
(2022) 02 JH CK 0013

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 147 Of 2015

M/S CIPCO Pharmaceuticals, A Partnership Firm And Others	APPELLANT
Vs	
State Of Jharkhand And Others	RESPONDENT

Date of Decision : 08-02-2022

Acts Referred:

Drugs And Cosmetics Act, 1940 — Section 17(c), 18(A)(1), 27(d), 34
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 482

Citation : (2022) 02 JH CK 0013

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Shankar Lal Agarwal

Final Decision : Dismissed

Judgement

Sanjay Kumar Dwivedi, J

1. This petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to

COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been

heard.

2. This matter was filed on 28.01.2015. The matter was listed before the Lawazima Board on 12.02.2015 and 26.03.2015. On 27.01.2016, the matter

was directed to be listed for admission on 04.02.2016 and on 19.02.2016, 25.02.2016, 03.03.2016, 10.03.2016 and 19.03.2016 adjournments have been taken by the learned counsel appearing on behalf of the petitioners.

3. When this matter was taken up today, the learned counsel appearing for the petitioners has informed the Court that warrant of arrest has been

issued against the petitioners. He further submits that there is law point involved in this petition and this matter may be heard.

4. This petition has been filed for quashing of entire criminal proceeding including the order taking cognizance dated 29.09.2014 passed by learned

Chief Judicial Magistrate, Dumka in O.C.R. Case No.128/14 and pending in the same court.

5. The complaint was filed by the Inspector of Drugs, Dumka stating therein that on 18.12.2013 the complainant took the sample of Diethyl

Carbamazin tablet expiry dated August, 2014 from the Drug Store District VBD office, Dumka. The sample was sent for analysis to the Government

Analyst at Namkum, Ranchi. On analysis the sample was declared "Not of Standard Quality" in respect of description and the label with reason

that:

(I) That the Tablets are not sufficient to hard with standard handling as few tablets were crumbled on handling

(II) Diethyl Carbamazin Citrate is not included in schedule "H" drugs under Drugs And Cosmetics Act, 1940 but it label as Schedule "H"

drug vide test report No.GA-252 dated 15.01.2014. Copy of the test report was sent to the Store Keeper vide office letter dated 20.01.2014 and was

asked to produce the purchase invoice of the said tablet. The storekeeper vide his letter dated 27.9.12 produced the purchase invoice of M/s

K.K.Pharmaceuticals, Station Road, Jugsalai, Jamshedpur. The complainant then vide office letter dated 20.01.14 asked to M/s K.K.

Pharmaceuticals, Jamshedpur to produce the purchase invoice of the drugs in question, in compliance K.K. Pharmaceuticals produced the purchase

invoiced of M/s Bharat Drugs and Chemicals, Dawa Bazar, Indore being Invoice dated 25.09.12 vide office letter dated 10.04.2014 said Bharat Drugs

and Chemicals was requested to produce the purchase invoice of the drugs in question. Said Bharat Drugs and Chemicals, Indore produced a

purchase invoice bearing No.328 dated 25.9.2012 which was raised by M/s CIPCO Pharmaceuticals, Indore. It is the further case of the complainant

that vide letter dated 2.5.14 the manufacturer asked the copy of manufacturing license, the product approval and the person responsible for

manufacturing the said tablet and in compliance of the aforesaid requirements the manufacturer produced necessary documents. It is further stated

that sealed portion of the sample was sent to M/s K.K.Pharmaceuticals, Station Road, Jugsalai, Jamshedpur through registered parcel on 15.2.14. The

manufacturer vide his letter dated 12.6.14 informed the complainant that the drug has been crumbled because of the improper storage and also due to

improper care taken during transportation by the agencies. It has been alleged in the complaint that no supplier or agency in this supply chain has

mentioned the mode of transport in their invoice including the manufacturer. Thus, this reason may not be considered. Therefore, the manufacturer

has violated Section 17(c) and Section 18(A)(1) of the Drugs and Cosmetics Act, which is punishable under Section 27(d) of the said Act.â??

