
(2020) 11 BOM CK 0050

In the Bombay High Court

Case No : Criminal Application No. 1147, 1281 Of 2020

Sunny And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 26-11-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 420, 464, 468
Drugs And Cosmetics Act, 1940 — Section 17(c), 18(c)

Citation : (2020) 11 BOM CK 0050

Hon'ble Judges : T. V. Nalawade, J; Shrikant D. Kulkarni, J

Bench : Division Bench

Advocate : Rajendra Deshmukh, Nikhil P. Dube, R. D. Sanap, Balraj Pande

Final Decision : Dismissed

Judgement

T. V. Nalawade, J

1. Both the proceedings are filed for relief of quashing and setting aside FIR on the basis of which C.R. No.194 of 2020 is registered in M.I.D.C.

Waluj Police Station, Aurangabad, for the offences punishable under Sections 420, 464, 468, 34 etc. of the Indian Penal Code and Section 18 (c) and

Section 17 (c) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as the Act).

2. Both the sides are heard.

3. The crime is registered on the basis of report given by one inspector appointed under the provisions of the Act. The submissions made and the

record show that action was taken by this department on the basis of secret information received by it on 15th March, 2020. There was information

against M/s. Eurolife Healthcare Pvt. Ltd., MIDC, Aurangabad, Maharashtra. The officers of the department visited the premises of this unit of the

private company on the same day and inspection was done of the goods available there and also of the record. The inspection was made in the

presence of representatives of this concern like Pradeep Changole, Sanjay Kaushal, Rahul Patil, Sanjay Joshi, Raju Sawale and Anil Karpe.

4. The inspection revealed that many containers of sanitizer were present in the aforesaid premises and original date of manufacture and original date of expiry of the contents were changed by affixing new labels on the containers. The price was also changed. The inspection revealed that M/s.

Dishman Carbogen Amcis Limited, was the manufacturer of this sanitizer. It was informed to the officers of this department that concern of the

accused was distributor of the manufacturer. The inspection revealed that already big stock of sanitizer was distributed by way of sale by changing

the dates of manufacture and the date of expiry by extending the date of expiry. Huge stock of sanitizer was ready for distribution by sale.

5. The inspection done by the officers of drug department further revealed that at the time of sale of sanitizer in the past, two different bills were

prepared for the same batch number and two sets of record were created. On one set, the dates given by manufacturer of manufacture and expiry

were mentioned, but on the other set, new dates of manufacture and expiry were mentioned and then the sale was made. The officers realized that to

deceive others, such modus operandi was used by this concern. It was noticed that already huge stock was sold to Rohit Distributors, Pune and Laxmi

Pharma of Mumbai.

6. The stock of sanitizer on which dates were changed and which was worth rupees 48.29 lakh was found in this premises and it came to be seized

under Panchanama. As per the procedure given under the Act, some samples were separated from the stock and the description was mentioned in

Form 16 given in the Act.

7. The papers show that on inquiry, the aforesaid representatives of the accused concern informed that the plant head of this unit from Aurangabad

like Shubham and marketing head like Shibu had given instructions to paste labels by changing dates. In view of this circumstance, the officers took

steps and called aforesaid Rohit, purchaser to return the stock purchased from the present concern. The stock was returned and it was found that

manipulation was done on this stock also by the accused persons.

8. On 17th March, 2020, the representatives of the accused concern gave statements that they had received instructions for making such changes from the head office, Directors. Such statements of Rahul Patil and Virendar Dhar came to be recorded and their written submissions were also obtained.

9. Correspondence was made with M/s. Dishman by the officers of the department to make inquiry as M/s. Dishman was shown as manufacturer.

M/s. Dishman confirmed that stock was sold to the accused concern as accused was distributor. However, the manufacturer informed that no

permission or instruction was given to the accused to change the date of manufacture and expiry date and also the price. The manufacturer informed

the department in the letter dated 26th September, 2020 as follows:

“Further it is submitted that CEO of M/S Eurolife briefed us about the variation carried out at their end so far as Maximum Retail Price of the

products, that we revealed in the above e-mail communication. The said variation is done without our prior consent however, till we received your

notice dated 06/08/2020, we were not aware about alteration in the expiry date as well. Nevertheless it was clearly refused by us relying upon the

CoA of the product. Even otherwise issue of “expiry date” is treated to be critical and as per policy of our company, it is never permissible to

modify the same in any case.”

10. Admittedly, concern of the accused had not obtained licence to manufacture drugs including sanitizer. The copies of the licences in Form 20B and

21 B issued by the department are produced. These forms show that licence was given to sell, stock or distribute by wholesale drugs other than those

specified in Schedules C, C(1) and X. The licences show that they were issued in respect of the premises where the aforesaid inspection as carried

out. The licenses show that they are issued in favour of Directors of M/s. Eurolife Healthcare Pvt. Ltd. (accused concern) and the names of the

Directors to whom it is issued are also mentioned in the licences. In addition to the names of the Applicants of the present two applications, there are

three more names of the Directors on the licences. Thus, every person, who was holding the licence can be held responsible for aforesaid illegal

activity.

