
(1995) 11 MP CK 0070

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 356 of 1991 (J)

M/s. Ranbaxy Laboratories Ltd.

APPELLANT

Vs

State of M. P.

RESPONDENT

Date of Decision : 01-11-1995

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 18, 27

Citation : (1995) 2 MPJR 435

Hon'ble Judges : C.K. Prasad, J

Bench : Single Bench

Advocate : S.C. Datt with Manish Datt, for the Appellant; S.K. Gangrade, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Prasad, J.

Petitioners have filed this application for quashing the order taking cognizance as also the entire proceeding in Criminal Case No. 2647 of 1985 pending in the Court of the Additional Chief Judicial Magistrate, Jabalpur. It appears that on the basis of a complaint made by the Drug Inspector, the learned Magistrate, by its order dated 19.7.1985, took cognizance of the offence u/s 18/27 of the Drug and Cosmetics Act, 1940 (hereinafter referred to the act for brevity) and directed for issuance of process against the petitioners.

Petitioner No. 1 is a company having its registered office in the State of Haryana and petitioner No. 2 is its Managing Director. Petitioner No. 3 has been termed as member of the Board of Directors. But Shri Datt, appearing on behalf of the petitioners, seeks permission to delete petitioner No. 3. Permission to delete the name of petitioner No. 3 is granted and the same stands deleted.

Shorn of unnecessary details the gist of the allegation, according to the complaint, is that the petitioner company was granted licence bearing No. 28/15/83 dated 12.10.85 to manufacture for sale of drugs. The Drug Controller,

by its order dated 16.12.1983 granted permission to manufacture Roscillin injections with following specifications:-

Injection

Ampicillin Injection (I. P.)

- Each Vial contains

Roscillin Injection.

- Ampicillin (As Ampicillin Sodium) 250 mg.)

43 Ampicillin Injection

- Each vial contains Ampicillin (As Ampicillin Sodium) 500 mg.)

The aforesaid drug was manufactured in the strength of 250 and 500 mgs. of Ampicillin and packed along with one ampoule of water. The carton of the drug contained the following declaration :-

One ampoule containing 2 ml. water for injection is included in this pack.

The leaflet kept inside the carton contained the following information :-

Each vial contains: Ampicillin sodium IP equivalent to Anhydrous Ampicillin 250 mg INDICATIONS, DOSAGE & ADMINISTRATION. According to medical prescription - One ampoule containing 2 ml water for injection is included in this pack.

(Emphasis supplied)

The aforesaid drug was marketed for sale through the distributors, according to the complaint, without the water for injection. According to the complaint, although it did not contain water but the petitioner-company realised the price from the distributors, fixed by the Central Government under the provisions of the Drugs (Prices Control) Order, 1979 and the same was inclusive of one ampoule of 2 ml. of water for injection. In fairness, I must state that according to the complaint itself a slip containing information that -" this pack does not contain water for injection" was kept inside the carton.

Shri Datt. appearing on behalf of the petitioners, submits that selling of Roscillin injection without water would not amount to sale of misbranded drug and as such the entire allegation made in the complaint petition does not constitute any offence. Having given my most anxious consideration to the submission made by the learned counsel, I am not impressed by that. The word "misbranded" has been defined u/s 17 of the Act which reads as follows:-

17. Misbranded drugs- For the purpose of this Chapter, a drug shall be deemed to be misbranded -

(a) if it is so coloured, coated, powdered or polished that damage is concealed if it

is made to appear of better or greater therapeutic value than it really is: or

(b) if it is not labelled in the prescribed manner: or

(c) if its label or container or anything accompanying the drug bears any statement, design or device which makes any false claim for the drug or which is false or misleading in any particular.

To me it appears to be plain from the reading of section 17(c) of the Act that a drug shall be deemed to be misbranded, in case, its label or container or anything accompanying the drug, bears any statement which is "false or misleading in any particular." In the present case, the container of the drug and the leaflet kept therein contained a statement that one ampoule containing 2 ml. water for injection is included in the pack. However, according to the complainant, it did not contain the water and in fact there is no controversy about this and Shri Datt, appearing on behalf of the petitioners, tried to explain the circumstances under which the ampoule containing water was not given in the carton. Be that as it may, according to the complaint, although the carton and the leaflet containing statement of one ampoule containing 2 ml. water for injection being kept along with drug, but in fact, the same was not found. In my opinion, the statement that it contain one ampoule containing 2 ml. of water in the carton and in the leaflet is false and, therefore, the act of the petitioners comes within the mischief of Section 17(c) of the Act. Thus, I negative the submission of Shri Datt.

