(2011) 02 PAT CK 0044

In the Patna High Court

Case No : Criminal Miscellaneous No. 37985 of 2004

Glaxo Smithkline Pharmaceuticals limited	APPELLANT
Vs	
The State of Bihar and Rakesh Nandan Singh, Inspector of Drugs, Civil Surgeon	RESPONDENT

Date of Decision : 22-02-2011

Acts Referred:

Citation : (2011) 02 PAT CK 0044

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—The present petition has been filed by four Petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure with a prayer to quash an order dated 12.7.2004 passed by learned Chief Judicial Magistrate, Saharsa in Complaint Case No. 723-C of 2004. By the said order, learned Magistrate has taken cognizance u/s 27(d) of the Drugs and Cosmetics Act,1940 (hereinafter referred to as the "Drugs Act?) for violation of Section 18(a)(i), 18(a)(vi), 18(b) and 18(c) of the Act.

2. Short fact of the case is that on 12.6.2003 and 7.7.2003, the Inspector of Drugs, Saharsa conducted inspections in the premises of M/S Popular Agency, Saharsa and Sheo Shakti Medical Agency, Saharsa respectively where some drugs were found in the premises, which were manufactured by M/S Emcure Pharmaceuticals Ltd. and marketed by M/S Glaxo Smith Kline Pharmaceuticals Limited. On the label and cartons of such seized drugs name and Logo of M/S Glaxo Smith Kline Pharmaceuticals Limited was printed. M/S Glaxo Smith Kline Pharmaceuticals Limited had purchased the said drugs as wholesale licensee from the manufacturer M/S Emcure Pharmaceuticals Limited. The said labeling was contrary to the provisions of the Drugs and Cosmetics Act and Rules and as such clarification was sought from M/S Glaxo Smith Kline Pharmaceuticals Limited, Patna and from other concerned and in response thereto the constituent attorney of M/S Glaxo Smith Kline Pharmaceuticals Limited furnished some clarification wherein it was admitted that in view of 3rd party agreements M/S

Glaxo Smith Kline Pharmaceuticals limited was marketing the drugs manufactured by M/S Emcure Pharmaceuticals Ltd. They further tried to clarify that the labeling was in accordance with Rules 96 and 97 of the Drugs and Cosmetics Rule (Rules). It was tried to be justified that on the labeling name of manufacture was mentioned clearly and further information was given that the said drugs were being marketed by M/S Glaxo Smith Kline Pharmaceuticals Ltd. After conducting enquiry, the complaint was filed in the court of Chief Judicial Magistrate, Saharsa. For better appreciation of the acts and allegation, it would be appropriate to quote paragraph-20 of the complaint petition, which is as follows:

20. That, the investigation and correspondence with the company, so far, have led to the following observations. (i) The above products are manufactured by Emcure Pharmaceuticals Limited and are purchased by Glaxo Smith Kline Pharmaceuticals Limited, on wholesale licenses as evidenced by excise invoices of the manufacturer. In Drugs and Cosmetics Rules,1945 there is no provision under which the NAME AND LOGO OF INTENDED PURCHASER (WHOLESALER), who purchases drugs from the manufacturer could appear on the labels of the drugs purchased.

Here, Glaxo Smith Kline Pharmaceuticals Limited is not the manufacturer of the above drugs but has purchased the above drugs from the manufacturer on wholesale licenses. So, the status of Glaxo Smith Kline Pharmaceuticals Limited, is of wholesaler of drugs not the manufacturer in the eye of law. The labelling of drugs is covered by Rule 96 and Rule 97 of Drugs and Cosmetics Rules,1945. The labelling comes within the ambit of "MANUFACTURE" as per Section 3(f) of Drugs and Cosmetics Act,1940 and so, the Rules 96 & 97 concern the manufacturer of the drug not the intended purchaser. As far as above products are concerned, Glaxo Smith Kline Pharmaceuticals Limited, has no roles in their manufacturing. Therefore, the name of the intended purchaser and its logo should not appear on the labels of drugs purchased. Thus printing of name and logo of the intended purchaser on the labels of drugs is violation of labelling rules 96 & 97 of Drugs & Cosmetics Rules 1945 and attracts provision of Section 17(b) of Drugs and Cosmetics Act,1940.

