
(2001) 10 KAR CK 0028

In the Karnataka High Court

Case No : Criminal Revision Petition No. 265 of 1997 with Criminal Petition No's. 1435, 1473 and 1476 of 1997, 255 to 258, 2933, 2934, 2935, 2936 and 3345 of 1999, 209 of 2000 and 736, 737, 738, 739 and 3070 of 2001

Sanjay G. Revankar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 15-10-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 397, 401
Drugs and Cosmetics Act, 1940 — Section 18 (a) (i)

Citation : (2002) CriLJ 1353 : (2002) ILR (Kar) 475 : (2002) 3 KarLJ 304 : (2002) 1 KCCR 323

Hon'ble Judges : S.R. Bannurmath, J

Bench : Single Bench

Advocate : S.G. Bhagawan, B.L. Acharya and S.K. Venkata Reddy, for the Appellant; Mohan Shanthangoudar, for the Respondent

Judgement

S.R. Bannurmath, J.—Though these petitions pertain to number of accused in different criminal cases launched by the State of Karnataka represented by Drugs Inspector, Uttar Kannada District, Karwar, as the offence alleged against the accused petitioners are common and the grounds raised and the questions of law involved are one and the same, all these petitions were taken up for consideration together and are being disposed off by this common order.

2. In all these cases, the manufacturers of "Fratouch" Framacytin Sulphate 1% w/W, partners, chemists, analysts and distributors have been arrayed as accused by the State in the individual complaints filed u/s 200 of the Criminal Procedure Code inter alia alleging offences in common against all the petitioners of the offence u/s 18(a)(i) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as "Act") for the manufacture, sale and distribution of spurious or sub-standard drugs punishable u/s 27(c) and (d) of Act as well as for the violation of Section 18(a)(vi) read with Rule 78(c)(ii) again punishable u/s 27(d) of the Act.

3. It is the case of the complainant State that these accused who are manufacturers, analysts and distributors of the company or partnership firm as well as its partners and directors and in charge officials manufacturing patent or proprietary medicine called as "Fratouch", a Framacytin Sulphate based skin cream, on suspicion that this cream is either spurious drug or sub-standard one, the same came to be seized and was subject to laboratory testing by Government analysts. As per the report of the analysts, the cream contained neomycin instead of Framacytin as claimed and it was opined by the experts that it is both sub-standard and spurious drug as defined u/s 17(b) and (d) of the Act and hence the present prosecution.

4. After taking cognizance and issue of process, the petitioners accused appeared before the learned Magistrate and filed an application under Sections 203 and 245(2) of the Criminal Procedure Code for dismissal of the complaint and also for discharge of the accused on the ground of no prima facie case is made out against the accused. The learned Magistrate on considering each of these cases in detail has rejected the application. Hence, the accused have approached this Court either in the revision u/s 397 and Section 401 of the Criminal Procedure Code or in petitions u/s 482 of the Criminal Procedure Code for quashing the entire proceedings launched against them.

5 The learned Counsels Sri S.G. Bhagawan and Sri Venkata Reddy represented all the petitioners and Sri Mohan Shanthangoudar, the learned State Public Prosecutor represented the respondent-State (complainant).

6. The arguments on behalf of the petitioners, common in all these cases are regarding, (a) The validity of the proceedings in the absence of required notification u/s 18 of the Act; (b) The absence of material regarding involvement of the petitioners in the crime as per Section 34; (c) The validity or correctness of the report of Central Drugs Laboratory (CPL) which according to the Counsels are without jurisdiction as well as in violation of other mandatory requirements. The arguments of both sides and my findings on these issues are as follows;

