(2001) 05 KL CK 0005

In the High Court Of Kerala

Case No : Criminal M.C. No. 3858/99

West Fort Hospital and Others APPELLANT

Vs

Drugs Inspector and Another RESPONDENT

Date of Decision : 25-05-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Drugs and Cosmetics Act, 1940 — Section 18, 27, 34
Drugs and Cosmetics Rules, 1945 — Rule 4(1), 65(1), 65(3)
Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2001) 05 KL CK 0005

Hon'ble Judges : G. Sasidharan, J

Bench : Single Bench

Advocate : S. Vijayakumar, for the Appellant; M.M. Mathew, Additional Director General of Prosecution, for the Respondent

Judgement

G. Sasidharan, J.—This petition is filed by accused Nos. 1 to 3 in S.T. No. 580 of 1997 on the file of the Chief Judicial Magistrate, Thrissur for quashing the proceedings initiated against them in connection with the above case. The complaint, copy of which is Annexure A, was filed against the present Petitioners and another person alleging commission of offences u/s 18(a)(iv) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as "the Act") read with Rule 65 (3) (1) and (4) (1) of the Drugs and Cosmetics Rules and Section 27(d) of the Act.

2. On the basis of a complaint given by one Dileep Ghosh, the Drugs Inspector, Thrissur inspected the Pharmacy of the first Petitioner, M/s West Fort Hospital, West Fort, Thrissur on 14th June 1995 and seized certain drugs and documents. The drugs seized from the Pharmacy were stated to be drugs the potency of which had expired. The complaint of Dileep Ghosh was that since the drugs, the potency of which had expired, purchased from the Pharmacy was administered to his mother, she died while undergoing treatment in the hospital. On seizing the drugs and documents from the Pharmacy of the hospital, a report was filed in the

Court of the Chief Judicial Magistrate on producing those articles. Annexure B final report was subsequently given to the above court stating that on an enquiry conducted by the Drugs Inspector, it was revealed that there was no evidence to show sale of the date expired drugs as alleged and the date of expiry printed on the label was a computer error. It was further stated in the final report that the court may drop the proceedings. Subsequently Annexure C letter was received by the Chief Judicial Magistrate, Thrissur from the Deputy Director of Prosecution stating that the enquiry and the investigation made by the Drugs Inspector were not complete and hence Annexure B report should not be accepted. Thereafter the learned Magistrate made Annexure D order directing the Drugs Inspector to conduct further investigation of the case. Annexure A complaint on the basis of which S.T. No. 580 of 1997 was taken on the file of the court was subsequently filed by the Drugs Inspector.

3. Quashing of the proceedings in the above complaint is sought for by saying that the procedure adopted by the learned Magistrate was not proper and the subsequent filing of the complaint is not permissible since already Annexure B report had been filed in the court stating that further proceedings in the matter had to be dropped. Anyhow, there is now a proper complaint, . Annexure A, filed in the Court of the Chief Judicial Magistrate on the basis of which a criminal case has been taken on file against the Petitioners and another person, the 4th accused. Even though there was a direction by the learned Magistrate, as could be seen from Annexure D, the subsequent filing of the complaint by the Drugs Inspector alleging commission of offences by the Petitioners and the other accused cannot be said to be without authority. That being the position, quashing of the complaint merely for the reason that on an earlier occasion Annexure B report was given cannot be allowed.

4. Another point urged by the learned Counsel appearing for the Petitioners is that there is no statement in Annexure A complaint as to how the Petitioners are made liable for the commission of the offences. In the complaint, it is stated that accused No. 1 is represented by its Managing partner, accused No. 2 is the Managing Partner of the hospital and accused No. 3 is a Partner of the hospital. The argument advanced is that in so far as there is no allegation in the complaint that the Petitioners were in charge of and were responsible to the company for the conduct of the business of the company, it cannot be said that a prima facie case is made out against the Petitioners for taking cognizance of the offences. In support of the above argument, learned Counsel appearing for the Petitioners relied on two decisions of the Supreme Court. In Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, , it was held by the Supreme Court that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. The test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out, then the Court will be justified in quashing the proceedings in exercise of its powers u/s 482 Code of Criminal Procedure That was a case in which there was allegation that

accused Nos. 4 to 7 were Directors of accused No. 2 and as such they were in charge of and responsible for the conduct of business of accused No. 2. The Supreme Court also noted in that case that there was not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there was any act committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable.

