

(2000) 08 MP CK 0001
In the Madhya Pradesh High Court

National Insurance Company Ltd.

APPELLANT

Vs

B. Rama Rao and Others

RESPONDENT

Date of Decision : 17-08-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482, 63, 67, 78, 79

Drugs and Cosmetics Act, 1940 — Section 17(b), 18, 18(a)(i)(vi), 18(a)(iii), 18(a)(vi)

Citation : (2003) 2 ACC 232

Hon'ble Judges : Bhawani Singh, C.J.;A.K. Mishra, J

Bench : Division Bench

Judgement

S.C. Pandey, J.—This petition u/s 482 of Code of Criminal Procedure is filed by petitioners who claim to be share holders of M/s. Balsara Hygiene Product Limited ("the Company" for short) for quashing the proceedings in Criminal Case No. 4854/1995 pending in the Court of Judicial Magistrate First Class, Jabalpur. There is another connected Misc. Criminal Case No. 6238/2000 which is filed by the Company under the same section of the Code of Criminal Procedure. The facts and grounds for determination in both these petitions are similar and therefore, the disposal of this petition shall also govern the disposal of Misc. Criminal Case No. 6238/2000 filed by the Company.

2. The facts of this case are as follows. On 8-4-1988, Shri R.C. Jain, Drug Inspector, Jabalpur, filed a complaint against the petitioners in both these criminal cases and also against Shri Bharat Bhusan Makkad and Shri R.K. Saraf. It was alleged that Drug Inspector Shri Jain was authorised to file the complaint by virtue of his office. The complainant stated in his complaint that Shri S.N. Garg, another Drug Inspector had purchased a sample of Odomos, a Mosquito Repeilant at the establishment of Pratap Agency, from R.K. Saraf after paying him Rs. 16.25 as its price. The sample seized was 4/25 gms. Odomos Mosquito repeilant is B. No. Nil manufactured by Baisara Hygiene Ltd. Bombay. The sample was divided in four parts. One part of the sample was handed over to R.K. Saraf after all the samples were sealed and duly packed. Thereafter the sealed sample was sent for Chemical Analysis to Government Laboratory situate at Idgah

Bhopal. At the time of filing of the complaint the report was awaited. It was alleged, despite service of Form No. 17 by Shri Garg to Shri R.K. Saraf and registered letters dated 5-10-1985, 31-12-1985 and 1-1-1986 the proprietor and the Pratap Agency did not produce the invoice/Bill and did not give any information regarding the fact of the receipt of consignment of Odomos from the manufacturer. Therefore, after obtaining sanction for prosecution and requisite information regarding the Memorandum of Association (called Constitution in the complaint) of the Company, the prosecution was launched against the petitioners and the Company. It is alleged in the complaint that petitioners were liable to be prosecuted along with the Company. It is alleged that the petitioners were liable for violation of Rule No. 96(1)(v) of the Drugs and Cosmetics Rules 1945 (for short "the Rules")- It appears from the complaint that the violation relates to the fact that carton from which the sample was purchased did not state the Batch No. and the date of manufacture and, thus, in effect Rule No. 96(1)(v) or 96(i) (vii) was violated by the Company and the petitioners. The petitioners as well as the Company were also liable to be prosecuted for violation of sections 17(b), 18(a)(iii) and 18(a)(vi) of the Drugs and Cosmetics Act, 1940 (henceforth "the Act").

3. In order to understand the substantive liability of the petitioners for commission of offences, it would not be out of place to mention the nature of the complaint by reference to the sections of the Act and Rules mentioned in the previous paragraph. Section 17(b) provides that the drug shall be deemed to be misbranded if it is not labelled in the prescribed manner. Section 18 prohibits manufacture, sale and distribution or keeping in stock the drugs and cosmetics in violation of provisions of section 18(a)(i) to (vi). However, we are concerned with Clause (a)(iii) of section 18 and Clause (a)(vi) of that section. The former prohibits the manufacture, sale, distribution, keeping in stock or exhibition of a patent or proprietary medicine unless there is displayed in the prescribed manner on label or container thereof, the true formula or list of active ingredients contained in it together with the quantities thereof. Section 18(a)(vi) prohibits manufacture, etc. of any drug and cosmetic in contravention of any provisions of Chapter No. (IV) or rules made thereunder.