Re: Notification u/s 18.--It is mainly contended by the learned Counsels for the petitioners that in order to make the provision of the Act applicable u/s 1(3), two notifications are required to be issued by the concerned Government. (1) For the application of Chapter III the Central Government by notification in the Official Gazette appoints the date of coming into operation the Act and under the same provision for Chapter IV to take effect a particular stating from a particular date. (2) The State Government also has to issue a Gazette notification in this regard. There is no dispute that such notifications u/s 1, sub-clause (3) have been issued by the Central and State Governments but what is contended is regarding the second notification as required u/s 18 of the Act. Section 18 of the Act provides and elaborates certain mandatory requirements, violation of which would amount to offences like prohibition of manufacturing and sale of certain drugs and cosmetics. Accordingly, to petitioners these prohibition and mandates comes into operation only from the date fixed by the State Government that too published in

the Official Gazette by way of notification and only then the provisions of the Section 18 will start operating in a particular State. It is contended that admittedly the present proceedings are for the violations or of the commission of the offence u/s 18 of the Act. Both the Counsels for the petitioners have vehemently contended that there is absolutely no notification issued by the Government of Karnataka in this regard and as such unless such notification is issued fixing the date from which Section 18 is operable in the State, the present proceedings are illegal and violative of mandatory requirement u/s 18. In this regard the learned Counsels have produced various similar notifications issued by the different States in the country as well as the notification issued by the erstwhile State of Mysore itself dated 19th December, 1958 appointing 1st March, 1959 as the date from which Section 18 of the Act comes into operation in the areas specified in it. It is further contended that if one peruses this notification, this is restricted to only erstwhile Hyderabad area and erstwhile old Mysore area excluding Bellary District. It is contended that the present proceedings are from the Uttar Kannada District and since there is no such notification similar to the one issued by the then Government of Mysore dated 19th December, 1958, the present proceedings are liable to be quashed as illegal. Drawing my attention to the similar requirement in respect of Section 33-EEC of the Act, it is contended that there is also a prohibition created by the Act and this prohibition shall be in operation from the date of publication of notification. It is contended that though in this regard the State of Karnataka has issued a notification dated 6th February, 1984 fixing the date as 1st April, 1984 for the purpose of application of the prohibition u/s 33-EEC no such notification is in existence so far as Section 18 is concerned. In reply to the same, the learned State Public Prosecutor drawing attention of the Court to the fact that the present Uttar Kannada District prior to States reorganisation was part and parcel of Bombay province; that when it was so in the Bombay province there was a notification dated 15th October, 1948 published by the then Bidar Government of Bombay as per Section 18 of the Act under Notification No. 1421/3A fixing the date of operation of prohibitions u/s 18 as 18th March, 1949. Similarly the Notification No. 4121/332 was also issued fixing the date of operation of Section 18, sub-clauses (1), (2), (4) and (5) of Clauses A, B and C and this notification is dated 28th March, 1947. Inviting my attention to Sections 119 and 120 of the States Reorganisation Act, it is contended that merely because after the reorganisation of States the Uttar Kannada District which was earlier known as Karwar District was transferred from Bombay province to the then State of Mysore, the notifications dated 26th March, 1947 and 15th October, 1948 do not get themselves nullified. It is contended that merely because there is no fresh notification issued by the reconstituted State of Mysore or the present State of Karnataka that does not mean that the earlier notifications making Section 18 prohibitions applicable from the dates mentioned in these notifications get erased from the operation. It is contended that keeping in view this aspect, namely the earlier areas now merged in the State of Mysore (Karnataka) which are generally known as Bombay Karnataka area consisted of old Belgaum, old Bijapur, old

Dharwad and old North Karnataka Districts, these four districts according to the learned State Public Prosecutor were governed by the earlier notifications making the prohibitions u/s 18 applicable from the dates so fixed under the Notification No. 4121/33 referred to above. Drawing my attention to the notification of the State of Mysore referred to by the learned Counsels for the petitioner themselves, it is contended that as there was no such similar notification issued in respect of erstwhile Hyderabad area and Mysore (old) area which have come to be the part and parcel of the old State of Mysore by virtue of reorganisation the then Government of State of Mysore had issued a notification dated 19th December, 1958 in respect of these areas only meaning thereby so far as the other area namely, Bombay Karnataka area is concerned as there was already notification u/s 18 the Government felt it not necessary to issue any other fresh notification making once again Section 18 prohibitions applicable to the Bombay Karnataka area. In this regard the learned State Public Prosecutor has relied upon the pronouncements of this Court in the cases of Chanabasappa Shivappa v. Gurupadappa Murigappa and Ors AIR 1958 Mys. 184, A.S.S. Karanth v. The Assistant Commercial Tax Officer, Puttur, South Kanara and Anr. AIR 1960 Mys. 275, and pronouncement of the Apex Court in the case of Rattan Lal and Co. and Another Vs. The Assessing Authority and Another, and in the case of Shri Swamiji of Shri Admar Mutt v. The Commissioner, Hindu Religious and Charitable Endowments Department and Ors. 1980 SC 1 : (1974) 4 SCC 642 Taking me through these pronouncements it is contended that after the formation of the new State of Mysore (now Karnataka) under the States Reorganisation Act, 1956, laws which were formerly comprises the newly included areas, continue to apply to those areas notwithstanding the fact that they have become part of new State of Mysore. Hence, it is contended by the learned State Public Prosecutor that there need not be another fresh notification u/s 18 when the factual aspect discloses that there was in existence similar notification applicable to the area now in disputed area namely, Uttar Kannada District and continued to operate there is no need to issue fresh notification and hence this contention of petitioner is liable to be rejected.

