
(2012) 05 RAJ CK 0108

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 726 of 2009

S.K. Makand and Another

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 08-05-2012

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 18(c), 18a(i), 27(b)(i), 27(d)

Citation : (2012) 4 WLN 406

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Rajendra Prasad for Mr. H.S. Sidhu, for the Appellant; A.R. Nikub, Public Prosecutor, for the Respondent

Judgement

Sandeep Mehta, J.—The instant miscellaneous has been filed by the petitioners challenging the order dt. 21.02.2009 passed by the learned Chief Judicial Magistrate, Sri Ganganagar in Criminal Miscellaneous Case No. 724/1992 (State vs. Vinod Sharma & Ors.) directing framing of charges against the petitioners for the offences under Secs. 18a(i) read with Sections 27(b)(i) and 18(c) read with Section 27(d) of the Drugs and Cosmetics Act, 1940 (for short, "the Act of 1949"), as affirmed in the Revision petition No. 68/2009, by the learned Sessions Judge, Sri Ganganagar by his order dt. 10.04.2009. The petitioners herein are the Directors of a company namely M/s. Gujrat Enjkt Limited, Kalol. An injection Isomizotes manufactured by the company was seized from its vendor at Sri Ganganagar and thereafter the Drugs Inspector filed a complaint against various persons including the petitioners for the offences mentioned above. The learned trial Judge proceeded to frame charges against the petitioners, as mentioned above and the revision petition filed by the petitioners, challenging the order framing charges, has also been rejected. Thus, the instant miscellaneous petition has been preferred before this Court seeking quashing of the charges and all subsequent proceedings qua the petitioners in this case.

2. Learned counsel for the petitioners submits that it is the admitted case of the

prosecution, by way of document EX. P/18, which is the List of Directors of the manufacturing company M/s. Gujrat Enjkt Limited, Kalol, that petitioner No. 1 S.K. Makand was the Director of the company in the capacity of Insurance Consultant and the petitioner No. 2 H.H. Makand was the Director of the company in the capacity of Educational Consultant. Thus, it is submitted that by the very fact that the designation of the petitioners in the Board of Directors of the company is for a limited purpose, the prosecution of the petitioners in this case is absolutely unwarranted. Learned counsel, pointing out the complaint filed in this case, submits that one Yogesh Makand has been mentioned as the Managing Director of the company and the person responsible for the day to day affairs thereof. He, therefore, submits that the prosecution of the petitioners in this case is absolutely unwarranted and that the miscellaneous petition deserves to be accepted.

3. Learned Public Prosecutor, on the other hand, has opposed the arguments advanced on behalf of the petitioners.

4. Having heard the arguments advanced at the bar and upon going through the material available on record, it is manifest that in the complaint, the accused at serial No. 10, namely Yogesh Makand, has been mentioned to be the Chirman cum Managing Director of the company. So far as the petitioners are concerned, as per the document EX. P/18, the petitioner No. 1 S.K. Makand is projected as the Director cum Insurance Consultant and the petitioner No. 2 H.H. Makand is projected as the Director cum Educational Consultant of the company.

5. There is a document EX. P/12, exhibited in the pre-charge evidence, available on record showing the names of responsible persons nominated on behalf of the company and two persons, viz. R.J. Pratap and N.J. Vaidya have been nominated by the company to be the responsible persons under the Drugs and Cosmetics Act for Manufacturing department of the company. There is no allegation in the complaint that the petitioners herein were responsible for the day to day affairs of the company. Thus, if the allegations made in the complaint are tested in the light of the decisions of the Hon'ble Apex Court in the cases of S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, and Pepsico India Holdings Pvt. Ltd. Vs. Food Inspector and Another, this Court has no hesitation in arriving at a conclusion that the allegations against the petitioners, as mentioned in the complaint, are bereft of any particulars and there is absolutely no allegation as regards to the responsibility/liability of the petitioners towards the day to day affairs of the company. Apart from mentioning the names of the petitioners as being the Directors of the company, there is no averment in the complaint which can justify their prosecution. In view of the aforesaid discussion the miscellaneous petition deserves to be accepted and is hereby accepted. The impugned order dt. 21.02.2009 passed by the learned Chief Judicial Magistrate, Sri Ganganagar in Criminal Miscellaneous Case No. 724/1992 directing framing the charges and all the subsequent proceedings thereto quo the petitioners only, as also the impugned order dt. 10.04.2009 passed by the learned Sessions

Judge, Sri Ganganagar in Criminal Revision No. 68/2009, are hereby quashed.
The state petition also stands disposed of.