

(2010) 02 KAR CK 0115
In the Karnataka High Court
Case No : Criminal P. No. 8068 of 2009

Alpha Laboratories Limited and Others	APPELLANT
Vs	
State at the instance of Drugs Inspector	RESPONDENT

Date of Decision : 10-02-2010

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 18 (a) (i), 23 (3), 27 (d)

Citation : (2011) CriLJ 2692

Hon'ble Judges : Arali Nagaraj, J

Bench : Single Bench

Advocate : G.R. Andanimath, for the Appellant; P.H. Gotkhindi, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

Arali Nagaraj, J.—Accused Nos. 1 to 7 in C.C. No. 466/2007 pending on the file of the learned Addl. Civil Judge (Sr. Dn.) and CJM, Dharwad. (hereinafter referred to as "CJM" for short) have filed the present petition u/s 482 of Code of Criminal Procedure seeking quashing of entire proceedings in the said case. These Petitioners-accused are alleged to have committed the offence u/s 18(a)(i) r/w. Section 27(d) of the Drugs and Cosmetics Act 1940 (hereinafter referred to as "D and C Act" for short).

2. Stated in brief the facts leading to the present petition are as under:

a) One Sri. N.V. Raghuram. the Drugs Inspector, Dharwad filed his private complaint u/s 200 of Code of Criminal Procedure against all the Petitioners herein alleging that Petitioner No. 1 namely M/s. Alpha Laboratories Limited, manufactured sub-standard quality of Lignocaine Hydrochloric Injection IP 2% and supplied the same to the office of the Deputy Director, Veterinary Services and Animal Husbandry, Dharwad, (hereinafter referred to as "DD Veterinary" for short) for the purpose of distribution among the Veterinary Hospitals in the District and thereby committed the offence u/s 18(a)(i) which is punishable u/s

27(d) of D and C Act.

b) Further case of the complainant is that, Petitioner-accused Nos. 2 to 4. the Directors of 1st Petitioner company, being responsible for the day-to-day business of the 1st Petitioner Company: Petitioner-accused Nos. 5 and 6 being employed respectively as Chemist & Analytical Chemist in the said company: and Petitioner-accused No 7 being a person in charge of the said company, all committed the said offence.

e) Since the said complaint was filed by the public servant, recording of his sworn statement came to be dispensed with and the learned CJM took cognizance of the said offence on the said complaint and issued process against all Petitioner-accused Nos. 1 to 7 for the said offence. Accordingly the said case came to be registered against them all.

3. All further proceedings in the said case are sought to be quashed on the following grounds:

i) The provisions of Section 23(3) of D and C Act are not complied with by the complainant Drugs Inspector while drawing the sample inasmuch as, sample should have been drawn in Form No. 17 but the Drugs Inspector has drawn it in Form No. 17-A.

ii) The Deputy Director. Veterinary and Animal Husbandry (DD Veterinary), who obtained from 1st Petitioner-company the drugs in question for the purpose of distributing the same among Veterinary Hospitals in the District has not been arraigned as one of the accused and therefore, in the absence of the said Director, who has been local vendor, the 1st accused company which has its manufacturing activities at Indore (M.P.) which is admittedly beyond the local jurisdiction of the learned Magistrate, could not be prosecuted before the learned CJM at Dharwad.

iii) The sanction obtained by the complainant Drugs Inspector for prosecuting Petitioner Nos. 1 to 7 is not a valid sanction and therefore the very taking of the cognizance of the said offence against all the Petitioners-accused is bad in law and hence the entire further proceedings in the said case deserve to be quashed.

iv) Issuing of process against Petitioner-accused Nos. 2 to 4, the Directors of 1st Petitioner company, cannot be sustained inasmuch as, they were not responsible for the day-to-day business of the company and therefore process issued against them is not in conformity with the provisions of Section 34 of D and C Act.

v) Issuing of process against Petitioner-accused No. 7 Pradeep Soni is not justified inasmuch as there is no specific allegation against him in the said complaint as to in what capacity he was responsible to the affairs of the company at the relevant time of manufacturing of the drug in question.