Re: Section 34.--The next point canvassed by the learned Counsels for the petitioner is regarding the correctness of the procedure adopted in respect of the individual accused by referring to Section 34 of the Act. Section 34 of the Act prescribes offences by companies. It is contended that merely because it is stated that very person who at the time of commission of the offence was in charge of, and was responsible for the company for its conduct or business, without specifically assigning roles to these individual petitioners who include the Partners, Directors, Managers, Distributors, Chemical Analysts and Chemists roping all of them for the offence is not proper. It is contended that if one peruses the complaint as there is absolutely no mention of individual responsibilities assigned to the petitioners so as to prima facie show that they are in charge of and responsible for the conduct of the business of the company. Drawing my attention to similar provision found in other special enactments like

Negotiable Instruments Act and law laid down in this regard it is contended that mere making of company, the first accused and all its Directors without prima, facie disclosing in the complaint itself their individual role as to being in charge and being responsible for the conduct of the business of the company, inclusion of all the petitioners is illegal and more so the act of taking cognizance by the learned Magistrate without his being satisfied of the role of each of the petitioners is a mechanical act and without application of mind and on this ground also the present prosecution is liable to be quashed. On the other hand, learned State Public Prosecutor contended that whenever an offence is committed by a company, the company is the primary or the main accused and by adopting the principles of vicarious liability every person who is in charge of and responsible to the company for the conduct of the business of the company is deemed to be guilty of the offence and hence liable to be punished. Drawing attention of the Court to the proviso of Section 34 itself, it is contended that whether such person is liable or not vicariously is to be proved by that person alone during the trial and the proviso to Section 34 in fact lays down or requires a negative proof to be shown by that such person to prove that the offence was committed without his knowledge or in spite of his exercising due diligence to prevent the offence. It is contended that in the very complaint itself the complainant has prima facie mentioned in detail the roles played by each of the petitioners and if at all the petitioners deny such role or wants to prove that the offence was committed without his/their knowledge or involvement as not being in charge of, it would be only at the stage of trial by leading evidence in this regard. Hence, it is argued on behalf of the State that the question whether petitioners are liable or not cannot be considered in detail at this stage to hold the petitioners who were in charge and responsible for the company for its conduct of business.

7. In addition to these common grounds, Sri Venkata Reddy, learned Counsel appearing for some of the petitioners also raised the following additional grounds.--

(1) Whether the certificate of test issued by the Government Analysts and the Director of Central Drug Laboratory is legal and valid one?

(2) By referring to Section 20 of the Act, it is contended that u/s 20, it is required from the State Government to appoint such persons as Government Analysts by issuing a notification in the Official Gazette. It is contended that in spite of his thorough research in this regard there is no such notification issued by the State Government appointing the Government Analysts and the Director of the Central Drugs Laboratory for the purpose of testing these drugs are spurious or sub-standard nature. He has brought to the notice of the Court various later notifications issued by the State Government appointing the Government Analysts at State Laboratory for the purpose of Section 20. Hence, it is contended that unless and until such notification is shown to be in existence the report of the Government Analysts and the Directors, Central Drugs