5. In State of Haryana Vs. Brij Lal Mittal and Others, referring to Section 34 of the Act, it was observed that 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. It was also held that 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. It is maintained by the learned Counsel appearing for the Petitioners that since there is no averment in the complaint that the Petitioners were in charge of and were responsible to the company for the conduct of the business of the company as well as the company, no prima facie case is made out in the complaint so that the learned Magistrate could take cognizance of the offence.

6. In the present case, list of documents is appended to the complaint. Item No. 31 in the list of documents is the partnership deed. The learned Additional Director General of Prosecutions would submit that the provisions of the partnership deed would go to show the actual part played by the Managing Partner and the Partner in the conduct of the business of the hospital. It is pointed out that it is not merely on the averments in the complaint alone that the learned Magistrate has taken the case against the Petitioners on file. The other documents which are mentioned in the list of documents are also available in the Court of the Magistrate which would help the Magistrate to see what actually was the role played by the Managing Partner as well as the partner of the partnership firm in the conduct of the business of the hospital in which the pharmacy is also run.

7. In Drugs Inspector v. B. K. Krishnaiah 1981 S.C.C. 487, the Supreme Court had occasion to consider a similar question. That was a case in which the Drugs Inspector filed a criminal case against a firm and three of its partners-for violation of the provisions of the Act. The Magistrate found that the materials available before him were sufficient to show that all the partners were responsible for carrying on the business. The order of the Magistrate was challenged in the High Court and the High Court quashed the proceedings on observing that it was not made out that the partners were in charge of and responsible to the firm. The Supreme Court held that the only question for consideration was whether the accused or any of them were liable for the commission of the offence. That was a case in which along with the complaint, the Drugs Inspector cited the names of witnesses and submitted list of documents including copy of the partnership deed as item No. 13 of the list of

documents. The learned Magistrate perused the partnership deed and prima facie found that the accused were liable for the offence and proceeded with the trial. The Supreme Court found that the High Court committed an error in holding that there was nothing to show that the Respondents were responsible for the management and conduct of the business of the firm. The provisions in the partnership deed were also taken into account along with the complaint for concluding that the partners could be said to be responsible for carrying on the business. This decision is squarely applicable to the facts of the present case since here also, along with the complaint, documents were produced one of which is the partnership deed.

8. In P. Rajarathinam Vs. State of Maharashtra and Others, , the Supreme Court had occasion to consider about the vicarious liability in committing offence with reference to Section 141 of the Negotiable Instruments Act. There the Supreme Court held that the complainant has to put his side of the case and the persons summoned would have to put on the record all what is material to extricate themselves out and the crucial time would be when framing charge where at decision in that respect would be required to be made by the court.

That was a case in which by invoking the provisions of Section 482 Code of Criminal Procedure, the accused wanted to quash the proceedings initiated against them for commission of the offence u/s 138 of the Negotiable Instruments Act. What could be seen from the above decision is that there were so many materials placed before the court along with the complaint and it was premature to quash the complaint u/s 482 Code of Criminal Procedure at the initial stage for the sole reason that there were no sufficient averments in the complaint because at the time of framing charge, complaint could be taken into account along with the other materials which were available with the court.

9. At the initial stage proceedings initiated against the accused can be quashed only if on the face of the complaint and the papers accompanying the same no offence is made out. Even if no sufficient averments to constitute offence are there in the complaint, on going through the complaint and other papers produced along with the complaint, if the Magistrate can see prima facie that the offence is made out, he is justified in proceeding against the accused.

10. Since along with the complaint, list of documents were produced which were sought to be relied on for showing that the Petitioners were in charge of and responsible to the company for the conduct of its business, it may not be proper to say that a prima facie case has not been made oat against the Petitioners for the reason that in the complaint it is not stated that the Petitioners were in charge of and were responsible to the company for the conduct of the business of the company. Hence, this petition is liable to be dismissed.

The Crl. M.G. is accordingly dismissed.