4. Referring to each of the above grounds, Sri. G.R. Andanimath, the learned Counsel for the Petitioners-accused strongly contends that the learned CJM

Committed serious error in issuing process against the Petitioners mechanically without applying his mind to the facts of the case and the relevant provisions of D & C Act and hence all further proceedings in the said case deserve to be quashed.

5. Per contra, Sri. P.H. Gotkhindi, the learned HCGP for the Respondent complainant strongly contends that Form No. 17-A is more comprehensive than Form No. 17 inasmuch as. Form No. 17-A contains all the information contained in Form No. 17 and also some additional information and therefore it cannot be said that the complainant Drugs Inspector violated the provisions of Section 23(3) of the D and C Act while drawing the sample of the drug in question. He further contends that, as laid down by Supreme Court and various other Courts, by virtue of the provisions of Sections 179 & 180 of Code of Criminal Procedure, the company manufacturing a sub-standard drug can be prosecuted at the place where sample of such drug is drawn even without arraigning the local distributor/supplier as co-accused and therefore, the Court of the learned CJM at Dharwad has jurisdiction to try the said offence against 1st Petitioner company though the said company has its manufacturing activities at Indore, beyond the territorial jurisdiction of the learned CJM. He also contends that no material is placed by the Petitioners to show that the sanction obtained by the complainant Drugs Inspector for prosecuting them is not in accordance with law. Lastly, the learned HCGP contends that, there are specific allegations in the complaint that each of Petitioners-accused Nos. 2 to 4, being Directors of the 1st Petitioner company, and responsible for its day-to-day business: the Petitioner No. 5 to 7. being responsible employees of the said company, were responsible for the conduct of business of the company at the relevant time when the drug in question was manufactured, therefore, by virtue of provisions of Section 34 of D and C Act they are properly arraigned as accused in the said complaint.

6. The following facts could be seen from the documents produced by the Petitioners-accused.

a) It is not in dispute that Petitioner-accused No. 1 namely M/s. Alpha Laboratories has been carrying on its manufacturing activities at Pigdamber 543446 Ran, District: Indore (M.P.). It has been manufacturing various drugs including The Lignocaine Hydrochloric Injection IP 2% and it supplied to the Department of Veterinary and Animal Husbandry, Dharwad. certain quantities of the said drug and the same was stored in the office of the DD veterinary for distribution among Veterinary Hospitals in the District.

b) On 16/3/2005 the complainant Drugs Inspector visited the office of the Veterinary Director, and drew local sample of the said drug and issued Form No. 17-A dated 16/3/2005 to the Veterinary Director. Thereafter the sample was sent for test and analysis. The complainant Drugs Inspector received test report in Form No. 13 dated 9/9/2005 to the effect that the said drug was not of the standard quality.

c) Thereafter, on 16/9/2005 the complainant sent a notice u/s 18(a) of D and C Act along with the test report in Form No. 13. to the Veterinary Director, requesting him to disclose the source of acquisition of said drug. In response thereto the Veterinary Director disclosed that the said drug was supplied to the department by the 1st Petitioner company namely M/s. Alpha Laboratories Limited.

d) The complainant obtained sanction from his superior authority for prosecuting the Petitioners-accused for the said offence and then filed his said complaint.

7. Section 23(3) of D and C Act provides that, "where an inspector takes a sample of a drug (or cosmetic) for the purpose of test or analysis, he shall intimate such purpose in writing in the prescribed form to the person from whom he takes it". Rule 56 of Drugs and Cosmetic Rule 1945 (hereinafter referred to as D&C Rules" for short) provides that, when an Inspector takes a sample of drug for the purpose of test or analysis, he shall intimate such purpose in writing in Form 17 to the person from whom he takes it".