Laboratory cannot be accepted as gospel truth to show that the drug manufactured by the petitioners company is either spurious or sub-standard one. Next, he contended that for the purpose of finding out whether prima setting is used in the product in dispute British Pharmacopoeia prescribes a particular test called "Chromatography method" and according to the learned Counsel this is the only standard test to find out as to the correctness of the prima setting or whether the drug containing Neomycin or Framycetin is either correct one or spurious one. He contended that as per the report of the Laboratory, the test conducted by the Analysts is "Neomycin" without determination test and hence as the test conducted by the Government Analysts even if it is accepted for the time being as authorised one, it is wrong or erroneous test conducted. It is submitted that on the basis of such erroneous test or method, which cannot be held that, the petitioners have violated the provisions of the Act or that the product manufactured by them is sub-standard or spurious one. It is also contended that by looking into Rule 3 of the Rules and Sections 24 and 25 of the Act as well as the powers of the Inspectors and the Government Analysts whether it was open for the Drug Inspector directly to send the product for testing to the Central Drugs Laboratory instead of being tested at the State Laboratory itself. The answer to this queries and contentions raised by the learned State Public Prosecutor is very simple. He contended that particular test should be conducted or not or as to what is the best test to be conducted is subject-matter of evidence of the experts and this Court while exercising the inherent jurisdiction cannot hold the evidence for the purpose of finding how the matters which are to be established by the experts" evidence. Insofar as the notifications u/s 20 is concerned he contended that as the petitioners had not raised this contention in the petition and is being argued for the first time is taken unaware of the fact and even otherwise the same could be established during the trial. In this regard, it is further contended by the learned State Public Prosecutor that there is no restricted place under the Act as to which laboratory the drug to be sent and which is admittedly a discretionary power of the Inspector to send it.

8. Hence, the points for consideration in the light of the arguments addressed are.--

(i) regarding requirement of fresh notification u/s 18 of the Drugs and Cosmetics Act;

(ii) requirements and compliance in respect of Section 34 of the Drugs and Cosmetics Act; and

(iii) the incidental questions.

9. Insofar as the requirement of fresh notification u/s 18 of the Drugs and Cosmetics Act as contended by the learned Counsel for the petitioners is concerned, in my view, though the legislation in its wisdom has prescribed the notifications required to be published in Official Gazette by the concerned State

one u/s 1(3) of the Act for the purpose of applicability of Chapter IV of the Act from a day to be prescribed and another notification is u/s 18 of the Act for the purpose of fixing the date by the State Government by notification in Official Gazette to make the prohibition applicable in the State. As such as it is mandatory requirement, there must be two notifications, one u/s 1(3) and another u/s 18 to be published by the concerned State Government and as such there is no dispute in this aspect regarding this contention of the learned Counsel for the petitioners. But what is to be seen is whether there is such notification at all in the State of Karnataka. Insofar as notification u/s 1(3) of the Act is concerned, again it is not in dispute that by the notification dated 22nd March, 1957 issued by the then State of Mysore (now State of Karnataka) making Chapter IV of the Act applicable to the entire State. But what is mainly contended is absence of notification u/s 18 of the Act. In this regard, the submission of the learned State Public Prosecutor is that the area of operation of the petitioners is undisputedly in Uttar Kannada District, which was earlier part of and known as Karwar District. One cannot dispute the fact that the areas that are commonly called and known as Bombay Karnataka area included in the then Bombay province were the districts of Belgaum, old districts of Dharwad, Bijapur and Karwar (now part of Karnataka State). As per the notification dated 27th March, 1947 and 15th October, 1948 the then Bombay Government had published two notifications in the Official Gazette fixing the dates of operation of Section 18 of the Act as 1st April, 1947 and 1st April, 1948 respectively. Thus prior to reorganization of the States so far as the present Uttar Kannada District or the then Karwar District is concerned, there was such a notification issued u/s 18 of the Act. No doubt after States reorganisation there is no fresh notification issued by the newly constituted State of Mysore (Karnataka) again fixing the date of operation of Section 18 of the Act. The main contention on behalf of the learned Counsels for the petitioners is that the then State of Mysore has even though published such notification dated 19th December, 1958 fixing the 1st March, 1959 as the date of the purpose of application of Section 18 of the Act it was only in respect of Hyderabad area and Mysore area excluding Bellary District and the other newly included area like the then Bombay Karnataka area consisting of the Districts Belgaum, old Bijapur, old Dharwad or old Karwar (Uttar Kannada District) have no been included in the present notification and as such it is to be deemed that there is no notification at all made applicable to these areas newly incorporated.