6. Mr. Agarwal, the learned counsel appearing on behalf of the petitioners submits that M/s CIPCO Pharmaceuticals is a partnership firm. He submits

that it has not been disclosed in the complaint that who was the partner looking after the day to day affairs of the partnership firm. He placed reliance

in the case of â??Raghu Lakshminarayanan v. Fine Tubesâ? reported in (2007) 5 SCC 103 and submits that so far the Director is concerned, no

vicarious liability can be fastened if the same has not been committed by the company. The firm, M/s CIPCO Pharmaceuticals, has already been

made accused in the complaint petition.

7. The learned counsel for the State opposed the prayer of the petitioners.

8. The Court has perused the entire record. On 29.09.2014 complaint has been filed against all the petitioners and cognizance has been taken against

all the petitioners under sections 27(d), 18(A)(1) and 17(c) of the Drugs and Cosmetics Act, 1940. It is well settled that individual either as Director or

Managing Director or Chairman of the company can be made accused along with the company. A reference in this regard may be made to the

judgment rendered by the Hon'ble Supreme Court in the case of Shiv Kumar Jatia v. State (NCT of Delhi), reported in (2019) 17 SCC 193.

Paragraphs 19 and 21 of the said judgment are quoted herein below:

â??19. The liability of the Directors/the controlling authorities of company, in a corporate criminal liability is elaborately considered by this Court in

Sunil Bharti Mittal. In the aforesaid case, while considering the circumstances when Director/person in charge of the affairs of the company can also

be prosecuted, when the company is an accused person, this Court has held, a corporate entity is an artificial person which acts through its officers,

Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. At the same time it is observed that it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides for. It is further held by this Court, an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Further it is also held that an individual can be implicated in those cases where statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

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21. By applying the ratio laid down by this Court in Sunil Bharti Mittal it is clear that an individual either as a Director or a Managing Director or

Chairman of the company can be made an accused, along with the company, only if there is sufficient material to prove his active role coupled with

the criminal intent. Further the criminal intent alleged must have direct nexus with the accused. Further in Maksud Saiyed v. State of Gujarat this

Court has examined the vicarious liability of Directors for the charges levelled against the Company. In the aforesaid judgment this Court has held

that, the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the

Company, when the accused is a company. It is held that vicarious liability of the Managing Director and Director would arise provided any provision

exists in that behalf in the statute. It is further held that statutes indisputably must provide fixing such vicarious liability. It is also held that, even for the

said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious

liability.â??

9. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing

the proceedings at any stage. This has been considered by the Hon'ble Supreme Court in the case of State of M.P. v. Awadh Kishore Gupta, reported

in (2004) 1 SCC 691. Paragraphs 10 and 11 of the said judgment are quoted herein below:

10. In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt, should not be an instrument of oppression or needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in *State of Haryana v. Bhajan Lal*. A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of the rare cases. The illustrative categories indicated by this Court are as follows:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted

by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever

reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is

instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing

efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for

wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.â??

11. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power

requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent

power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving

a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced

before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient

material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of

quashing the proceedings at any stage. (See Janata Dal v. H.S. Chowdhary and Raghubir Saran (Dr) v. State of Bihar) It would not be proper for the

High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and

on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude

that the complaint cannot be proceeded with. In proceedings instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court.

When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decide the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings. [See

Dhanalakshmi v. R. Prasanna Kumar, State of Bihar v. P.P. Sharma, Rupan Deol Bajaj v. Kanwar Pal Singh Gill, State of Kerala v. O.C. Kuttan,

State of U.P. v. O.P. Sharma, Rashmi Kumar v. Mahesh Kumar Bhada, Satvinder Kaur v. State (Govt. of NCT of Delhi) and Rajesh Bajaj v. State

NCT of Delhi.â??

10. In the complaint, the allegations are serious in nature. In view of Section 34, the Director and the proprietor of the partnership firm are liable to be punished. In view of this, no relief can be extended to the petitioners.

11. Hence, Cr.M.P.No.147 of 2015 is dismissed.