the company has purchased 30000 strips, whereas, it is found that only 28800 strips have been sold to M/s.Kapital Care and though it is stated in the reply notice that 1200 strips were lost in the transit, only 600 strips have been returned to the firm and another 600 strips are claimed to have been destroyed. The batch number is different, therefore, the complaint.

5. Heard both sides and perused the materials placed on record.

6. The learned Metropolitan Magistrate No.IV, Saidapet has took cognisance of the private complaint, wherein, all the accused address is given as Poes Garden, Chennai. The petitioner is arrayed as A4. It is relevant to note that A2 to A4



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are also arrayed as Managing Director of M/s.Intas Pharmaceutical Ltd. This Court is

of the view that with regard to the affairs of the company, only one can be a

Managing Director, others are directors, but the petitioner/A4 herein is also arrayed

as Managing Director. Be that as it may, the only allegations against the petitioner is

that out of 30000 strips purchased by the company from M/s.Intas Pharmaceutical

Ltd, Ghaziabad, on enquiry with M/s.Kapital Care, it was found that 28800 strips

have been sold, therefore, show cause notice was issued. It was replied to the effect

that the they did not receive 1200 strips of drug INTAGRA 100 mg from the

company since it was lost during transit. Admittedly, 600 strips was returned to the

Company and the remaining 600 is said to be destroyed, whereas, the destruction

certificate varies with the batch number.

7. The complaint itself indicate that one Ajith Kumar Dugar/5th accused was in charge and competent person of the firm and he was present during the inspection. When the entire private complaint perused on a whole, nowhere, it is averred that the petitioner or other directors were in charge of the company. It is relevant to note that when an offence is committed by a company, every person who



at the time of 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 also be liable to be proceeded against and punished accordingly as per Section 34 of the Drugs and Cosmetics Act,

1940. Section 34 of the Drugs and Cosmetics Act, 1940 reads as follows:

“ 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:

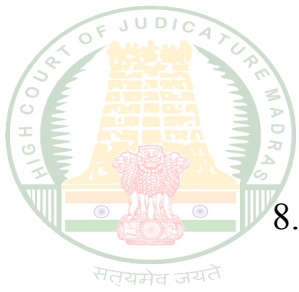
Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(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. A reading of the above provision makes it clear that it must be 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. Therefore, the above makes it very clear that the basic ingredients to maintain a prosecution, at-least minimum requirements to maintain the prosecution, necessary averments with regard to the specific role of the Director or Managing Director has to be averred in the complaint as to their consent or connivance of, or is attributable to any neglect on their part to clothe with the criminal liability. Before choosing to prosecute any person vicariously, the complaint must contain allegations that such person was in charge and was responsible to the company for the conduct of the business of the company at the relevant point of time. Absence of this basic averment is itself sufficient to quash the proceedings. Having pleaded in the complaint that one Ajith Kumar Dugar was in charge of the company and competent person of Company, no whisper whatsoever was made in the complaint as to the role played by the other directors. Therefore, merely, on the basis



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of position of a person as a Managing Director in the absence of averments in the complaint as to the involvement in the offence, a person cannot be prosecuted merely on the basis of position or designation he holds. The show cause notice issued by the complainant was replied by one Ajith Kumar Dugar which clearly indicate that he was in charge of the company and in the absence of specific averments as against the petitioner, the complaint is not maintainable as against the petitioner.

9. In this regard, it is relevant to note that the Hon'ble Supreme Court in the case of *Ravindranatha Bajpe vs. Mangalore Special Economic Zone Ltd* reported in 2021 SCC OnLine SC 806 has held mere fact that the respondents are the Chairman/Managing Director in itself does not hold them vicariously liable, unless, there are specific allegations and averments made against them with respect to their individual role in the commission of the offence. Relevant paragraph of the judgment reads as follows:-

9. From the order passed by the learned Magistrate issuing the process against the respondents herein, Accused 1 to 8, there does not appear that the learned Magistrate has recorded his satisfaction about a prima facie case against Respondents 2 to 5 and 7 and 8. Merely because Respondents 2 to 5 and 7 and 8 are the Chairman/Managing