4. The petitioners in this case have contended that they are not liable to be prosecuted for the reason that they are mere share holders of the Company. They are not responsible for the acts of the Company. This contention can be disposed of at this juncture by saying that the Drug Inspector had obtained the names of the petitioners in this petition after corresponding with the Commissioner, Food and Drug Administration, Bombay. The Commissioner had given the names of the petitioners as found in the Memorandum of the Association of the Company. Section 34 of the Act becomes operative in the case of a Company. It would be a question of fact if the petitioners are not covered by section 34 of the Act. Consequently, this Court cannot dismiss the complaint without there being any evidence on record clearly absolving the petitioners of any criminal liability in this case. This matter could be decided only when the

petitioners are required to enter into their defence and show to the satisfaction of the learned trial Magistrate that they have been arrayed as accused persons in this case without any basis.

5. However, this Court is required to decide much more serious question regarding the liability of the Company and consequently that of the petitioners. It is urged on behalf of the petitioners that M/s Pratap Agency did not comply with section 18-A of the Act. There was nothing on record to suggest that, the Company had supplied the consignment of Odomos from which the purchase was made by the Drug Inspector "Shri Garg". It is not the case of the complainant that M/s Pratap Agency was the authorised agent of the petitioners. The complainant itself says that despite several letters there was no disclosure made by anybody on behalf of the agency. The invoice or the bill was not produced by the seller. Therefore, the Company and the petitioners at the outset cannot be arrayed as accused persons without there being a link in the chain of events showing that the particular consignment was actually manufactured by the Company.

6. The learned counsel, appearing on behalf of the State, argued that despite the fact there was no response from M/s. Pratap Agency, it must be presumed that the Company was the manufacturer of the sample purchased. It was pointed out that name of manufacturer was printed upon the tube. It was argued that this raises a presumption because the Company is the known manufacturer of Odomos and markets the drug by that name. This fact was never denied by the counsel for petitioners. Even otherwise the Court could take judicial notice of the fact that Odomos as such is produced by the Company. In this connection, the learned counsel brought to the notice of the" Court a letter dated 18-10-1985 which was sent to the Drug Inspector, Jabalpur to show that Odomos is being manufactured and marketed by the Company. This letter was filed along with the complaint and, therefore, it was argued that the Court may presume that the sample Odomos sold by the Pratap Agency to Drug Inspector must have been manufactured by the Company.

7. The point raised by the petitioners is an important point and it deserves examination. In this connection notice may be taken of section 18-A of the Act, which reads as under:--

"Disclosure of the name of manufacturer, etc.:-- Every person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall, if so required, disclose to the Inspector the name, address and other particulars of the person from whom he acquired the drug or cosmetic"

It may be noticed that a person, who is not of manufacturer or its agent is duty bound to disclose the name and particulars from whom he acquired the drug or cosmetic. It may be pertinent to notice the consequence of the breach of section 18-A. The consequence is that the person refusing to furnish information is liable to imprisonment or fine in accordance with section 28 of "the Act". It reads as

under:--

"Penalty for non-disclosure of the name of the manufacturer, etc. -- Whoever contravenes the provisions of section 18-A (for section 24) shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to (one thousand rupees or with both)."