10. In this regard if one peruses the provisions especially Sections 119 and 120 of the States Reorganisation Act, it makes it clear that the law applicable to the area prior to the States reorganisation would continue to be in operation until and unless they are suspended, superseded, amended or altered by proper legislature in the new States. Scope and objects of Section 119 has been considered by a Division Bench of this Court in the cases of Chanabasappa Shivappa, *supra*, A.S.S. Karanth and two pronouncements of the Apex Court in the case of M/s. Rattan Lal and Company, *supra* and in the case of Shri Swamiji

of Shri Admar Mutt, *supra*. The law laid down in these pronouncements is to the following effect.--

"The effect of Section 119 of the States Reorganisation Act is that the law in force in the area which was within the State of Bombay before the appointed day and which had come to the State of Mysore after such appointed day, will remain in force so far as those territories are concerned".

"By virtue of definition of law in the Act, a notification issued under the provision of a statute can be law for the purpose of the Act if it has the force of law in the whole or in part of the territory of India, and therefore notification issued by the erstwhile Bombay Government can be said to be a "law" in force immediately before the appointed day. The notifications issued by the Bombay Government and which was in force immediately before the appointed day would still apply to the part of the Mysore State which before this integration with that State formed part of the Bombay State".

"It is further observed that the scheme of the States Reorganisation Act makes the law applicable to the new areas until superseded, amended or altered by the appropriate legislature in the new States".

11. Undisputedly in the present case insofar as the newly constituted Uttar Kannada District or former Karwar District are concerned, there was a notification issued by the erstwhile Bombay province fixing the date from which Section 18 of the Act has come into operation. It is also undisputed that thereafter this provision or the date of notification has not been either amended, suspended or superseded by any other notification. As such till it is done, in my view, the notification issued by the then Bombay province will continue to operate so far as the petitioners are concerned. No doubt there is notification of 1958 published by the then State of Mysore, but by making harmonious construction of the changes and reorganisations, it is to be noted that this notification pertains to the area of Hyderabad and Mysore which came to be integrated with the new State of Mysore wherein similar notifications as is available in respect of Bombay Karnataka area was not there in the old Hyderabad or old Mysore State and as such the then State of Mysore has published this notification dated 19th December, 1958. Hence, in my view, the contentions raised by the learned Counsel for the petitioners in regard to notification u/s 18 of the Act has no merits as, there is already in existence the notification in this regard by the then Bombay province issued and which continues to operate in the light of the provisions of Sections 119 and 120 of the States Reorganisation Act.

12. This takes me to the next question regarding Section 34 of the Drugs and Cosmetics Act. In this regard the learned Counsel for the petitioners have vehemently contended that even though Section 34 makes all the persons concerned with the company which is the principal accused vicariously liable; there must be definite averment in the complaint as to the role of each of the persons arrayed as co-accused with the help of principles of vicarious liability.

The learned Counsels for the petitioners has relied upon the pronouncements of the Apex Court in the cases of State of Karnataka Vs. Pratap Chand and Others, ; Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, and State of Haryana Vs. Brij Lal Mittal and Others, .

13. By looking into the provisions of Section 34 of the Act it is apparent that vicarious liability of persons for being punished 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 (as per Section 34(1) of the Act). Even otherwise u/s 34(2) of the Act 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, each of them would be deemed guilty of the offence. If one peruses the provisions of Section 34(1) and (2) of the Act independently, what can be made out is thus.--