8. Further, Rule 56-A of the D&C Rules provides that, "where the fair price, for the samples of drugs taken for the purpose of test or analysis, tendered under Sub-section (1) of Section 23 has been refused, the Inspector shall tender a receipt therefore to the person from whom the said samples have been taken as specified in Form 17-A.

9. Thus, it is clear from the above provisions of Section 23(3) of D and C Act, Rules 56 and 56-A of the D&C Rules that, when an Inspector takes sample of drugs for the purpose of test or analysis, he shall intimate such purpose in Form 17 to the person from whom he takes the sample and, if such person refuses to receive the fair price tendered by the Inspector in respect of the sample taken by him, he shall give intimation to the said person in Form 17-A.

10. Form No. 17 reads as under:

FORM 17

(See Rules 56 and 145A)

INTIMATION TO PERSON FROM WHOM SAMPLE IS TAKEN

To

....

I have this day taken from the premises ofsituated at samples of the drugs/cosmetics specified below for the purpose of test or analysis.

Date..... Inspector.....

Details of sample taken

Date..... Inspector.....

Further, Form No. 17-A reads as under:

FORM 17A

(See Rules 56A and 145AA)

RECEIPT FOR SAMPLES OF DRUGS OR COSMETICS TAKEN WHERE FAIR PRICE
TENDERED THEREOF UNDER Sub-section (1) OF SECTION 23 OF THE DRUGS
AND COSMETICS ACT. 1940 IS REFUSED

To

.....

Whereas I, this day of.....20..... have taken from the premises of
situated atsamples of drugs/cosmetics as specified below: -

Details of samples.....

And whereas I had offered to pay you rupees as the fair price of the
samples of drugs/cosmetics taken:

And whereas, you have refused to accept the fair price tendered thereof;

Now, therefore, I give you this receipt as the fair price tendered for the samples
of the drugs/cosmetics taken by me.

Date..... Inspector.....

11. From the above contents of Form Nos. 17 & 17-A it could be seen that Form 17-A contains all the information contained in Form No. 17 and also some additional information. Therefore. I am of the considered opinion that by using Form 17-A, which contains all the particulars that are contained in Form No. 17. and also contains additional information as to drawing of sample of drug the complainant Drugs Inspector substantially complied with the provisions of Section 23(3) of D and C Act. This being so, therefore, the submissions of the learned Counsel for the Petitioners-accused that the complainant Drugs inspector violated the mandatory provisions of Section 23(3) of D&C Act by using Form No. 17-A while drawing the samples of the drug in question and therefore entire proceedings in the said case are liable to be quashed cannot be accepted.

12. The learned Counsel for the Petitioners-accused has relied upon the decision of Hon"ble Supreme Court in the case of A.K. Roy and Another Vs. State of Punjab and Others, in support of his above contention that provisions of Section 23(3) of D and C Act are not complied with. In the said case before the Hon"ble Supreme Court the provisions of Section 20(1) of Prevention of Adulteration Act were considered. Section 20(1) of the said Act provided that "prosecutions for the offences under the said Act are to be lodged by the persons designated for that purpose". In that context Hon"ble Supreme Court observed at para No. 10

of its judgment in the said case that, "the power to initiate prosecution for the offences under the said Act could not be delegated to any person by the persons designated for that purpose". Therefore I am of the view that the said observations of Hon"ble Supreme Court cannot be applied to the present case inasmuch as, the authority or competency of the complainant to prosecute the Petitioners herein is not in question and, as observed by me supra, the provisions of Section 23(3) of D and C Act have been substantially complied with by the complainant Drugs Inspector.

13. It is the strong contention of the learned Counsel for the Petitioners-accused that, since it is the very case of the prosecution that the drug in question was supplied by the 1st Petitioner company, having its manufacturing activities at Indore, in the State of M.P., to the Veterinary and Animal Husbandry Department at Dharwad and samples of the said drug were taken from the drug stored in the office of the DD veterinary at Dharwad, within the jurisdiction of the Court of the learned CJM at Dharwad, the said Court at Dharwad does not have jurisdiction to try the 1st Petitioner company, in the absence of the DD Veterinary, as one of the accused in the said case.

