

(1997) 02 PAT CK 0060

In the Patna High Court

Case No : Criminal Miscellaneous No. 2466 of 1991

Rhone-Poulenc (India) Ltd. and Others

APPELLANT

Vs

Shree Ch. V. Subba Rao and Another

RESPONDENT

Date of Decision : 21-02-1997

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 17, 17B, 27, 27A
Penal Code, 1860 (IPC) — Section 463, 464

Citation : (1997) 1 BLJR 788 : (1997) 1 PLJR 661

Hon'ble Judges : Ravi Nandan Sahay, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ravi Nandan Sahay, J.—May & Baker (India) Ltd., a reputed Manufacture of Drugs, was incorporated under the Indian Companies Act in the year 1928. By virtue of Resolution passed in the Annual General Meeting of Company on 20.8.1989, the name of the Company was changed from May & Baker (India) Ltd. to RHONE-POULENC (INDIA) LTD. This quashing application has been filed by RHONE-POULENC (INDIA) LTD., its Depot Administrative Officer, Manufacturing Director, Marketing Director, Distribution Manager and Sales Manager. This petition has been filed with the object of setting aside the order of cognizance dated 27.10.1990 in complaint Case No. 870 (M) 90 u/s 27 A,(B)(ii) (c) of the Drugs and Cosmetics Act, 1940 on the basis of the complaint filed by the Inspector of Drugs, Patna (West). The complaint petition was filed on 22.10.1990 before the Chief Judicial Magistrate, Patna alleging, inter alia, as follows:

(i) That the complainant inspected the Patna Depot of RHONE-POULENC (I) Ltd. and found the following-

(a) The prior to 30.3.90 the name of the Company was May & Baker (1) Ltd. and after 30.3.90 the name was changed to RHONE-POULENC (I) LTD.

(b) That the name of the Manufacturer was found as RHONE-POULENC (I) LTD. On some medicines which were manufactured in December, 1989 when the said manufacturer was not in existence, therefore, those medicines came under the definition of "Spurious Drugs" as defined u/s 17B(c) of the Drugs and Cosmetics Act, 1940.

(c) That some drugs manufactured after 1.4.1990 contained the manufacturer's name as May & Baker (I) Ltd., while in some medicines inside the carton manufacturer's name was given as "May & Baker (India) Ltd." and outside the carton it was written as RHONE- POULENC (I) LTD. On some of the cartons it was written by affixing sticker "Made in India by RHONE-POULENC May & Baker Pharmaceuticals", which is confusing and misleading and comes under the definition "Misbranded" as defined u/s 17(c) of the Drugs and Cosmetics Act, 1940 and also Violates Rules 96 and 104-A of Drugs and Cosmetics Rules, 1945.

2. The principal allegation against the petitioners in the complaint petition is that the company was not in existence in December, 1989 but got engaged in manufacturing, distributing and selling of drugs which comes within the mischief of Section 17B of the Drugs and Cosmetics Act, 1940 which is punishable u/s 27A of the Act.

3. Section 17B of the Drugs and Cosmetics Act says that for the purposes of this Chapter, a drug shall be deemed to be spurious-

(a) If it is manufactured under a name which belongs to another drug; or

(b) If it is an imitation of, or is a substitute for another drug or resembles another drug in a manner likely to deceive or bears upon it or upon its label or container the name of another drug unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug; or

(c) If the label or container bears the name of individual or company purporting to be the manufacturer of the drug, which individual or company is fictitious or does not exist....

4. In the instant case the alleged contravention is of Clause (c) of Section 17B of the Act.

5. Mr. Chatterjee, learned Counsel for the petitioners has strongly contended that the complaint was filed under serious misconception of provisions of Section 17B(c) of the Act. It is submitted that in order to attract the provisions of Section 17B(c) of the Act, a person or company purporting to be the manufacturer of drug must be fictitious (or not in existence). By no stretch of imagination it can be said that petitioner No. 1 was fictitious. It is true that the name of the company changed after the relevant period mentioned in the complaint petition but in para-2 of the complaint petition it self, it is acknowledge that the name of the company was May & Baker (India) Ltd. prior to 30.3.1990. It is contended that Section 17B(c) of the Act is not attracted because the label on the container showed the name of petitioner No. 1 which was not a fictitious company as

contemplated by the relevant provisions of the Act. It is rightly contended that the new Company came into existence for the first time in May, 1990 but May & Baker (I) Ltd. was in existence since 1928. The company retained the same identity as it was before. Only the name was changed, that too according to the provisions contained under the Indian Companies Act.

6. Mr. Chatterjee, learned Counsel for the petitioners has placed reliance on a decision of the Allahabad High Court in Dharam Deo Gupta Vs. State, . In this decision, A.N. Mulla, J., interpreted the word "Fictitious" under the Drugs and Cosmetics Act, 1940. In this case, the company which was not a drug manufacturer purchased the drugs of Andrew's Chemicals (India) Ltd. which was a drug manufacturer. After purchases, the medicines were sold purporting to be manufactured by the company New International Chemicals Ltd. Which was not a manufacturer. In Para-36 of the Report argument was advanced on behalf of the applicant-accused, who was Managing Director of the New International Chemicals that the company could not be called to be fictitious or did not exist and therefore will not be liable to be prosecuted for selling fictitious drugs. Learned judge observed as follows-

The counsel for the applicant contended that the New International Chemicals was not a company which can be called fictitious or which did not exist and, therefore, Sub-section (9) does not apply. In my opinion, this is not the meaning of the word "fictitious" in the context of this sub-section. Fictitious, as defined in the Chambers Twentieth Century Dictionary means "imaginary-not real-forged". It is the third meaning which is applicable in this case. Forgery is defined in Sections 463 and 464 of the Indian Penal Code.

Whenever any document is made and the intention is to commit fraud, that document becomes a forged document, it is true that the New International Chemicals Ltd. was a firm, but it was not a firm of manufacturers. The label used wanted to fraudulently declare that this firm was a firm of Manufacturers, it also claimed to be manufacturers of those ampoules when the real manufacturers were Andrews Chemicals, Calcutta. It, therefore, took up a fictitious role and therefore the name of the manufacturer given in the label was fictitious. It was not real. I am therefore satisfied that these ampoules were misbranded.

7. In the present case, admittedly, petitioner No. 1 was manufacturer of the drugs though at the relevant time medicines were sold in the name of RHONE-POULENC (INDIA) LTD. though change of name became effective from 30.03.1990. It cannot be said that petitioner No. 1 is a fictitious company and/or non-existent to attract the mischief envisaged by Section 17B(c) of the Act.

8. A supplementary affidavit has also been filed to show the bonafides of the petitioners that the change of name of the company was advertised in all leading Newspapers.

9. In the result, the prosecution of the petitioners is not justified and is fit to be quashed for the reasons stated above. This application is accordingly allowed and

the order of cognizance dated 27.10.1990 in complaint Case No. 870 (M) 90 of the Chief Judicial Magistrate, Patna is hereby quashed.