
(2017) 10 BOM CK 0041
In the Bombay High Court
Case No : 577 of 2011

Shri Ramesh Lulla & Ors

APPELLANT

Vs

State of Maharashtra & Ors

RESPONDENT

Date of Decision : 03-10-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 61](#), [Section 202](#), [Section 202\(1\)](#) - Form of summons - Postponement of issue of process - Postponement of issue of process

Citation : (2017) 10 BOM CK 0041

Hon'ble Judges : R.K. Deshpande

Bench : SINGLE BENCH

Advocate : Geeta Tiwari

Judgement

1. This petition challenges Criminal Complaint R.C.C. No.251 of 2011 filed by the respondent No.1/State against the petitioners, who are made the accused therein, alleging the offences under Section 18(a)(i) read with Sections 16(1)(a) and 17B(d) punishable under Section 27(a) and (d) of the Drugs and Cosmetics Act, 1940. The petition also challenges the order dated 29-9-2011 passed by the learned Chief Judicial Magistrate, Bhandara, whereby the learned Magistrate issued the summons to the petitioners.

2. On 25-10-2011, this Court passed an order as under : " Heard.

Issue notice before admission returnable in four weeks.

Learned counsel for the petitioner states that returnable date of the accused summons is 3/11/2011.

Having heard the learned counsel for the petitioner, prima facie, I find that the procedure required to be followed for issuance of summons outside the jurisdiction of the court, has not been followed. That being so, adinterim relief in

terms of prayer clause (iv).

Shri Rokde, learned APP waives notice on behalf of respondent no.1."

3. Thereafter on 5-7-2012 also, this Court (Smt. Sadhana S. Jadhav, J.) passed a speaking order recording the challenge that it is only the persons, who are responsible for maintaining the quality of drugs manufactured, who can be prosecuted for the drugs being sold as "Not of Standard Quality" and the Directors of the Company cannot, therefore, be prosecuted.

4. The matter remained unattended on the part of the petitioners on 21-11-2015, and it was kept for dismissal on 7-12-2015. Again on 9-8-2017, none appeared for the petitioners. The matter was, therefore, dismissed in default. It was then restored on 21-8-2017. It was adjourned thereafter on 25-9-2017, at the request of the counsel for the petitioners.

5. Today, none appears for the petitioners. I have heard Smt. Tiwari, the learned Additional Public Prosecutor appearing for the respondent No.1/State.

6. After going through the provisions of Sections 16(1)(a) and 17B(d) read with Section 18(a)(i) of the Drugs and Cosmetics Act, prima facie it is shown that the manufacturer can be prosecuted for not maintaining the standard quality of drugs manufactured. The liability also arises in the case of distribution of such drugs. In the present case, the distribution of the drugs in question was at Bhandara, which is within the jurisdiction of the Chief Judicial Magistrate, Bhandara. Prima facie, it does not seem that the petitioners/accused can be prosecuted for the acts alleged against them.

7. So far as failure to follow the procedure under Section 202 of the Criminal Procedure Code is concerned, there does not appear to be any enquiry by the Magistrate himself or any investigation by the Police Officer or any such other person, as contemplated under subsection (1) of Section 202 of the Code. Though this is the specific ground raised in the petition, there is no response to it in the reply filed by the respondent No.1/State. In view of this, the issuance of summons under Section 61 of the Criminal Procedure Code by the Chief Judicial Magistrate, Bhandara, to the petitioners will have to be quashed and set aside with liberty to the learned Chief Judicial Magistrate to proceed further in the matter of investigation.

8. After the dictation of the entire judgment, Shri S.N. Tapadia, Advocate, holding for Shri V.V. Bhangde, Advocate, appears for the petitioners and submits that the complaint pending before the learned Chief Judicial Magistrate, Bhandara, has been withdrawn by the respondent No.1/State. If this is the position, it shall be open for the learned Chief Judicial Magistrate to consider this aspect of the matter also.

9. In the result, the petition is partly allowed. The order dated 29-9-2011 passed by the learned Chief Judicial Magistrate, Bhandara, issuing summons to the accused persons in R.C.C. No.251 of 2011 at Annexure 3, is hereby quashed and

set aside. The matter is remitted back to the learned Chief Judicial Magistrate, who shall pass an appropriate order by taking into consideration the contentions raised by the petitioners.

10. Rule is made absolute in above terms.