(2009) 07 JH CK 0069

In the Jharkhand High Court

Case No : Cr.M.P. No. 1004 of 2006

J.C. Jani APPELLANT

Vs

The State of Jharkhand and Gopal Krishna Kedia RESPONDENT

Date of Decision : 17-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202
Drugs and Cosmetics Act, 1940 — Section 17A, 27A, 34, 34(1)
Penal Code, 1860 (IPC) — Section 274, 275, 336, 420

Citation : (2009) 57 BLJR 2729

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : V.P. Singh, Prabhat Kumar and B. Chatrapati, for the Appellant; V.K. Prasad, APP, Yogesh Modi and Amit Keshri for the O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

Prashant Kumar, J.—This application is for quashing the order dated 18.4.2006 passed in Complaint Case No. 670 of 2002 corresponding to T.R. No. 1155 of 2006 by Judicial Magistrate 1st Class, Giridih, whereby and whereunder he issued non bailable warrant of arrest against the petitioner.

2. The brief facts of the case is that one Gopal Krishna Kedia (complainant) purchased a medicine namely, syntocinon Injection bearing Batch No. 07025G from Rahul Medical Hall, Giridih for the treatment of his relative. It is alleged that the said medicine was manufactured by German Remedies Ltd. It is further stated that at the time of administering the aforesaid medicine, the nurse of the hospital detected some adulteration and therefore she did not administer the said injection. It is stated that thereafter on 27.11.2000, complainant sent a legal notice to the Company concerned. It is stated that in response to said legal notice, the Company sent its representative to Giridih for verification and those representative also accepted that there was some adulteration in the medicine. However the said representative assured the complainant that they will report

the matter to the Company and will come again with some Technical Staff. It is stated that even after the lapse of so many days, when the Staff of the company did not turn up, the complainant sent a reminder to the Company. Thereafter he has been informed on telephone that the matter is being investigated and the out come of the same will be informed to complainant later on. It is stated that, however, no information was given to the complainant nor the sale of aforesaid medicine was stopped. Therefore the complainant conclude that the accused person intentionally not stopped the sale of aforesaid medicine for their personal gain. It is, accordingly, alleged that the accused persons committed an offence u/s 27A read with Section 17A of Drugs and Cosmetics Act. 1940 and also u/s 274, 275, 336 and 420 of the IPC.

3. It appears that the complainant was examined on S.A. and two witnesses were examined during the inquiry u/s 202 of the Cr.P.C. It further appears that after going through the S.A. and statement of witnesses, the learned Magistrate vide his order dated 3.12.2002 came to the conclusion that prime-face offence u/s 27A read with Section 17A of the Drug and Cosmetics Act is made out, accordingly, processes were issued against accused person.

4. It then appears that against the aforesaid order, a Cr. Misc. petition bearing Cr.M.P. No. 656 of 2003 was filed in this Court by the then Managing Director and Secretary of the Company, namely, Manfred Knoll and P. Srinivas Iyer. It further appears that the aforesaid Cr. Misc petition was allowed by this Court vide order dated 13.5.2004 and the order dated 3.12.2002 passed by Judicial Magistrate, Giridih has been quashed. It then appears that against the aforesaid order of this Court, the complainant filed an appeal before Hon''ble the Supreme Court which was registered as Cr. Appeal No. 318 of 2006 arising out of SLP (Cr) No. 5932 of 2004. It further appears that Hon''ble the Supreme Court allowed the aforesaid Cr. Appeal and after setting aside the order of this Court, restore the Complaint Petition No. 670 of 2002 pending in the court of CJM, Giridih for being tried in accordance with law. It further appears that thereafter the learned court below vide order dated 18.4.2006 had directed the office to issue non bailable warrant of arrest against the accused person. It appears that the complainant had furnished the name and address of the accused person vide his application contained in Annexure-5. It appears that in Annexure-5 for the first time name of this petitioner was introduced as an accused by the complainant.

5. It is stated that at the time when the offence was committed, Manfred Knoll was the Managing Director of the Company. It is further stated that the said Manfred Knoll in the capacity of Managing Director had filed Criminal Miscellaneous Petition No. 656 of 2003 in the Hon''ble Court. It is also stated that the complainant in the Hon''ble Supreme Court had made Manfred Knoll as Respondent No. 2. It is then stated that the petitioner (J.C. Jani) has been inducted as Managing Director of the Company w.e.f. 01.10.2001 as per the minutes of the meeting of the Board of Directors of German Remedies Ltd, held on 01.10.2001 at 10 a.m. Accordingly, it is stated that on the date of commission

of offence, petitioner, J.C. Jani was not the Managing Director and therefore as per Section 34 of the Drugs and Cosmetics Act, 1940 he is not the in charge of the business of the Company and therefore he cannot be held liable for the said offence.