14. In Sub-section (1) of Section 34 of the Act every person who is shown to be in charge of, and was responsible to the company for the conduct of its business is deemed to be guilty. The use of the words "every person" means it is irrespective of what is the position held by the said person whether be it as a Director, Manager, Secretary or any other officer of the company. If it is prima facie shown by the prosecution that such person was in charge of, and was responsible to the company for the conduct of its business by applying the principles of vicarious liability, he is deemed to be guilty of the offence and liable to be proceeded against. The proviso to said Sub-section (1) shows that even if such prima facie material is shown, it is open for the person so accused and charged to prove that irrespective of his being in charge of, and responsible towards the company for its conduct or business, the offence was committed without his knowledge or was done in spite of best diligence or preventive actions taken by him to prevent such offence. Hence the basic material and averment required so far as Sub-section (1) of Section 34 of the Act is concerned is to prima facie show that the particular person/accused is in charge of, and was responsible to the company for the conduct of its business. Through this clause though almost every person connected with the company may be arrayed as accused and be prosecuted, be it the Director, Manager, etc., in its wisdom the legislature has added the second clause to this section creating specific vicarious liability so far as Director, Manager, Secretary and other officers are concerned also and this provision starts with non obstante clause. Under Sub-section (2) of Section 34 of the said Act apart from showing that the accused person is a Director, Manager, Secretary or other officer of the company, it must be shown or proved that the offence has been committed with his consent or connivance or is attributable to any neglect on the part of such Director, Manager, Secretary or other officer of the company.

15. Taking into consideration the Director, Manager, Secretary or other officers of

a company are made vicariously liable to the collective action of a company, who itself would be an accused in the offences like one on hand, there are certain restrictions and preventive measures placed by the legislation itself for making them co-accused along with the company. Prima facie requirement is that the complainant to substantiate the basic requirements like the present accused is, to show he is in charge of, or responsible for the conduct of the business of the company, be it in any capacity and if he is the Director, Manager, Secretary or officer of the company it should be averred and shown that the offence took place with his consent or connivance or is also attributable to the neglect on the part of such person (Director, Manager, Secretary and other officer). Keeping in view the observations of the Apex Court in the case of Sham Sunder and Others Vs. State of Haryana, which are to the following effect.--

"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".

(emphasis supplied)

It is to be noted that unlike the first information as required u/s 154 of the Criminal Procedure Code which need not be elaborate and contain all the history of the case, this complaint u/s 200 of the Criminal Procedure Code filed for specific and substantial offences under the independent acts like Drugs and Cosmetics Act. In the present case it is the public servant on his own investigation in respect of commission of offences under the Act lodges a complaint u/s 200 of the Criminal Procedure Code. In such an event the accused person who is to be vicariously liable and this aspect he may come to know only after taking of cognizance and issuance of process against him and only when he can either state that he does not fall either under Sub-section (1) of Section 34 of the Act viz., that he is not a person in charge of, and was responsible to the assets of the company or the alternate arguments that even though he is the Director, Manager, Secretary or other officer of the company, it is not shown that the offence was committed with his consent or connivance or is attributable to any neglect on his part. As observed by the Apex Court in the case of Girdhari Lal Gupta Vs. D.H. Mehta and Another, followed in the subsequent pronouncements in the case of Sham Sundar, supra, merely because a person is a Director may not be concerned with day-to-day working of the company and as such only

because of his holding of position, he cannot be straightaway arrayed as accused unless prima facie there is averment to clearly indicate what exactly is the role played by such Director, which resulted in the commission of the offence.

16. In the present case petitioners (accused 4 to 6 and 8) are the Directors of the company. There is no specific averment about the role of each of Directors except baldly stating in the complaint that these are the Directors of accused 1-company and hence they are to be held responsible for the day-to-day affairs of the firm or company. In my view, this would not be a sufficient averment. From the words used in the complaint, for example at para 7 that accused 4 to 6 are working partners of the firm and are held responsible for the day-to-day affairs indicate that the complainant wants to infer the fact that merely because such person is a director, he is deemed to be responsible for the commission of the offence. As observed by the Apex Court in the aforesaid decisions, there are number of different types of partners in a firm or a company. He may be working partner, sleeping partner or partners who are minors. Merely because he is a partner, it cannot be straightaway inferred that he is responsible for the day-to-day working or he is in charge of and responsible for the very operation of the company and more so towards the commission of the crime in question. No doubt the proviso to Section 34(1) leaves it open to such co-accused to prove before the Trial Court such offence was committed without his knowledge or in spite of his exercising due diligence in proving the commission of such offence but that is at the trial stage. As observed by the Apex Court in the case of Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, if there is absence of such prima facie allegation or averment why the person should be asked to undergo the agony of a criminal trial and make him to prove the fact which was not even averred basically by the complainant in his complaint filed u/s 200 of the Criminal Procedure Code. Hence, in my view, that apart from saying that the co-accused is holding certain posts like Director, Manager or Secretary or any other officer of the company, the main accused, it must be clearly averred in the complaint itself as to whether he was in charge of the company or its affairs and how he was concerned with the commission of the offence itself. Taking into consideration the various pronouncements of the Apex Court in this regard in respect of similar provisions arising under the different special enactments creating various liabilities on the partners of a firm or Directors of a company, I hold that the complainant in his complaint should mention and aver the details as to how the particular vicariously liable person or accused is concerned with the commission of the crime itself and unless and until the same is done, merely because he is a Director or an officer cannot be held to be straightaway as an accused.