11. This Court has perused the record prepared by the department during

inspection, which include Panchanama. The details of the changes made by affixing labels on the containers are given by the department. The details show that the period given for use was extended on most of the stock by one year and to some extent the price was changed.

12. Mr. Rajendra Deshmukh, learned senior counsel submitted for Applicant Sharma that Sharma is only investor in the company and he is not involved in the management of the company. He also made submission that it cannot be said that Sharma would have been benefited due to aforesaid act. Mr. Pande, learned counsel submitted for Applicant Toshniwal that the Applicant is aged about 80 years and it cannot be believed that he was involved in the management of this private company.

13. The submissions made for the two Applicants by their respective counsels are not supported by any record. There is nothing on record to show

that the management was entrusted to a particular person by the Directors. On the contrary, the aforesaid two licences show that they were issued to

the persons like present Applicants. The submissions made show that Applicant Toshniwal is the founder of this private company and Applicant

Sharma has purchased 43% of the shares in this company and in that capacity he was the Director. The relevant contentions made by these two

Applicants can be found in anticipatory bail application, which was filed by them in the Court of learned Additional Sessions Judge, Vijapur, District

Aurangabad. It appears that due to pandemic situation, the learned Additional Sessions Judge did not take the matter seriously and granted the relief of

anticipatory bail. The application, which was filed for anticipatory bail is produced by the Applicants and the application shows that it was not

contended before the learned Additional Sessions Judge that these two Applicants were not involved in the management of the private company. On

the contrary, the application shows that all the Directors had gone together before the learned Additional Sessions Judge for getting the relief of

anticipatory bail. This circumstance also needs to be kept in mind.

14. The aforesaid record and circumstances show that to make profit the private company of the present Applicants used the peculiar modus

operandi. They changed the dates like the date of manufacture and the date of expiry, which are important as the substance is a drug. The importance

of this drug is more in the present situation created by Covid-19 virus. In view of

the say of the manufacturer, which is quoted above, it can be said that the manufacturer would not have changed these dates. If such substance is used after expiry date, it may create health problems and it may prove to be ineffective. Thus, even when society was facing alarm of Covid-19 virus, the accused persons did such acts only to make money. As due to expiry dates, which were extended by affixing new labels, the persons must have used the sanitizer even after expiry date and in future also they are likely to use the drug, which is sold, but which is not accounted by the accused, it can be said that the accused persons committed the offence of creation of false record and also the offence of cheating. They have also committed the offences punishable under the Act. Thus, there is material against both the Applicants to make out prima-facie case for the offences for which crime is registered.

15. Mr. Rajendra Deshmukh, learned senior counsel placed reliance on the observations made by the Apex Court and this Court in some reported cases. The learned senior counsel submitted that the prosecution needs to show that the Applicants were involved in the management of the private company. When there are statements of the employees of aforesaid nature showing that they had received instructions from the Directors, Applicants and when there is nothing on the record to show that a particular Director was entrusted with the management of the company, when licence was in their names and when each one was to get share in the profit proportionate to the investment, it cannot be said that the present Applicants were not involved in the management. The cases referred are as under:

- a). 2019 SCC OnLine SC 1090, (Shiv Kumar Jatia Vs. State of NCT of Delhi);
- b). (2015) 4 Supreme Court Cases 609, (Sunil Bharti Mittal Vs. Central Bureau of Investigation);
- c). Criminal Writ Petition No.827 of 2016 and another matter, (Samar Ray & Anr. Vs. The State of Maharashtra & Anr.) decided at Principal Seat of this Court on 13th July, 2016;
- d). Writ Petition No.834 of 2014 and other matters, (Alok Sharma & Ors. Vs. State of Maharashtra & Ors.) decided at Principal Seat of this Court on 10th February, 2015; and
- e). Criminal Writ Petition No.2320 of 2014, (Hetal Naren Thakore Vs. The State of Maharashtra & Anr) decided at Principal Seat of this

Court on 9th December, 2014.

16. There is no dispute over the proposition made in the aforesaid reported cases by the Apex Court and by this Court. In the present matter, Section

34 of the Act can be used if the offence committed by company and it runs 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 sub-section 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 sub-section (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 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.

Explanation. "For the purposes of this section"

(a) "company" means a body corporate, and includes a firm or other association of individuals; and

(b). "director" in relation to a firm means a partner in the firm.

17. The material already quoted by this Court is sufficient to infer, at this stage, atleast for prima-facie purpose that both the Applicants were

responsible for conducting of the business of this company. It is also possible to infer, at this stage, for prima-facie purpose that the offence was

committed with consent or connivance of these two Applicants. It is already observed that the Applicants are the persons, who are benefited by the

offence. This Court holds that the relief claimed cannot be given to the Applicants. In the result, both the applications stand dismissed.