(ii) By printing NAME AND LOGO OF Glaxo Smith Kline Pharmaceuticals Limited-the INTENDED PURCHASER (WHOLESALER) on the labels of drugs, the customers, including doctors, who prescribed the products are misled into believing that these are the products of Glaxo Smithkline Pharmaceuticals Limited, which is far from the truth. Further, name of the Glaxo Smith Kline Pharmaceuticals Limited, (wholesaler) is printed conspicuously in bolder letters than the name of the manufacturer to further impress upon the customers that these are the products of GSK. This attracts provision of Section 17(c) of Drugs and Cosmetics Act, 1940. (iii) The companies argument is that the above products are manufactured under THIRD PARTY MANUFACTURING AGREEMENT and the name and logo of the company is printed on the labels of drugs as an

additional information to the customers that a product that they are familiar with but which may be manufactured by a company other than Glaxo Smith Kline Pharmaceuticals Limited under a third party manufacturing agreement, continues to be of the same high quality and standard that customers are used to.

(a) As far as third party manufacturing agreements are concerned, there is no such arrangement in Drugs & Cosmetics Rules, 1945. There are only 3 ways of manufacturing of drugs as per Rules. (a) Own Manufacturing License (b) Repacking License (c) Loan License When any one wishes to avail on self of the manufacturing facilities owned by a licensee, one is granted a Loan License (25A or 28A) subject to the fulfillment of the conditions, prescribed under Rules.

Here, M/S Glaxo Smith Kline Pharmaceuticals Limited as also availed the manufacturing facilities of Emcure Pharmaceuticals Limited, to get their products manufactured under THIRD PARTY MANUFACTURING AGREEMENT but without any legal obligations under Drugs & Cosmetics Rules. Since they don''t have any legal obligations as a manufacturer under Drugs & Cosmetics Rules, they can not avail the privilege of printing their logo and name on the labels of drugs. This could be availed only by the manufacturers (whether Own License, Loan License or Repacking License) of drugs, who have certain legal obligation as manufacturers under Drugs & Cosmetics Act & Rules and not by the intended purchaser of drugs (wholesaler). The third party manufacturing agreement is beyond the provisions of Drugs & Cosmetics Rules and therefore this arrangement must not have any bearing on the labelling of drugs. Moreover, some unlawful terms are incorporated in Para-2 and Para-11 of Third Party Manufacturing Agreement, which do not go along the Drugs Rules.

Para-2- Emcure guarantees that the said products shall be in accordance with the formulation, standards, specifications and label claims as intimated to and accepted by Glaxo. Standard & label claims of the product can not be dictated by Glaxo at its sweet will but must be in accordance with the standard set out in the Second Schedule to Drugs & Cosmetics Act,1940 and labelling Rules 96 & 97 of Drugs and Cosmetics Rules, 1945 respectively.

Para-11 - The said products shall be sold by Glaxo under its logo and trade marks owned by or licensed to Glaxo as set out in Schedule 1 here to ("the said marks"). Glaxo hereby grants to Emcure, a non-assignable and non-exclusive right and permission to apply and affix the said marks on or in relation to its orders for the said products. Emcure shall affix on the said products and/or the labels and/or the packages thereof such of the said marks as intimated to Emcure. Glaxo as a wholesaler can not infringe the "Labelling process" which comes within the ambit of "Manufacture" as per Section 3(f) of Drugs & Cosmetics Act,1940 and concerns manufacturer ONLY not wholesaler. Therefore, Glaxo cannot dictate Emcure Pharmaceuticals Limited, to affix the logo, name & trademarks of Glaxo on the products, manufactured by Emcure Pharmaceuticals Limited.