14. In support of his above contention, Sri. Andanimath, the learned Counsel for the Petitioners-accused, has placed reliance on the decision of Madhya Pradesh High Court in the case of Mohammed Ahmed Khan v. State reported in 2001(2) EFR 519. As could be seen from para No. 5 of the said decision, the question that arose for consideration by the High Court of Madhya Pradesh was "whether Special Court at Shajapur in Madhya Pradesh had jurisdiction to try the offence against an employee of the manufacturing company having its operation outside the jurisdiction of that Court". Though it was urged before the High Court of M.P. in the said case that the local vendor, from whom samples of fertilizer were drawn by the Fertilizer Inspector, had not been made an accused in the said case and therefore the said case could not be proceeded against the company, the High Court did not record its finding either accepting or rejecting the said contention. The employee of the company was only proceeded against without the company and its Directors being arraigned as accused. Therefore the High Court of M.P. quashed the charge that was framed against accused in the said case. That being so, I am of the opinion that the decision of Madhya Pradesh High Court in the said case would be of no help to the Petitioners herein to support the above contention of their learned Counsel.

15. In support of the above contention, the learned Counsel for the Petitioners-accused has relied on yet another decision of Madhya Pradesh High Court also in the case of Bassein Drugs and Pharmaceutical Industries Pvt. Ltd., v. State of M.P. reported in 1979 MPLJ NOC 55. In the said case, the said High Court held that the provisions of Section 179 of Code of Criminal Procedure apply only where offence is committed within local limits of one Court and consequences of Act done ensue within the jurisdiction of another Court.

16. Facts in the said case were: "the applicant company was the manufacturer of

drugs at Bombay. It sold drugs to M/s. Zaveri and Sons at Bombay who in turn sold the drugs to one Omprakash Khandelwal of Indore. Sample of the drugs was taken from Khandelwal for test and it was found to be sub-standard. The applicants and Khandelwal were prosecuted for various offences under D&C Act including the one u/s 18(a)(i) of the said Act. in the Court of Magistrate at Indore. Further, there was no allegation in the complaint that the sale to M/S Zaveri and Sons was for distribution by them to Khandelwal nor was it alleged that manufacture for sale or stocking or exhibition for sale was done by applicants within jurisdiction of indore Magistrate". On those facts, the High Court of Madhya Pradesh held that, the drug was manufactured at Bombay and it was sold at Khandelwal and as such the consequences of the manufacturing activity of the said drug ensued at Khandelwal and therefore Section 179 of Code of Criminal Procedure could be applied. The question. "whether prosecution of the company at the place where consequences of manufacturing of sub-standard quality drugs ensued could not be initiated without arraigning the person from whom the sample of drug was taken" was not before the High Court of Madhya Pradesh in the said case. Therefore the said decision also is of no help to the Petitioners herein.

17. The learned Counsel for the Petitioners, has also relied upon the decision of Supreme Court in the case of State of Punjab Vs. Nohar Chand, . This decision has been referred to by the High Court of Bombay in the case of Ashok Sureshchand Bal and Ors. v. State of Maharashtra reported in 2002 DC 114 Bombay High Court (Nagpur Bench), which is relied upon by the learned High Court Government Pleader. Therefore the principles laid down by the Hon"ble Supreme Court in the said case would be considered while considering the said decision of High Court of Bombay.

18. In support of his contention that the 1st Petitioner company could be proceeded against without arraigning the DD Veterinary, as co-accused, the learned High Court Government Pleader has relied upon two decisions of Bombay High Court namely:

a) 2002 DC 114 Bombay High Court (Nagpur Bench) (Ashok Sureshchand Bal and Ors. v. State of Maharashtra).

b) M/s. Mediscarch Laboratories and others Vs. State of Goa, .

In both these decisions the decision, of Hon"ble Supreme Court in the case of State of Punjab Vs. Nohar Chand, has been relied upon.