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Director/Executive Director/Deputy General Manager/Planner & Executor, automatically they cannot be held vicariously liable, unless, as observed hereinabove, there are specific allegations and averments against them with respect to their individual role. Under the circumstances, the High Court has rightly dismissed the revision applications and has rightly confirmed the order passed by the learned Sessions Court quashing and setting aside the order passed by the learned Magistrate issuing process against Respondents 1 to 8 herein — original Accused 1 to 8 for the offences punishable under Sections 427, 447, 506 and 120-B read with Section 34IPC.”

10. Similar view was reiterated by the Hon'ble Supreme Court in *M/s.Cheminova India Ltd and another vs. State of Punjab and other* reported in *AIR 2021 SC 3701*.

11. Similarly, the Hon'ble Supreme Court in the case of *State of Haryana Vs. Brijlal Mittal and others* reported in *AIR 1998 SC 2327* has held that vicarious liability of a person for being prosecuted for an offence committed arises if at material time, he was in charge of and was also responsible to company for conduct of its business because a person is a director of the company, it does not merely mean that he fulfils both above requirements so as to make him liable under the Drugs and Cosmetics Act. Relevant paragraph of the judgment reads as follows:-



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“8. Nonetheless, we find that the impugned judgment of the High Court has got to be upheld for an altogether different reason. Admittedly, the three respondents were being prosecuted as directors of the manufacturers with the aid of Section 34(1) of the 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.”

It is thus seen that the 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 the company it does not necessarily mean that he fulfils both the above requirements so as to make him liable. Conversely, without being a director a person can be in charge of and responsible to the company for the conduct of its business. From the complaint in question we, however, find that except a bald statement that the respondents were directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were in charge of the company and also responsible to the company for the conduct of its business.”

12. Another question now arises is whether the replies were considered in proper light by the Sanctioning Authority. It is also seen that subsequent to the



amendment of the Act 2008, the State Drug Control Organisations were placed under

obligation to constitute Screening Committees. Guidelines had been issued by the

Central Drugs Standard Control Organisation in December 2008. According to the

guidelines,

“ In particular the Guidelines mandate that The State Drug Control Departments shall constitute screening committees comprising of at least three senior officers not below the level of Assistant Drugs Controllers or equivalent to examine the investigation reports of the cases where prosecutions are proposed to be launched. The committee may submit written opinion on the investigation reports regarding their feasibility of taking legal action. The criminal intent or gross negligence should be taken into consideration while recommending actions like prosecution etc. Care should be taken that charges framed are not based on inappropriate provisions which may be difficult to prove in the court of law in the absence of proper justification or evidence. Cases of failing in assay, brand name disputes and non-renewal of manufacturing licence in time should be examined on their merits before recommending prosecution in such cases. and further that Prosecutions by the Inspectors shall be launched on the basis of written permissions of the controlling authority and this authority in turn shall consider the recommendations of the screening committee while taking final decision in the matter. ”

13. Though placing the matters before the Screening Committee arises only for minor offences, this Court is of the view that mere non placing the matter to the Screening Committee will not affect the prosecution, but the fact remains that since



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there is no averments made against the accused to maintain the prosecution and merely on the basis of designation, one cannot be prosecuted.

14. Such view of the matter, this Criminal Original Petition stands allowed and the complaint in C.C.No.555 of 2022, pending on the file of the learned Metropolitan Magistrate No.IV, Saidapet stands quashed as against the petitioner alone. Consequently, the connected miscellaneous petitions are closed.

01.09.2025

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Internet : Yes/No

Index : Yes/No

Neutral Citation : Yes/No

To

1.The Metropolitan Magistrate No.IV, Saidapet

2. The Drugs Inspector

Royapettah Range (i/c)

O/o.Assistant Director of Drugs Control

Zone III, DMS Campus, 259-261

Anna Salai, Teynampat, Chennai – 600 006

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N.SATHISH KUMAR, J.

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