If they wish to print the logo and name of their company on the labels of drugs, they should either manufacture in their own licensed factory or they should get their products manufactured in other licensee''s factory under Loan License not under third party manufacturing agreement. It is unlawful to get their products manufactured under third party manufacturing agreement bypassing the manufacturing norms, when the Rules have already provided such facilities to the desirous parties to get their products manufactured in some other licensee''s factory under Loan License. The "Explanation" of LOAN LICENCES as mentioned in Rule 75A of Drugs & Cosmetics Rules 1945 reads as under -

For the purpose of this rule a loan licence means a licence which a licensing authority may issue to an applicant who does not have his own arrangements for manufacture but who intends to avail himself of the manufacturing facilities owned by another licensee in Form 28. There is a "LATIN MAXIM", well recognized by Hon''ble Indian Courts as well, from earlier days - "ACTUS LEGITIME NON RECIPIUNT MOMDUM". It emphasizes that when a particular mode is sanctioned by law for doing a certain thing, that thing can not be done in different way. Thus the manufacturer (Emcure Pharmaceuticals Limited) and purchaser of drugs (Glaxo Smitthkline Pharmaceuticals Limited), both have violated the provision of LOAN LICENCES - Rule 75A of Drugs & Cosmetics Rules 1945.

(b) As far as additional information on the labels, as they have cited in their letter, dated 20th August,2003, is concerned the law makers have already embraced all the information/declarations pertaining to drugs, manufacturer''s details, Mfg. Lic. No. , warning & precautions, if any, which may be important to the consumers/pharmacists/doctors, required to be made on the labels of drugs. Therefore, printing of name & logo of the intended purchaser (wholesaler) of drugs is not required to be made on the labels of drugs. (IV) PROBABLE REASONS FOR ADOPTING THE UNLAWFUL PRACTICE OF THIRD PARTY MANUFACTURING AND ITS IMPACT ON GOVERNMENT REVENUE.

(a) EXCISE-DUTY PAID TO THE GOVERNMENT- When the get their products manufactured under third party manufacturing agreement bypassing the provision of loan licences, the excise duty paid to the Government is much lesser than when they themselves manufacture in their own licensed factory or get their products manufactured in another licensee''s factory under loan license. This is evident from the comparison of excise duty payable on the products manufactured by GSK itself and excise duty payable on the products manufactured by Emcure Pharmaceuticals Limited under third party manufacturing agreement. To appreciate the gravity of the situation, a classical case of the difference in excise duty payable on the product manufactured by GSK in its own licenced factory and on the product manufactured by Emcure Pharmaceuticals ltd. under third party manufacturing Agreement is cited below as an example -

I. PRUDCT- T-BACT OINTMENT

1. Name of the product and its dosage form - T-BACT OINTMENT

2. Name of the manufacturer: Mfd. by G.S.K.

In its own factory.

3. Composition approved: Contains Mupirocin USP 2.0% W/W in a non-greasy by Drug Control Authorities

4. Type - Tube

5. Size - 5 g

Excise duty, if any

6. Rate % - 16

7. Amount - Rs. 5.98 8. Price to be Retailed (inclusive of excise Duty) - Rs. 48.20

9. Retail price - Rs. (MRP) - 58.75 (inclusive of Excise Duty)

10. Batch No. - 238.

II. PRODUCT- BACTRONAN OINTMENT

1. Name of the product and its dosage from: BACTROBAN OINTMENT

2. Name of the Manufacturer: Mfd. by Emcure Pharmaceuticals

3. Composition approved by: Mupirochin USP By Drug Control Authorities 2.0% W/W Wate Soluble base q.s.

4. Specification of pack

5. Type - Tube

6. Size - 5g

Excise Duty, if any

7. Rate % - 16

8. Amount - Rs. 3.20

9. Price to be Retailed (inclusive of excise duty)-Rs.47.65

10. Retail price(inclusive of Excise Duty) 58.75

11. Batch No.E108

III. PRODUCE BACTROBAN OINTMENT

1. Name of the produce Bactroban Ointment and its dosages from:

2. Name of manufacturer: Mfd. by Emcure Pharmaceuticals Ltd. under Third Party manufacturi ng agreement for GSK

3. Composition approved: Mupirocin USP 2% by Drug control Authorities-: W/W

Water Soluble Base q.s. Specification of the pack:

4. Type - Tube

5. Size - 5 g

Excise Duty, if any

6. Rate % - 16

7. Amount - Rs. 2.02

8. Price to be retailed- Rs. 47.40 (inclusive of Excise Duty)

9. Retail price (inclusive of Excise Duty) - Rs. 58.75 (MRP)

10. Batch No. - E 127

From the above table it is evident that above three products have same active ingredient, same strength, same specification of the pack and same Retail Price (MRP) but the excise duty payable on T-BACT OINTMENT, manufactured by Glaxo Sithk line Pharmaceuticals Limited in its own licenced factory is Rs. 5.98 whereas the excise duty payable on BACTROBAN OINTMENT, batch No. -E108 & E 127, manufactured by Emcure Pharmaceuticals Ltd. under third party manufacturing agreement is only Rs. 3.20 & Rs. 2.02 respectively and there is a remarkable cut in excise duty whereas the MRP remains same.

This unscrupulous gain in excise duty may be one of the motivating factor for the company to adopt this unlawful practice of third party manufacturing which causes great loss to the Govt. Revenue. (b) LOSS OF GOVERNMENT REVENUE - When they manufacture drugs in their own licenced factory or get their products manufactured in other licensee''s factory under loan licences, they have to deposit the prescribed amount under Drugs & Cosmetics Rules, 1945 in Government Account towards License fee, License Renewal fee, Inspection fee and Additional product approval fee. But under third party manufacturing agreement the Government gets no fee since they bypass the licensing procedure of loan licence as prescribed under Rules and this incurs great loss to the Government Revenue.

(c) FREEDOM FROM LEGAL OBLIGATIONS AND RESPONSIBILITIES UNDER DRUGS & COSMETICS ACT, 1940 & RULES, 1945. - When they themselves manufacture in their own licenced factory or get their products manufactured in other licensee''s factory under loan License, they have certain legal obligations and responsibilities as prescribed under Rule 76, 76A & 78A of Drugs & Cosmetics Rules, 1945 but when they get their products manufactured under third party manufacturing agreement they are free from those legal obligations and responsibilities. All those legal obligations and responsibilities lie on the shoulders of the licenced manufacturer, which is evident from Para 9 & 10 of third party manufacturing agreement. For the above reasons, Glaxo Smith Kline Pharmaceuticals Limited has probably resorted to the unfair practice of third

party manufacturing.

from the foregoing paras, it is amply clear and evident beyond doubt that the above drugs have been manufactured by violating the provision of loan licences - rule 75a and labelled by violating labelling rules 96 & 97 of drugs and cosmetics rules, 1945 and logo & name of the intended purchaser (glaxo smithkline pharmaceuticals limited - as a wholesaler), as they feature on the labels of drugs & carton of drugs attract provision of misbranded drug - section 17(b) & 17(c) of drugs and cosmetics act, 1940.

That, Accused No. 1 to 12 have manufactured, distributed and sold MISBRANDED DRUG (Section 17(b) & 17(c) of Drugs and Cosmetics Act, 1940) by violating the provisions of Rules - 75A (Loan licence), Rule 96 & 97 (Labelling Rules) of Drugs & Cosmetics Rules 1945, which are prohibited u/s 18(a)(i), 18(a)(vi), 18(b) & 18(c) of Drugs & Cosmetics Act, 1940 and consequently punishable with imprisonment for a term which shall not be less than one year but which may extend to two years and with fine u/s 27(d) of Drugs & Cosmetics Act,1940.