19. In the case or Ashok Sureshchand Bal and Ors. v. State of Maharashtra reported in 2002 DC 114 Bombay High Court (Nagpur Bench) relied upon by the learned HCGP, the facts were: "The complainant Drugs Inspector. Wardha, had drawn samples of drugs in question from Suresh Bahadurchand Khatri, the proprietor of M/s. Kiran Medical and General Stores at Hinganghat. District Wardha. The said item was manufactured by M/s. B.D.N. Pharmaceuticals, at: Nagpur. On subjecting the said drug to analysis it was found to be not of

standard quality. Therefore prosecution was lodged against the said company by the complainant before the learned JMFC at Hinganghat in the District of Wardha where samples were drawn".

20. On the above facts in the said case, it is clear that manufacturing unit of the company was at Nagpur, samples of the drug in question were drawn at Hinganghat and the prosecution was initiated at Hinganghat but the party at Hinganghat from whom the samples were taken was not arraigned as an accused. Therefore, the High Court of Bombay formulated the question: "whether the Judicial Magistrate First Class at Hinganghat had no jurisdiction to try the Petitioners as the manufacturing unit of the Petitioners was at Nagpur and the samples of drug were taken at Hinganghat though the party from whom samples were drawn was not arraigned as co-accused, along with the Petitioners". The said question is quite identical with the one that has arise for my consideration in the instant case, namely, "whether the Court of the learned CJM, Dharwad, has no jurisdiction to try the Petitioners herein for the offence u/s 18(a)(1) r/w Section 27(d) of the D&C Act 1940 in view of the facts that the Petitioners have been carrying on their manufacturing activities at Indore and samples of the drug in question are drawn from the office of the Deputy Director, Veterinary and Animal Husbandry, Dharwad, but the said Deputy Director has not been arraigned as co-accused along with the Petitioners".

21. In the above case (M/s Ashok Sureshchand Bal And Ors. v. State of Maharashtra 2002 DC 114). The learned Single Judge of Bombay High Court, Nagpur Bench, has referred to the decision of Hon"ble Supreme Court in the case of State of Punjab Vs. Nohar Chand, which has been relied upon by both the parties to the present Criminal Petition. Hon"ble Supreme Court has observed at para Nos. 5 to 7 in the said case as under:

Para 5. "The Respondent, the manufacturer of the sub-standard fertiliser is to be tried along with those who marketed the sub-standard fertiliser manufactured by him as his agents. The question is whether the Court where the sub-standard fertiliser is marketed would have jurisdiction to try the manufacturer of the sub-standard fertiliser whose manufacturing activity is at a different place. This very argument was posed before the Division Bench of the High Court. The High Court after referring to Sections 179 and 180 of the Code of Criminal Procedure, 1973 held that the Court where sub-standard fertiliser was found to be marketed will have the jurisdiction to try the manufacturer of substandard fertiliser even if the manufacturing activity is at an entirely different place. The Division Bench held that the manufacturer as well as the dealer can be tried at a place where the consequences of the manufacturing and the selling of sub-standard fertiliser had ensued as envisaged in Sections 179 and 180 of the Code of Criminal Procedure. That in our opinion appears to be the correct view in law.

Para 6. Section 179 provides that when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction

such thing has been done or such consequence has ensued. Section 180 provides that where an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, the first-mentioned offence may be inquired into or tried by a Court within whose local jurisdiction either act was done.

Para 7. Now if manufacturing substandard fertiliser is by itself an offence and marketing the sub-standard fertiliser is itself a distinct offence but they are so interconnected as cause and effect, both can be tried at one or the other place. If one manufactures the sub-standard fertiliser, wherever it is marketed the inter-relation or casual connection is of cause and effect. The situation will be adequately covered by Sections 179 and 180 of the Code of Criminal Procedure. We are in agreement with the later decision of the Division Bench rendered on March 9, 1983 that the Court where the substandard fertiliser is being marketed will equally have the jurisdiction to try the manufacturer of sub-standard fertiliser. This is so obvious that any further discussion appears to us to be superfluous.