Shri Datt then submits that petitioners are neither uncharge nor responsible to the company and there is no averment in this regard in the complaint petition and, therefore, they cannot be persecuted for the offence with the aid of Section 34 of the Act. Section 34 of the Act reads as follows :-

34. Offences by companies - (1) Where an offence under this Act has been committed by a Company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in this subsection 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.

In para 17 of the complaint petition the complainant has stated as follows:-

In the aforesaid paragraph the words has been used and according to shri Datt the same means management. The word according to the Legal Glossary. Published by the Government of India (1992 Edition) means "conduct". In the background of the meaning of the word the allegation made in paragraph 17 of the complaint petition means as follows :-

That the conduct of Business of accused No. 1. M/s Ranbaxy Laboratories Limited is done by the Managing Director, Dr. Parvinder Singh, accused No. 2 under the direction of the member of the Board and accused No. 3, Dr. S.K. Krishnamurthy is the controller of Dewas factory of its company. As such, for the illegal act done by accused No. 1 all are responsible in view of section 34 of the Act.

Shri Datt submits that the statement made in the aforesaid paragraph does not show that any averment that petitioner was either incharge or responsible to the company, has been made. He submits that in the absence thereof the petitioners cannot be prosecuted.

In support of his submission, learned counsel for the petitioners. Shri Datt. placed reliance on a judgment of the Supreme Court in the case of Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, . My attention has been drawn to paragraph 15 of the judgment which reads as follows :-

15. So far as the Manager is concerned, we are satisfied that from the very nature of his duties it can be safely inferred that he would undoubtedly be vicariously liable for the offence, vicarious liability being an incident of an offence under the Act. So far as the Directors are concerned, there is not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any act committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable. In these circumstances, therefore, we find ourselves in complete agreement with the agreement of the High Court that no case against the Directors (accused Nos. 4 to 7) has been made out ex facie on the allegations made in the complaint and the proceedings against them were rightly quashed.

A close reading of the judgment indicates that in the case before the Apex Court their Lordships were considering the allegation made against the petitioners and the said case in the background of what was stated in paragraph 5 of the complaint petition.

In the said case the complaint petition contained the following averment :-

5. That the accused No. 3 is the Manager of accused No. 2 and accused Nos. 4 to 7 are the Directors of accused No. 2 and as such they were in charge of and responsible for the conduct of business of accused No. 2 at the time of sampling.

Thus, in the Municipal Corporation of Delhi's case (supra) the complainant inferred that accused No. 2 and accused Nos. 4 to 7 are the Directors of the

Company and as such they were incharge and responsible for the conduct of business of the company. Such an inference, in the opinion, of the Apex Court was not possible and accordingly the prosecution of the Directors of the Company was quashed. However, in the present case I find that there is specific allegation against the Managing Director of the company that he was conducting the business of the company under the direction of the Board Directors. As such, the authority relied on by Shri Datt in support of his case is clearly distinguishable.

In fact, the Municipal Corporation of Delhi's case (supra) was considered by the Apex Court in the case of Municipal Corporation of Delhi Vs. Purshotam Dass Jhunjunwala and Others, and the earlier case of Municipal Corporation of Delhi (supra) was distinguished. In the case of Municipal Corporation of Delhi (supra) the allegation made in the complaint was as follows:-

5. That accused Ram Kishan Bajaj is the Chairman accused R.P. Neyatis is the Managing Director and accused Nos. 7 to 12 are the Directors of the Hindustan Sugar Mills Ltd. and were incharge of and responsible to it for the conduct of its business at the time of commission of offence.

"The allegation made in the complaint petition in the present case and as incorporated above, clearly demonstrate that it was averred that the petitioner No. 2 was conducting the business of the company under the direction of the Board of Directors.