3. On aforesaid allegation and fact, complaint was filed against altogether 12 accused persons, which include all the four Petitioners.

4. Since it was an official complaint, the learned Chief Judicial Magistrate, by its order dated 12.7.2004, took cognizance u/s 27(d) of the Drugs Act for violation of provisions under Sections 18(a)(i), 18(a)(vi), 18(b) and 18(c) of the Act and directed for issuance of summons for securing appearance of the accused persons and transferred the case to the court of Shri C.M. Jha, Judicial Magistrate, Ist Class, Saharsa for its trial and disposal.

5. Aggrieved with the order of cognizance, the present petition was filed by the aforesaid Petitioners. On 1.12.2005, while issuing notice to opposite party No. 2, this Court directed that in the meantime, further proceeding in Complaint Case No. 723-C of 2004 pending in the court of Judicial Magistrate, Ist Class, Saharsa shall remain stayed. Thereafter, on 26.2.2007, the case was admitted for hearing. It was directed that in the meantime, the order of stay granted by this Court earlier shall continue and as such the order of stay is still continuing. At the stage of hearing, the present petition was heard on several dates.

6. Shri B.K. Sinha, learned Senior Counsel appearing on behalf of the aforesaid Petitioners, at the very outset, has argued that order of cognizance is liable to be set aside on the ground that in the complaint petition, there is no assertion indicating commission of any of the offences by any of the Petitioners. It was submitted that Petitioners cannot be prosecuted on vicarious liability. It was submitted that Petitioner Nos. 2 and 3 are Chairman and Managing Director of M/ S Glaxo Smith Kline Pharmaceuticals Limited and being Chairman and Managing Director, in absence of any specific role played by aforesaid Petitioners, they cannot be prosecuted. Learned Senior Counsel, in support of his argument, has heavily relied on a judgment of Hon''ble Apex Court reported in Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, . It was submitted that

in the said case, Directors were prosecuted in the similar manner. However, the Supreme Court has quashed said criminal prosecution in absence of any specific allegation made in the complaint against the DirectOrs.

7. Shri B.K. Sinha, learned Senior Counsel has further argued that in the present case, under 3rd party agreement, the drugs in question were got manufactured by M/S Emecure Pharmaceuticals Limited under the supervision and guidance of M/S Glaxo Smith Kline Pharmaceuticals Ltd., which was not in violation of any of the provision of Drugs Act or Rules. It was further submitted that in view of Section 19(3) of the Drugs Act, the Petitioners not being manufacturer of the Drugs in question cannot be prosecuted for violation of provisions u/s 18 of the Act. It was also argued that the Drugs in question cannot be categorized as misbranded since all the informations regarding the Drugs were mentioned on the labeling that the Drugs were manufactured by M/S Emcure Pharmaceuticals Ltd. Accordingly, it was submitted that the order of cognizance is fit to be set aside.

8. Shri Subhash Prasad Singh, learned Government Advocate No. 8 has appeared on behalf of opposite party Nos. 1 and 2/State and has strongly opposed the prayer of the Petitioners. In this case, on behalf of opposite party No. 2, two detailed counter affidavits were filed controvert the stand taken by the Petitioners. It was highlighted by Shri Subhash Prasad Singh, learned Government Advocate No. 8 that under the Drugs Act, there were three provisions for manufacturing the Drugs, which are (a) Own manufacturing license, (b) Re-packing license and (c) Loan license. It was also argued that M/S Glaxo Smith Kline Pharmaceuticals Ltd. had purchased the drugs in question as whole seller and as such there was no provision either under the Act or Rules to mention the fact on the labeling that the Drugs were being marketed by M/S Glaxo Smith Kline Pharmaceuticals Ltd. in a way bolder than the name of manufacturer on the label. Even on the cap of some of the Drugs Logo of Glaxo Smith Kline Pharmaceuticals Ltd. as "GSK" was mentioned boldly. It was submitted by Mr. Singh that those facts were mentioned in the labeling only with a view to create an impression that prima facie the Drug was manufactured by Glaxo Smith Kline Pharmaceuticals Ltd. itself whereas the fact remains that Drugs in question were manufactured by M/S Emecure Pharmaceuticals Ltd. Besides arguing that there are sufficient materials on record to proceed with against the Petitioners and other accused persons, Shri Singh has raised a preliminary objection that this Court may not interfere with an order of cognizance, which was passed at very initial stage of the present case. It was submitted that time without number, it has been reiterated that this Court may avoid in exercising inherent jurisdiction with a view to interfere with a criminal case at initial or interlocutory stage. It was argued that the Petitioners can well be advised to raise all the points at appropriate stage before the court below and as such it was submitted that this petition may be rejected.