(Emphasis supplied by me)

22. Following the above observations of Hon''ble Supreme Court, the learned Single Judge of Bombay High Court (Bench at Nagpur) arrived at the conclusion that the drug in question was manufactured at Nagpur and the sample was drawn at Hinganghat and the consequence of manufacturing of sub-standard drug ensued at Hinganghat and therefore the Court at Hinganagar had jurisdiction to try the manufacturer of the said drug though the manufacturing activities were carried on at Nagpur and though the party at Hinganghat from whom the samples of drugs were drawn was not an accused in the said case.

23. The learned Single Judge has also considered at para No. 7 of his Judgment, the decision of Panaji Bench of Bombay High Court in the case of Medi search Laboratories and Ors. v. State of Goa. and has observed as under:

Para 7. Another judgment which was considered in State Vs. Nathumal Damumal and Others, . In this case, Nathumal Danumal trading in Deolali Camp in Nasik had purchased 15,000 ibs of tincture Iaricis BP 1891, manufactured by M/s. India Drugs Laboratory Private Limited, Calcutta. The goods were transported from Calcutta to Indore and thereafter, 5000 ibs of the said drug was sent to Nasik by rail and 1000 ibs by truck to Malegaon. Drugs Department got information about the transportation of the said drugs and, as such, the officers intercepted the goods at Nasik and Malegaon and samples were taken, which were sent to Chemical Analyser and it was found that the said samples were not according to the standard specified in the Act. The prosecution was launched at Nasik against the manufacturer, as well as Nathumal Damumal, who had purchased the drugs. In this case, taking into consideration that the word "distribute" is wide enough to include the repose of the goods at Nasik, even after a completed sale at Calcutta, since the manufacturers were aware that the goods were bound for

Nasik, it is pertinent to note that it was, held that it is clear that the ordinary and general meaning of the word "distribute" is sufficient to convey spreading of goods anywhere by whatever means that may be employed and even though the sale was complete at Calcutta, there could be no doubt that they were intended for Nasik. (Emphasis supplied). It was further pointed out that taking into consideration that the Act was enacted to control the rampant evil of misnamed drugs or substandard drugs from being sold which may in some cases prove seriously injurious to the purchaser, it was held that it was not possible to give any other meaning to the word "distribute" and to give any other meaning, would be to frustrate the purpose of the Act and enable the manufacturers to manufacture drugs irresponsibly and spread them throughout the length and breadth of the Country and escape the consequences for such manufacture. (Emphasis supplied). It was thus held that Section 179, Code of Criminal Procedure was clearly attracted since one of the ingredients of the offence of distribution was actually reaching of the goods at the place where they were intended. The objections, raised by manufacturers were, therefore, rejected.

24. Further, at para No. 9 of the judgment in the said case (Ashok Sureshchand Bal's case 2002 DC 114) the learned Single Judge of Nagpur Bench of Bombay High Court has considered the principles laid down in the case of In charge Production, Haryana State Co-operative Supply and Marketing Federation Ltd. Vs. State of Punjab, and has observed as under:

Para 9. At this stage, I would also like to refer the judgment of Punjab and Haryana High Court in In charge Production, Haryana State Co-operative Supply and Marketing Federation Ltd. v. State of Punjab (supra). In this case, point involved for determination was whether manufacturer of sub-standard fertilizers can be tried within the jurisdiction of the Court where it is manufactured or a place where it is ultimately sold along with the retailer or the wholesale dealer. It was in this context that reference was made to the case Nohar Chand v. State of Punjab (supra), which was decided by the Punjab High Court wherein it was held that the manufacturer can only be tried at the place where the sub-standard fertilizer is manufactured. Referring to this view, the Division Bench of the Punjab High Court in In Charge Production, Haryana State Cooperative Supply and Marketing Federation Ltd. v. State of Punjab (supra), had observed that -