17. It is to be noted that the complaint is by a public servant (State Machinery). Unlike private complaint who will not have sufficient resources at hand to investigate or find out as to the exact role of each of the co-accused, in my view, it is necessary to aver the actual role played by each of the co-accused so as to make them vicariously liable for the commission of the offences by the main

accused, the company or the firm.

18. In the present case as noted except vague and bald averments in paragraphs 7 to 9 and paragraph 44 insofar as accused 4 to 6 and 8 are concerned, I do not find any necessary basic averments except stating that they are the Directors and hence are deemed to be guilty, There are absolutely no material averments to hold with guilt of each of the accused on prima facie material. As these are the specific offences making liability of persons concerned with a company (the main accused) principally in criminal case, the learned Magistrate at the time of taking of cognizance itself is required to apply his mind in this regard as it is open for him not to take cognizance at the initial stage itself or taking cognizance of only such persons against whom there is prima facie material. In the present case except a bare and bald statement of the complaint insofar as accused 4 to 6 and 8 are concerned that it is deemed that they are liable to be arrayed as accused merely because they are Directors of the company, is not a prima facie indication of their committing the offence vicariously. In my view, there is no sufficient application of mind on the part of the learned Magistrate in this regard. This action of taking cognizance and issuing process insofar as accused 4 to 6 and 8 are concerned, in my view, is without application of mind in the absence of availability of or making out prima facie case is concerned and hence liable to be set aside or quashed.

19. But this principle does not apply insofar as accused 7, 9, 10 and 11 are concerned. Accused 7 is the Manager of the company, who cannot be disputed to be in charge of the affairs of the entire company especially the production of the drug now alleged to be spurious or sub-standard drug. Similarly accused 9, 10 and 11 are the technical staff being Chemists and Analysts being directly concerned with the manufacturing process whose basic duty is to see that no spurious or sub-standard drug is prepared. The averments found in the present complaint would be sufficient in this regard and as such taking cognizance and issue of process insofar as accused 9, 10 and 11 are concerned, cannot be found fault with.

20. Insofar as other contentions raised by the learned Counsel for the petitioners is that no required test for the purpose of finding out whether the drug is sub-standard or spurious one is carried out as is required to be conducted and prescribed under the British Pharmacopoeia is concerned, in my view, this contention is premature one. Whether the test conducted is proper or not, the results are correct or not are to be proved by both sides during the trial by examining their respective witnesses including experts. This Court at this stage cannot lay down or prescribe particular test to be held for the purpose of finding out whether the drug is spurious or sub-standard one. Hence, this contention raised by the learned Counsels for the petitioners, in my view, is not sustainable at this stage.

21. In this result, these petitions are partly allowed. The proceedings insofar as the Directors of the company in each of the cases are hereby quashed keeping in

view the well-settled principles regarding the exercise of inherent jurisdiction as laid down by the Apex Court in the cases of State of Haryana and others Vs. Ch. Bhajan Lal and others, and M/s. Pepsi Foods Limited, supra. Petitions are rejected insofar as accused 7-Manager, accused 9 to 11-Technical Staff is concerned.

22. However, it is made clear that mere quashing of the proceedings at the initial stage does not mean that doors of the prosecution agency are totally closed. If during the investigation or trial, it is found that these Directors had specific role in the light of Section 34 either clauses of the Act, in the commission of the offence it is open for the Trial Court to take cognizance and issue process against such of the Directors as found liable.

23. The petitions are disposed off accordingly.