9. Besides hearing, learned Counsel for the Petitioners, I have also perused the

materials available on record. The argument, which has been advanced on behalf of the Petitioners that Petitioners, not being manufacturer, cannot be prosecuted for violation of Section 18 of the Drugs Act in view of Section 19(3) of the Act is concerned, the court is of the opinion that such argument has got no substance in view of the facts and circumstances of the present case. At this stage, it would be appropriate to quote Section 19 of the Drugs Act, which is as follows:

19. Pleas.- (1) Save as hereinafter provided in this section, it shall be no defence in a prosecution under this Chapter to prove merely that the accused was ignorant of the nature, substance or quality of the drug (or cosmetic) in respect of which the offence has been committed or of the circumstances of its manufacture or import, or that a purchaser, having bought only for the purpose of test or analysis, has not been prejudiced by the sale.

(2) (For the purposes of Section 18 a drug shall not be deemed to be misbranded or (adulterated or spurious) or to be below standard quality nor shall a cosmetic be deemed to be misbranded or to be below standard quality) only by reason of the fact that- (a) there has been added thereto some innocuous substance or ingredient because the same is required for the manufacture or preparation of the drug (or cosmetic) as an article of commerce in a state fit for carriage or consumption, and not to increase the bulk, weight or measure of the drug (or cosmetic) or to conceal its inferior quality or other defects; or (b) in the process of manufacture, preparation or conveyance some extraneous substance has unavoidably become intermixed with it: provided that this clause shall not apply in relation to any sale or distribution of the drug (or cosmetic) occurring after the vendor or distributor became aware of such intermixture. (3) A person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall not be liable for a contravention of Section 18 if he proves- (a) that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof; (b) that he did not know and could not, with reasonable diligence, have ascertained that the drug or cosmetic in any way contravened the provisions of that section; and (c) that the drug or cosmetic, while in his possession was properly stored and remained in the same state as when he acquired it.

10. On perusal of aforesaid provision, it is evident that such protection can only be granted, if the proposed accused is in a position to satisfy the court that he had acquired the Drug from the licensed manufacturer, Distributor or Dealer and he did not know that the Drug in question was contrary to any of the provisions and the same was in his possession and kept properly. In the present case, fact remains that Drugs in question were misbranded and contrary to the provisions of loan license i.e. without obtaining loan license M/S Glaxo Smith Kline Pharmaceuticals Ltd. was marketing the Drugs manufactured by M/S Emecure Pharmaceuticals Ltd. Moreover, any defence may be taken at appropriate stage before the court below. The plea that he is protected u/s 19(3) of the Drugs Act cannot be examined or entertained by this Court, while hearing a petition u/s

