**(2015) 09 MAD CK 0145**

**In the Madras High Court**

**Case No :** Criminal O.P. (MD). No. 16807 of 2015, M.P. (MD) Nos. 1 and 2 of 2015

Solamali Enterprises and Others APPELLANT

Vs

The Tamil Nadu State RESPONDENT

**Date of Decision :** 23-09-2015

**Acts Referred:**
Drugs and Cosmetics Act, 1940 — Section 18(c), 27(b)(ii), 34, 34(1), 34(2)

**Citation :** (2015) 09 MAD CK 0145

**Hon'ble Judges :** R. Mala, J.

**Bench :** Single Bench

**Advocate :** P. Senthurpandian, for the Appellant; K. Anbarasan, Govt. Advocate, for the Respondent

**Final Decision :** Dismissed

## Judgement

R. Mala, J.—The petitioners have come with this petition seeking to call for the records in S.T.C. No. 251 of 2015 on the file of the learned Judicial Magistrate No. IV, Tirunelveli and quash the same.

2. The learned Counsel appearing for the petitioners submitted that the petitioners are arrayed as Accused Nos. 2 and 3 stating that the complaint has been filed by the respondent for the offence that they sold drugs to A1 who is not having valid licence. He further submits that as per section 34 of the Drugs and Cosmetics Act, 1940, if the offences are committed by Companies, the persons who is responsible for the Company alone is liable for prosecution and not the other persons. But, even though the said P.Pitchai(A3)is a Managing Partner, he is not responsible for the Company to conduct the business of the Company. So, he was not found guilty. Hence, he prays for quashing the same. To substantiate the same, he relied upon the judgment of the decision of the Honourable Supreme Court in State of Haryana Vs. Brij Lal Mittal and Others, and also the judgment of the Bombay High Court in Pannalal Sunderlal Choksi and Others Vs. State of Maharashtra and Another, and seeks for quashing the

 

same.

3. Resisting the same, the learned Government Advocate (Criminal side) appearing for the respondent submitted that Section 34(2) of the Act, specifically stated that any Director, Manager, Secretary or other Officer of the Company, is liable to be proceeded against and punished accordingly. He further submits that knowingly fully well that they sold drugs to the first accused who is not having the valid licence. Hence, he prays for dismissal of the petition.

4. Heard the learned Counsel appearing for the petitioners and the learned Government Advocate (Crl.side) appearing for the respondent.

5. Considering the rival submissions and perused the typed set of papers, it is seen that the respondent herein has filed the complaint for violation of under Section 18(c) of the Drugs and Cosmetics Act, 1940. Section 18(c) of the Drugs and Cosmetics Act, 1940 is as follows:-

"18(c). [Manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale] or distribute any drug [or cosmetic] except under and in accordance with the conditions of, a licence issued for such purpose under this Chapter."

6. Here, A2 and A3 have sold drugs to A1 who is not having the licence. So, he is punishable under Section 27(b)(ii) of the said Act. Admittedly, the first accused is not having any valid licence for selling the drugs. The only point to be decided is whether A2 and A3 are liable for prosecution.

7. It is appropriate to incorporate Section 34 of the Drugs and Cosmetics Act, 1940, thus:

"34. Offences by Companies- (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in subsection (1) 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 any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. "

8. Section 34 of the Drugs and Cosmetics, Act, 1940 deals with the offence by the Companies. Admittedly, the Company means a body corporate and includes a firm or other association of individuals and director in relation to a firm means a partner in the firm. Admittedly, the second respondent namely M/s. Solamalai Enterprises is a firm which is not in dispute. So, the offence by the company shall be liable to be proceeded against the Company.

9. The learned Counsel appearing for the petitioners submits that the petitioner is only a Partner he is not dealing with the day-today activities. Hence, he is not liable for prosecution. To substantiate the same, he filed the documents, in which, it was stated that the sale shall be made under the personal supervision of a competent person name of the competent person is G.Saravanan. But, in another document produced would show that four named persons. The stock has been issued on 24.09.2013. But the name G. Saravanan has been struck off. (1) R.Sudhakar (2) M.Karthikeyan (3)M.Arjun Raja, (4)K.Jaishankar has been mentioned from 21.12.2013. That the clause stated Officer of the company is responsible. He has not filed any documents to show what his role in the firm. Whether he is a Managing Partner and what his duties and the responsibilities, whether he has taken active part in the business. He has not filed Article of Association and any other documents.

10. In such circumstances, I am of the view it is premature for quashing the same, as if the petitioner is not connected with the business of the firm.

11. It is appropriate to consider the decision of the Honourable Apex Court in in State of Haryana Vs. Brij Lal Mittal and Others, . In that, it was held in paragraph ''8'' as follows:-

"8. Nonetheless, we find that the impugned judgment of the High court has got to be upheld for an altogether different reason. Admittedly, the three respondents were being prosecuted as directors of the manufacturers with the aid of Section 34(1) of the Act which reads as under:-

"34. Offences by Companies- (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

It is thus seen that the vicarious liability of a person for being prosecuted 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. Simply because a person is a director of the company it does not necessarily mean that he fulfils both the above requirements so as to make him liable. Conversely, without being a director a person can be in charge of and responsible to the company for the conduct of its business. From the complaint in question, we however, find that except a bald statement that the respondents were directors of the manufacturers, there is no other allegation to indicate, even prima facie that they were in charge of the company and also responsible to the company for the conduct of its business."

But, after the trial only, that has been decided that it is responsible whether during the material time who was in-charge. Furthermore, in the criminal appeal only that has been decided. In that it was decided that there was drugs were sent for analysis i.e. sub-standard. But, here, it is not the case for production or manufacture the drugs. They purchased drugs as a wholesaler and distributed to the same to the retailers including the first accused who is not having the valid licence. So the above citation is not applicable.

12. In another decision relied upon by the petitioner of the Bombay High Court in Pannalal Sunderlal Choksi and Others Vs. State of Maharashtra and Another, wherein it was stated that there was no specific averment in complaint that the petitioners were in charge of and were also responsible to companies for conduct of business of companies. But, he has taken through this averment that in paragraph ''24'' reads as follows:

"24. In both the cases in hand, except bald statement made in the complaints filed by the Drug Inspector and Food Inspector, there is no whisper in the complaints that the petitioners were in charge of and were also responsible to the companies for the conduct of the business of the companies. The Drug Inspector and the Food Inspector have drawn a presumption with regard to involvement of the Directors of the Company without any averments with regard to control of day-to-day business of the Companies."

13. In reply, they have not stated that he is not responsible for the business, but, he has stated that M/s. Varthini Store, the first accused herein has given a statement that he already applied for drug licence to the authority on the basis only he sold the same. In such circumstances, even though they have given a reply that they have not given explanation or reply stating that the third accused is not responsible for the business.

14. Hence, I do not find any reason for quashing the proceedings against the second accused/first petitioner, the first accused is a company under Section 34 of the Drugs and Cosmetics Act, 1940, which is liable for prosecution. In respect of the third accused/second petitioner herein, he has not filed any reply stating that he is not responsible or he has not doing the business during the relevant period. Hence, I do not find any reason for quashing the application against the second petitioner.

15. Accordingly, this Criminal Original Petition is hereby dismissed. The above

findings shall not influence the trial. The second petitioner/third accused wants personal appearance to be dispensed with. The trial Court is directed to consider his application for dispensing with the personal appearance of the third accused. Consequently, the connected Miscellaneous petitions are also dismissed.

 