(2006) 04 MP CK 0022

In the Madhya Pradesh High Court

Case No : Miscellaneous Cr. Case No. 3526 of 2005

Venkateshwaran Narayanan and Others APPELLANT

Vs

State of Madhya Pradesh RESPONDENT

Date of Decision : 13-04-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Drugs and Cosmetics Act, 1940 — Section 17, 17(2), 17(4), 18, 18(A)
Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2006) 2 MPLJ 592 : (2006) 3 RCR(Criminal) 458

Hon'ble Judges : Rakesh Saksena, J

Bench : Single Bench

Advocate : S.C. Bagadiya and Kapil Jain, for the Appellant; J.K. Jain, Government Advocate, for the Respondent

Judgement

Rakesh Saksena, J.

Petitioners, who are Directors of M/s. Glaxo India Co. Ltd., have filed this petition u/s 482 of Cr.PC seeking quashment of criminal prosecution against them of Criminal Case No. 867/99 pending before the Chief Judicial Magistrate, Raisen, u/s 18A(i) read with Section 27(d) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as ''the Act'').

The main contention advanced by the learned Counsel appearing for the petitioners is that the petitioners, i.e., accused No. 10 Mr. V. Narayanan, Accused No. 11 Mr. P.V. Nayak and Accused No. 12 Mr. D.S. Parekh have been impleaded in the complaint as accused merely on the ground of their being Directors of the Company without making any averment against them, as such the Court below has erred in taking cognizance against them.

In short, the facts of the case are that on 30-3-1996 the Drug Inspector of District, Raisen purchased 200 Betnasol tablets from M/s. Raj Medical Stores, Obedullaganj, for regular examination. After following due procedure he sent one part of the drugs sample to Govt. Analyst, Bhopal for analysis alongwith Form

No. 18. Govt. Analyst, as per his report dated 25-1-1997, found the aforesaid Betnasol tablets not of standard quality. On inquiry, M/s. Raj Medical Stores informed that the aforesaid Betnasol tablets were purchased by them from M/s. Prakash Medical Stores, Bhopal. The original and photostat copy of the bills were produced. M/s. Prakash Medical Stores disclosed that the said drug was purchased by them from Glaxo India Ltd. According to complainant, since the petitioners were Directors of M/s. Glaxo India Ltd., they were responsible for manufacture and sale of the aforesaid Betnasol tablets of Batch No. MB-825 and were liable to be punished for the offence u/s 18(a)(i) read with Section 27(d) of the Drugs and Cosmetics Act, 1940.

Shri S.C. Bagadiya, Senior Advocate, learned Counsel for the petitioners submitted that the petitioners are Non-Executive Directors of Glaxo Smith Kline Pharmaceuticals Ltd. (formerly known as Glaxo India Ltd.). Petitioner Nos. 1 and 2 had never been whole time Directors in the Co. and the petitioner No. 3 was Executive Director Incharge of Human Resources, Legal Licensing and Corporate Communication and was not concerned with manufacture or quality control of the drugs produced by the Company. He submitted that in the complaint there is not even a whisper or even an iota of allegation against the petitioners. He submitted that there is no allegation that at the time when the offence was committed, petitioners were incharge of and were responsible to the Company for the conduct of the business of the Company. He places reliance on the case of State of Haryana Vs. Brij Lal Mittal and Others, and S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, and submits that the criminal prosecution of petitioners deserved to be quashed.

On the other hand, Shri J.K. Jain, Govt. Advocate, appearing for the State, submitted that since the petitioners are the Directors of the Company, they are liable for the offence committed by the Company. He submitted that it has been averred in the complaint that accused Nos. 1 to 14 had manufactured Batch No. MB-825 of Betnasol tablets for sale, therefore, they were liable to be punished for the aforesaid offence. He placed reliance on the decision reported in State (Delhi Admn.) Vs. I.K. Nangia and Another, . He further submitted that the petition for quashing of the criminal complaint filed by the Glaxo Smith Kline Pharmaceuticals Ltd. had been dismissed by this Court vide order dated 19-11-2004 passed in Misc. Cr. Case No. 8526/04, therefore, the present petition by the Directors of the Company was not maintainable.