482 of the Code of Criminal Procedure filed against an order of cognizance. Such fact can be examined by the court below at appropriate stage. Accordingly, on the basis of plea of application of Section 19(3) of the Drugs Act, the order of cognizance in the present case cannot be interfered with. In respect of argument of learned Senior Counsel for the Petitioners that on the allegation of vicarious liability, the Petitioners cannot be prosecuted is concerned, the court is of the opinion that such plea is not sustainable in view of the facts and circumstances of the present case. In the present case, it is not in dispute that M/S Glaxo Smith Kline Pharmaceuticals Ltd. had purchased drugs from M/S Emecure Pharmaceuticals Ltd. as whole seller and as such there was no requirement to mention this fact on label of drugs in question that too in the letter bolder than the letters in respect of manufacture over the label on the drug in question. The complainant had made specific averment that on behalf of M/S Glaxo Smith Kline Pharmaceuticals Ltd., during enquiry, plea was taken that under 3rd party agreement, which is alien to the Drugs Act, M/S Glaxo Smith Kline Pharmaceuticals Ltd were marketing the purchased drugs in question with labeling, which is misbranded under the provision of the Drugs Act. It can be inferred that the fact of 3rd party agreement was within the knowledge of all the Petitioners and as such it cannot be said that it was a case of fixing vicarious liability. Moreover, Section 34 of the Drugs Act, describes regarding offences committed by the Companies. It is appropriate to quote Section 34 of the Drugs Act, which is 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.

11. In view of aforesaid provision, if a person associated with the affair of the Company takes any protection, he will have to prove that the offence, which was committed by the Company was without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. The aforesaid

statutory provision makes it clear that the plea or defence that the Company had committed offence without the knowledge of the person concerned, will have to be established by the concerned person. Such fact cannot be examined by this Court. The court is of the opinion that such plea can be taken before the court below at appropriate stage.

12. In view of the facts and circumstances of the present case, the court is of the opinion that it is not a fit case for interference with the order of cognizance. Time without number, it has been reiterated that this Court may refrain from exercising inherent jurisdiction for quashing of an order passed at initial or interlocutory stage of a criminal case. It has also been reiterated that this power is to be exercised in exceptional or rarest or rare cases, not as a matter of course. At this stage, the court is tempted to quote observation of Hon''ble Apex Court reiterated in a case reported in Ganesh Narayan Hegde v. S. Bangarappa and Ors. 1995(3) 2935, which is as follows:

18. With respect to the contention of the learned Counsel for the Respondents that after a period of twelve years, the matter should not be allowed to be proceeded with we must say that the complainant is certainly not responsible for this delay. The learned Counsel did not even make such a suggestion. Moreover, this contention does not appear to have been raised before the High Court. (The judgment of the High Court is dated 16-6-92). We do not know who is responsible for this delay. As observed by Krishna Iyer, J. in In Re: The Special Courts Bill, 1978, : "(I)It is common knowledge that currently in our country criminal Courts excel in slow-motion. The procedure is dilatory, the dockets are heavy, even the service of process is delayed and, still more exasperating, there are appeals upon appeals and revisions and supervisory jurisdictions, baffling and baulking speedy termination of prosecutions....." . The slow-motion becomes much slow-motion when politically powerful or rich and influential persons figure as accused.F.I. Rs. are quashed. Charges are quashed. Interlocutory orders are interfered with. At every step, there will be revisions and applications for quashing and writ petition. In short, no progress is ever allowed to be made. And if ever the case reaches the stage of trial after all these interruptions, the time would have taken its own toll: the witnesses are won over; evidence disappears; the prosecution loses interest-the result is an all too familiar one. We are sad to say that repeated admonitions of this Court have not deterred superior Courts from interfering at initial or interlocutory stages of criminal cases. Such interference should be only in exceptional cases where the interests of justice demand it; it cannot be a matter of course. In the circumstances, we cannot accede to the said contention.

13. In view of the facts and circumstances of the present case, the court is of the opinion that the present case cannot be categorized as an exceptional or rarest of rare case and as such it is not appropriate to interfere with the order of cognizance.

14. Accordingly, the petition stands rejected. 15. In view of dismissal of the

present petition, interim order of stay stands automatically vacated.