It is true that in view of this authority, it has been held that the manufacturer of sub-standard fertilizers can only be tried at the place where the sub-standard fertilizers is manufactured, but if this view, is upheld, it will lead to disastrous results. The manufacturers of the sub-standard fertilizer in that ease would escape prosecution, as the fertilizer manufactured at a place by a manufacturer is sold throughout the country through authorised agents. Each State Government has provided its own enforcement machinery and that machinery has only jurisdiction in its own State. The officers entitled to take sample can only file complaints before the Courts having jurisdiction in their own State and not in the other State where the manufacturing has actually taken place. In fact

that manufacturer of sub-standard fertilizer actually sells to the farmers through its authorised dealer or agent and ultimately both are in league with each other to sell the sub-standard fertilizer and the offence thus is related. The manufacturer as well as the dealer can be tried at a place where the consequences of the manufacturing and selling of sub-standard fertilizer had ensued as envisaged in the provisions of Section 179 and 180 of the Code of Criminal Procedure, 1973. In the manufacturing of substandard fertilizer at one place and its sale through agents at another place, there is a unity of purpose and design and continuity of action between the manufacturer and seller in respect of the sale of that substandard fertilizer. Thus the manufacturer can be tried at a place where the sub-standard fertilizer is sold ultimately.

It may be pointed out that the view taken by the Punjab and Haryana High Court in *Nohar Chand v. State of Punjab* (supra) was overruled by Apex Court in *State of Punjab v. Nohar Chand* (supra.)

25. After considering at length the principles laid down by the Hon"ble Supreme Court in the case of *State of Punjab v. Nohar Chand*, the decision of Bombay High Court. Panaji Bench, in the case of *Medi search Laboratories and Ors. v. State of Goa* and the decision of High Court of Punjab and Haryana in the case of *In charge production, Haryana State Co-operative Supply and Marketing Federation Ltd., v. State of Punjab*, referred to supra, the learned Single Judge, High Court of Bombay, Nagapur Bench, arrived at the conclusion that the company could be prosecuted without arraigning as accused the person from whom samples were drawn. It is observed by the learned Single Judge at para No. 10 of his judgment as under:

Para 10...In my opinion, taking into account the purpose sought to be achieved by the said Act, the principle has to be expanded and wherever an adulterated drug is manufactured, the manufacturer can be prosecuted at the place where the drug is sold irrespective of whether the seller has been made party or not since the consequences ensue at the place where the goods are sold and purchased. The goods are manufactured for the purpose of distribution throughout the country and the manufacturers cannot be permitted to escape their liability on technical grounds. At any rate, the consequences of manufacturer of adulterated drug ensue wherever the drug is sold and as such manufacturer can be sued at any place of sale of adulterated drug. Of course, the sale within the jurisdiction of the Court taking cognizance against the manufacturer will have to be established.

26. In the instant case, admittedly, 1st Petitioner company is manufacturer of the drug in question carrying on its manufacturing activities at Indore in the State of Maharashtra. It is not in dispute that it supplied the said drug to the said Veterinary Department and the DD Veterinary received the same and stored it in his office for the purpose of its use in the Veterinary Hospitals in the District. This being so the DD Veterinary could not be a seller and storage of the said drug in his office could not be held to be for the purpose of sale. Further, it is not the

case of the complainant that the said drug was stored by the DD Veterinary in his office knowing it to be "not of the standard quality". Therefore, the said Deputy Director could not be said to have committed the said offence so as to arraign him as a co-accused along with the accused in the said case (Petitioners herein). The first Petitioner company committed the said offence at Indore, in the State of Maharashtra, by manufacturing the said drug at Indore and the consequence of the said offence ensued in the District of Dharwad, within the territorial jurisdiction of the learned CJM. Therefore, it is clear that by virtue of Section 179 & 180 of Code of Criminal Procedure prosecution could be launched against the Petitioners either at Indore where the offence was committed or at Dharwad where its consequences ensued.