8. It is apparent that the legislature provided an escape route to the person who had acquired the drug or cosmetic from the manufacturer. In that case the real culprit would be the manufacturer and not the person who acquired it. However, when the person required to furnish information refuses to give intimation as per section 18-A of the Act, could the manufacturer be arrayed as an accused on the basis of the fact that the name of the Company is printed in the tube? This Court is of the opinion that no such presumption can be drawn. Firstly, if this presumption could be drawn then there would be no occasion to impose a duty to disclose the name of the manufacturer from whom the drug was acquired as per section 18-A and consequent penalty u/s 28 of the Act. Secondly the argument raised on behalf of the State conveniently omits the consideration that drug or the cosmetic in the hand of the person acquiring may be spuriously manufactured by a person or a company other than the known manufacturer. The known manufacturer is liable only when he supplied the drug and cosmetics in the breach of the Act or the Rules. The silence of Pratap Agency is the missing link. The correct information may have connected the petitioners with the offences in question. The very silence of the aforesaid sections on the pain of conviction u/s 28 of the Act may raise another presumption that petitioners were not the manufacturers. In any case if the Pratap Agency did not want to disclose the name of the company as the suppliers of "Odomos", the company cannot be made liable for the silence of Shri Bharat Bhusan Makkad and Shri R.K. Saraf. On the other hand the presumption may be that they had no privity of contract with the company and consequently with the petitioners. Looking to common course of events, it is presumed that no person shall act in a manner which would not only destroy his defence against the offences with which he is charged but also make him liable for conviction u/s 28 of the Act.

9. The petitioners have argued that the case was kept pending for a period of 12 years. The year of the commission of the alleged offence was 1985. They argue that they were never served with summonses. The Court below has acted in violation of sections 63 and 67 of Code of Criminal Procedure, without any attempt to get the petitioners served the Court below has resorted to issuance of warrants of arrest in violation of sections 78 and 79 of the Code of Criminal Procedure. There is considerable delay due to pendency of the case and for this reason this Court should quash the entire proceedings against the petitioners.

10. This argument bears examination. The Additional Chief Judicial Magistrate, Jabalpur registered the criminal case on the basis of the complaint, without examining the Drug Inspector, as he was a public servant, by order dated 8-4-1988. Even so the officer of the rank of C.J.M. was required to apply his or

her mind to the facts of case with reference to facts involved and the liability of accused persons mentioned in the complaint. If the Additional C.J.M. had noticed the facts carefully then she would have found that prima facie the petitioners and the Company could not be connected with the offences. However due to lack of adequate knowledge or mechanical application of mind the summons were ordered to be issued against all the accused persons. Although accused Bharat Bhusan Makkad and R.K. Saraf were served fairly quickly. They did not appear and therefore bailable warrants were issued against them. Thereafter they appeared. It appears from the order sheet dated 15-2-1990, that the Court issued bailable warrant against rest of accused persons without recording a finding if summons were served upon them. From 15-2-1990 onwards the order-sheet shows that whenever the case was fixed for orders the Court directed issuance of bailable warrants. There were numerous dates between 8-4-1988 to 15-2-1990 and the order sheet states on each date that summons be issued without any attempt to verify the reason for non-impletion of earlier order. It is painful to record a finding that between 8-4-1988 to 15-2-1990 the different Magistrates mechanically ordered that summons be issued on various dates and after 15-2-1990 to 13-9-2000 ordered that bailable warrants be issued on different dates. On each day they did not try to find out why their orders were not implemented. This procedure does not command itself to the Court. It is the duty of the Courts trying the case to find out the reason for nonimplementation of their orders. This procedure resulted in enormous delay. It appears ultimately the petitioners appeared on 13-9-2000 before the trial Magistrate. The service of summons or warrants to accused persons may be made through Courts outside the State by way of reciprocal arrangements as per section 67 of the Code of Criminal Procedure. Otherwise the cases may linger on and the accused persons who avoid, service, may take advantage of th? delay. The procedure of issuing bailable warrants without recording the service of summons may be irregular. However, this Court would not quash the complaint on this ground alone. The company had written letter on 16-10- 1985 to the Drug Inspector. The petitioner Company had known the probability of complaint being lodged against it. The Court holds that the issuing of bailable warrants may be treated as an irregularity. However as already indicated in paragraphs 5 to 8 that the petitioners entitled to quashing of the complaint on much stronger ground. Consequently, this Court allows both the petitions u/s 482 of the Code of Criminal Procedure and directs that the complaint lodged against Balsara Hygiene Product Ltd. (Petition in Misc. Criminal Case No. 6238/2000) and against the petitioners in this petition is hereby quashed. However, the complaint against Shri Bharat Bhusan Makkad and Shri R.K. Saraf shall be decided by trial Court at the earliest as the matter has been pending trial for more than 12 years. The record of the trial Magistrate be sent back at the earliest.