Shri Datt, in support of his submission has further placed reliance on a judgment of the Supreme Court in the case of Sham Sunder and Others Vs. State of Haryana, . He drew my attention to paragraph 9 of the aforesaid judgment which is quoted as below :-

9. It is, therefore, necessary to add an emphatic note of caution in this regard. More often it is common that some of the partners of a firm may not even be knowing of what is going on day to day in the firm. There may be partners, better known as sleeping partners who are not required to take part in the business of the firm. There may be ladies and minors who were admitted for the benefit of partnership. They may not know anything about the business of the firm. It would be a travesty of justice to prosecute all partners and ask them to prove under the proviso to sub-section (1) that the offence was committed without their knowledge. It is significant to note that the obligation for the accused to prove under the proviso that the offence took place without his knowledge or that he exercised all due diligence to prevent such offence arises only when the prosecution establishes that the requisite condition mentioned in sub-section (1) is established. The requisite condition is that the partner was responsible for carrying on the business and was during the relevant time in charge of the business. In the absence of any such proof, no partner could be convicted. We, therefore, reject the contention urged by counsel for the State.

At the outset I may state that the aforesaid judgment was rendered by the Apex

Court after conclusion of the trial whereas the petitioner has approached this Court at the threshold. As I have held earlier foundational facts constituting the offence has been averred in the complaint petition and the details are required to be given at the time of trial. In this connection, it is apt to reproduce para 7 of the judgment of the Apex Court in the case of Municipal Corporation of Delhi vs. Purushottam Dass Jhunjunwala (supra) as follows :-

7. Further details would have to be given in the shape of evidence when the trial proceeds and in view of the clear allegations made in para 5 of the complaint, we are not in a position to agree with the High Court that it is a fit case in which it should have exercised its discretion u/s 482 of the Criminal P.C. 1973 in order to quash the proceedings against the accused - respondents.

Thus, Sham Sunder's case (supra) relied on by the petitioners is clearly distinguishable.

Shri Datt, then submits that there being no mensrea the prosecution of the petitioners is fit to be quashed. In support of his submission he has placed reliance on the judgment of the Supreme Court in the case of Nathulal vs. State of Madhya Pradesh (1). My attention was drawn to the following passage from the judgment of the Apex Court :-

(4).... Mensrea is an essential ingredient of a criminal offence. Doubtless a statute may exclude the element of mensrea but it is sound rule of construction adopted in England and also accepted in India to construe a statutory provision creating an offence in conformity with the common law rather than against it unless the statute expressly or by necessary implication excluded mensrea. The mere fact that the object of the statute.....is to promote welfare activities or to eradicate a grave social evil is by itself not decisive of the question whether the element of guilty mind is excluded from the ingredients of an offence. Mens rea by necessary implication may be excluded from a statute only where it is absolutely clear that the implementation of the object of the statute should otherwise be defeated. The nature of the mens rea that would be implied in a statute creating an offence depends on the object of the Act and the provisions thereof.

Again in the aforesaid case the matter was being considered after the conclusion of the trial. The trial is yet to begin. Further mensrea is a question of fact and it requires determination only after the evidence is led. As such I do not find any substance in this submission of Shri Datt also.

Shri Datt further submits that by a communication dated 30.12.1985 the Controller, Food and Drug Administration, addressed to the Secretary to the Government of Madhya Pradesh, in Public Health and Family Welfare Department, in which a request was made for passing orders for withdrawal of the case, from the Court in Jabalpur. No final order has been passed by the State Government in this regard. Merely, the fact that Controller of Drugs has stated for withdrawal of the case, the petitioners shall not be absolved from the criminal

liability.

Shri D.V. Pendharkar, Deputy Govt. Advocate, appearing on behalf of the respondent-State, submits that while exercising the power for quashing a criminal prosecution no detailed inquiry is required to be made and he placed reliance on various authorities. In view of the settled law that while considering the case for quashing of criminal proceeding the statement made in the complaint petition is to be *prma facie* accepted, it is not necessary to individually refer to the cases relied on by the learned counsel. Having negated all the submissions made by the learned counsel for the petitioners, I do not find any merit in the case. The revision application stands dismissed.

The process in the case was directed to be reissued as back as on 19.7.1985 and it is more than a decade. In the facts and circumstances of the case, I direct the trial Judge to conclude the trial within six months from the date of receipt of copy of this order along with the records. The petitioners shall appear before the Court concerned on 27th of November, 1995. The records of the trial Court may be sent immediately. The revision application stands dismissed accordingly.