On perusal of the order dated 19-11-2004 passed by this Court in Misc. Cr. Case No. 8526/04, it is revealed that the point raised in the present petition was not decided by this Court in the aforesaid petition and it was kept open for the petitioners to prosecute their objection application before the Trial Court. In last two paragraphs of the aforesaid order it has been observed:

So far as the last contention is concerned, the present petition has been filed by the Company and not by the Directors who have been arrayed as accused numbers 2 to 14 in the complaint.

The learned Senior Counsel submits that u/s 34 of the Act only those persons who were Incharge of the Company and responsible for the conduct of the business of the Company can be liable to be proceeded against and punished accordingly. Relying on State of Haryana Vs. Brij Lal Mittal and Others, , the learned Counsel submitted that there is no allegation in the complaint to indicate even prima facie that accused numbers 2 - 14 were incharge of the Company and also responsible to the Company for the conducts of its business. From the copy of order-sheets filed on behalf of the applicant, it appears that an application u/s 34 of the Act was filed before the Magistrate for dismissing the complaint against accused numbers 2-14. Since this present petition is not on behalf of the accused numbers 2-14, the point raised cannot be decided by this Court in the petition filed by the present applicant. Accused numbers 2-14 are at liberty to prosecute their application before the Trial Court or seek other available remedy.

Thus, it is apparent that the earlier petition was not filed on behalf of the present petitioners, therefore, the point raised by them in the petition was not decided. Accordingly, I hold that this petition is maintainable.

On perusal of the averments made in the complaint, we find that the petitioners are being prosecuted for their being Directors of the manufacturing Company with the aid of Section 34(1) of the Drugs and Cosmetics Act. For ready reference Section 34 of the Act is quoted below:

34. Offences by companies.- (1) Where an offence under this Act has been committed by a company, very person who at the time the offence was committed, was incharge 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.

Considering the scope of liability of a Director of the Company in Brij Lal Millal''s case (supra), the Apex Court observed:

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 fulfills 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.

In the light of the above observation of the Apex Court, if we examine the averments made in the complaint, it is seen that no allegations are contained in the complaint regarding the fact that the petitioners as Directors were in charge of and were responsible to the company for the conduct of the business of the company nor was there any allegation that the offence was committed with their consent and connivance or that it was attributable to any neglect on the part of the petitioners.

The provisions of Section 34 of the Act are pari maleria to the provisions of Section 141 of the Negotiable Instruments Act. Section 141 of the Negotiable Instruments Act provides:

(1) If the person committing an offence u/s 138 is 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 person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided....

(2) Notwithstanding anything contained in Sub-section (1), where any 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.

In the case of S.M.S. Pharmaceuticals Ltd. (supra), elucidating on the scope of the Negotiable Instruments Act, the Supreme Court observed as under:

19. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability u/s 141 of the Act is sought to be fastened vicariously on a person connected with a Company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to.be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141 he would issue the process. We have seen that merely being described as a Director in a company is not sufficient to satisfy the requirement of Section 141. Even a non-Director can be liable u/s 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial.

The case of State (Delhi Administration) v. I.K. Nangia and Anr. (supra), cited by the learned Government Advocate, does not help the complainant. This case-pertains to provisions of Prevention of Food Adulteration Act. However, in this case also the Apex Court has held that:

16...Notwithstanding the nomination of a person responsible u/s 17(2), there can also be prosecution of any Director, Manager, Secretary, or other officer of the company u/s 17(4). But in such a case it is necessary for the prosecution to prove that the offence has been committed ''with the consent or connivance of, or is attributable to, any neglect on the part of such person''.

On due consideration of the averments, made in the complaint in respect to the petitioners as Directors of the company and the law laid down by the Apex Court in various decisions, I am of the considered opinion that no case entailing criminal liability against the petitioners is made out ex facie to proceed against them. Accordingly, the prosecution so far as it relates to the petitioners, is quashed.