6. It is submitted by learned Counsel for the petitioner that the petitioner was not the Managing Director of the Company on the date of commission of offence, therefore petitioner cannot be proceeded and held guilty for the offence which was committed before his appointment as Managing Director. It is submitted that Annexure-4 will show that this petitioner was appointed as Director and Managing Director of the Company w.e.f. 01.10.2001 by resolution No. 5 and 6 of the meeting held on 01.10.2001. The learned Counsel for the petitioner has submitted that as per Complaint petition the date of occurrence is 15.11.2000. It is submitted that the complainant, with some ulterior motive, had mislead the court below by giving the name of petitioner as an accused and thereby succeeded in getting the non bailable warrant of arrest issued agains him. It is submitted that the issuance of non bailable warrant of arrest against this petitioner is against the provision of Section 34 of the Drug and Cosmetics Act. Accordingly, it is prayed that the said non bailable warrant of arrest issued against this petitioner is liable to be quashed.

7. On the other hand, learned Counsel for the O.P. No. 2 (complainant) submitted that since this petitioner is Director and Managing Director of the Company on the dated of filing of the complaint petition therefore, he is deemed to be the incharge of the business of the Company. It is submitted that in the complaint petition, Manfred Knoll has not been made accused by name rather Managing Director of German Remedies Ltd has been made accused. Under the circumstance as on the date of filing of complaint the petitioner was the Managing Director therefore the court below has rightly issued non bailable warrant of arrest against him and therefore to illegality has been committed by the court below in this connection.

8. Having heard the submission, I have gone through the facts of the case as well as the law in this connection. Section 34 of the Drugs and Cosmetics Act runs as follows:

34 (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.

Explanetion._ 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.

From the perusal of aforesaid provision, it is manifestly clear that if any offence is committed by a Company under the aforesaid Act then every person who were in-charge of the conduct of the business of the company at the time of commission of offence shall be deemed to be guilty of the offence and liable to be proceeded against and punished accordingly. Thus as per tins aforesaid Section, if a person is not in-charge of the conduct of business of the Company, is not liable to be proceeded for the offence committed under the Drugs and Cosmetics Act nor he can be punished.

9. It has been held by Hon''ble the Supreme Court in State of Haryana Vs. Brij Lal Mittal and Others, that

It is thus seen that vicarious liability of a person or 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 director of the Company it does not necessarily mean that he fulfills both the above requirements so as to make him liable.

10. From perusal of paragraph No. 15 of the petition, it appears that the then Managing Director of the Company (German Remedies Ltd.) was Manfred Knoll and he in that capacity has filed Cr. Misc No. 656 of 2003 against the order taking cognizance. It further appears from Annexure-6 which is the SLP petition field by complainant, that aforesaid Manfred Knoll had been made respondent No. 2, which shows that the complainan (O. P. No 2) had knowledge that at the time of committing offence the aforesaid Manfred Knoll was the Managing Director of the Company. It is relevant to mention that Annexure- 4 is the minutes of the meeting of the Board of Directors of German Remedies Ltd held on 01.10.2001 Resolution No. 5 of the said meeting shows that Mr. J.C. Jani (Petitioner) has been appointed as Director of the said Company against the casual vacancy and by Resolution No. 6 he has been appointed as the Managing Director of the Company for a period of five years w.e.f. 01.10.2001. Admittedly as per the complaint petition, the medicine in question was purchased on 15.11.2000 and on that date it was detected that the same had some

adulteration. Under the said circumstance it is clear that the aforesaid medicine was manufactured and sold on or before 15.11.2000.

11. As noticed above, Section 34 of the Drugs and Cosmetics Act provides that only those officers can be proceeded for the offence, who are responsible for the conduct of business of the company at the time of commission of the offence. Thus the (sic) date is the date of commission of offence and not the date of filing of complaint. Thus as per Section 34 of the Act an officer of the Company, who is not responsible for the conduct of business at the time of commission of crime, cannot even proceeded for the offence.

12. As noticed above, on the date of commission of crime, the petitioner is neither the Managing Director nor the Director of the Company, thus, by no stretch of imagination, it can be held that the petitioner was responsible for the conduct of business of the company on 15.11.2000 i.e. the date of occurrence.

13. The case in hand is squarely covered by the aforesaid judgment of Hon''ble Supreme Court. In the instant case, since the petitioner is not responsible for the conduct of business of the company, therefore, as per Section 34 of the Drugs and Cosmetic Act, 1940, he cannot be proceeded for the said offence.

14. In view of the discussion made above, I find that the learned court below had not applied its mind before issuing warrant of arrest against this petitioner and thereby committed serious illegality. Thus the same is an abuse of the process of the Court.

15. In the result, this application is allowed. The non bailable warrant of arrest issued against the petitioner in connection with Case No: 670 of 2002 (T.R. No. 1155 of 2006) by order dated 18.4.2006 is hereby quashed. The learned court below is directed to issue process against the Managing Director and other offices of the Company who were in-charge and responsible for conduct of the business of the Company at the time of commission of offence and proceed in the case as per the direction of Hon''ble Supreme Court.