27. In view of the facts and circumstances of the instant case, as observed by me supra, respectfully agreeing with the above view taken by the learned Single Judge of Bombay High Court, Nagpur Bench, in the case of M/s Ashok Sureshchand Bal (2002 DC 114) and also following the decision of Hon'ble Supreme Court in the case of State of Punjab Vs. Nohar Chand, and also agreeing with the views taken by the learned Single Judge. Bombay High Court Panaji Bench in the case of Medi search Laboratories and Ors. v. State of Goa. (1997 DC 94) and the High Court of Punjab & Haryana in the case of In charge Production, Haryana State Co-operative Supply and Marketing Federation Ltd. Vs. State of Punjab, . I am of the considered opinion that the Court of the learned CJM at Dharwad has jurisdiction to try the 1st Petitioner company and also Petitioners-accused Nos. 2 to 7 for the said offence without arraigning the DD Veterinary as co-accused.

28. The learned Counsel for the Petitioners-accused strongly contends that, the sanction obtained by the complainant Drugs Inspector for prosecuting the Petitioners herein is not legally valid one and therefore the entire proceedings in the said case deserve to be quashed. However, he has not been able to substantiate this contention by referring to any fact of the case or any provision of law. Therefore the said contention does not deserve acceptance.

29. The learned Counsel for the Petitioners strongly contends that issuing of process against Petitioner-accused Nos. 2 to 4 the Directors of the 1st Petitioner company cannot be sustained inasmuch as no material is produced on record by the complainant Drugs Inspector to show that these Directors were responsible for the day-to-day conduct of the business of the said company.

30. The learned HCGP has produced at Annexures "D" and "E" the two letters addressed by 1st Petitioner company to the Drugs Inspector. These two letters are not in dispute. They reveal that the said company furnished to the complainant-Drugs Inspector the copies of Memorandum of Article and association, name of the person incharge of and responsible to the company as being Pradeep Soni, name of the manufacturing chemist who was incharge of manufacturing of the said batch of drug, name of analyst who analysed the product and also furnished a copy of drug analytical report. Thus it is clear that

based on the said material furnished to him, by the 1st Petitioner company, the complainant Drugs Inspector, has made specific averments in the complaint that the Petitioner-accused Nos. 2 to 4. being the Directors of the 1st Petitioner company, were responsible for the conduct of day-to-day business of the company at the relevant time. Further, it is also averred in the said complaint that accused No. 5, being manufacturing chemist of the company, accused No. 6 being analytical chemist of the company were also responsible for manufacturing of the drug in question. It is pertinent to note that these allegations are based on the information furnished to the complainant by the Company itself in the letters at Annexures D & C. Therefore, the contention of the learned Counsel for the Petitioners that issuing of process against Petitioners-accused Nos. 2 to 6 is without any basis cannot be accepted.

31. However, on careful reading of the averments in the complaint it could be seen that it is alleged at para No. 9 therein that accused No. 7 Sri. Pradeep Soni is a person incharge of accused No. 1 company and that as a person incharge he is responsible for the day-to-day conduct of the business of the said company. Referring to this averment, the learned Counsel for the Petitioners contends that arraigning this accused No. 7 as co-accused with other accused Nos. 1 to 6 cannot be sustained. But, Annexure "D" the letter written by the 1st Petitioner company to the Drugs Inspector, reveals that Mr. Pradeep Soni had been the person in charge of and responsible to the company. That being so, this contention of the learned Counsel for the Petitioners also cannot be accepted.

32. For the reasons aforesaid I am of the considered opinion that the present petition deserves to be dismissed as being devoid of merits. Hence the same is dismissed accordingly. However, the Petitioners shall be at liberty to demonstrate before the Trial Court as to which of the Directors and which of the employees of the 1st Petitioner company who are accused Nos. 2 to 7 were not responsible for the conduct of the day-to-day business of the company at the relevant period when the said drug came to be manufactured and thereby seek their discharge.

In view of the final disposal of the main petition, Misc. Crl. No. 15 117/2010, the Interlocutory Application also stands dismissed.