State Of Haryana vs Brij Lal Mittal & Ors on 30 April, 1998

Equivalent citations: AIR 1998 SUPREME COURT 2327, 1998 AIR SCW 2240, 1998 (4) ADSC 265, 1998 FAJ 269, 1998 CRILR(SC&MP) 400, 1998 (3) COM LJ 1 SC, 1998 (3) SCALE 383, 1998 CALCRILR 244, 1998 ADSC 4 265, 1998 (5) SCC 343, 1998 SCC(CRI) 1315, 1998 CRILR(SC MAH GUJ) 400, (1998) 3 SCR 104 (SC), 1998 (2) BLJR 1118, 1999 (2) SRJ 244, (1998) 3 JT 584 (SC), (1998) 2 EFR 79, (1998) 37 ALLCRIC 133, (1999) CRILT 161, (1998) 2 CRIMES 295, 1998 CHANDLR(CIV&CRI) 340, (1998) 2 EASTCRIC 454, (2000) 1 MADLW(CRI) 114, (1998) 2 RECCRIR 608, (1998) 2 CURCRIR 246, (1998) 29 CORLA 462, (1998) 4 SUPREME 364, (1998) 3 SCALE 383, (1998) 2 CHANDCRIC 232, (1998) 2 ALLCRILR 741, (1998) 93 COMCAS 329, 1998 (2) ANDHLT(CRI) 92 SC

Author: M.K. Mukherjee

Bench: M.K. Mukherjee, Syed Shah Mohammed Quadri

PETITIONER:
STATE OF HARYANA

Vs.

RESPONDENT:
BRIJ LAL MITTAL & ORS.

DATE OF JUDGMENT: 30/04/1998

BENCH:
M.K. MUKHERJEE, SYED SHAH MOHAMMED QUADRI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T M.K. MUKHERJEE.J. Leave granted. Heard the learned counsel for the parts.

2. On August 7, 1990 the District Drugs Inspector, Hisar (Haryana) visited the premise of M/s. Naresh Medical Agencies, (hereinafter referred to as the 'firm'), purchased two samples of sodium chloride injections (hereinafter referred to as the 'drugs') and sent portions of each of those samples to the Government Analyst for analysis. The Analyst submitted his reports on September 10 and 11, 1990 to the effect that both the samples were not of standard quality and were misbranded and adulterated within the meaning of Sections 17 and 17A of the Drugs and Cosmetics Act, 1940 ('Act' for short). The Inspector, on receipt of those reports, delivered copies thereof to the firm on September 17, 1990 along with a letter asking it to disclose the names and addresses and other particulars of the persons from whom the drugs had been purchased, in compliance therewith the firm, by its letter dated October 1, 1990, intimated the Inspector that M/s. Ajay Medical Agencies, Hisar and National Distributors, Sirsa, were the distributors of the drugs and M/s Mitson Pharmecutial Pvt. Ltd., Siblan, were the manufacturers. On getting that information the inspector apprised those firms/company of his having purchased the drugs from the firm and the reports of the Analyst.

3. The Inspector then filed a complaint against the above Irms/company and their partners/directors in the Court of the Chief Judicial Magistrate, Hisar on August 31, 1992 alleging commission of offence under Section 27 of the Act by them. The Magistrate took cognizance upon the complaint and issued processes against the persons arralgned. Aggrieved thereby the three directors of the manufacturers (the respondents before us) moved the High Court under Section 482 of the Code of Criminal Procedure for quashing the proceeding initiated against them. By the impugned judgment the High Court quashed the proceeding as against the respondents on the ground that the prosecution was launched after the shelf life of the drugs had expired in the month of July, 1991 and as a consequence thereof they were deprived of their right under Section 25(4) of the Act to get the drugs tested by the Central Drugs Laboratory. Hence this appeal at the Instance of the State of Haryana.

4. At the outset, it will be apposite to extract Section 25 of the Act. It reads as under:-

> "REPORT OF GOVERNMENT ANALYSTS:
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> (1) The Government Analyst to whom a sample of any drug or cosmetic has been submitted for test or analysis under sub-section (4) of Section 23, shall deliver to the Inspector submitting it a signed report in triplicate in the prescribed form.
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> (2) The Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and another copy to the person, if any, whose name, address and other particulars have been disclosed under Section 18A, and shall retain the third copy for use in any prosecution in in respect of the sample.
>
> (3) Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the fact stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken or the person whose name, address and other particulars have been disclosed under Section 18-A has,

within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report. (4) Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where as persons has under sub-section (3) notified his intention of adducing evidence in controversion of a Government Analyst's report, the Court may, of its own motion, or in its discretion at the request either of the complaint or the accused cause the sample of the drug or cosmetic produced before the Magistrate under sub-section (4) of Section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Central Drugs Laboratory under sub-section (4) shall be paid by the complaint or accused as the Court shall direct."

5. From a bare perusal of sub-section (3) it is manifest that the report of the Government Analyst shall be evidence of the facts stated therein and such evidence shall be conclusive unless the person from whom the sample was taken or the person whose name, address or other particulars have been disclosed under Section 18A (in this case the manufacturers) has within 28 days of the receipt of the report notified in writing the Inspector or the Court before which any proceeding in respect of the sample are pending that he intends to adduce evidence in controversion of the report. Sub-section (4) also makes it abundantly clear that the right to get the sample tested by Central Government Laboratory (so as to make its report override the report of the Analyst) through the Court accrues to a person accused in the case only if he had earlier notified in accordance with sub-section (3) his intention of adducing evidence in controversion of the report of the Government Analyst. To put it differently, unless requirement of sub-section (3) is comped with by the person concerned he cannot avail of his right under sub-section (4).

6. In perusal of the impugned judgment we are constrained to say that the High Court did not properly consider the provisions of sub-section (3) nor did it appear to have perused the complaint and the documents annexed thereto before concluding that the respondents were deprived of their right under sub-section (4). Indeed, in quashing the impugned notification the High Court extracted Section 25 and then, without any discussion whatsoever, recorded the following peremptory finding:

"It is apparent from aforesaid (Section 25) that when the concerned report is received, one copy has to be delivered to the person from whom the same was taken. Within 28 days of the receipt of the copy, the said person can show his intention to adduce defence in contravention of the report. Sub-section (4) of Section 25 of the Drugs & Cosmetic Act, 1940 further makes the position clear. An accused can request the Court to call for the sample and send it for analysis to the Central Drugs

> Laboratory. By the time the petitioners were summoned, the shelf life had expired. In this process the petitioners (the respondents before us) lost their right to get the sample re-analysed from the Central Drugs Laboratory. 'The petitioners' counsel rightly alleges that a valuable right has lost and this caused prejudice to the petitioners."

7. At the risk of petition, we wish to emphasis that the right to get the sample examined by the Central Drugs Laboratory through the Court before which the prosecution is launched arises only after the person concerned notifies in writing the Inspector or the Court concerned (here the latter clause did not apply for the prosecution was set to be initiated) within twenty eight days from the receipt of the copy of the report of the Government Analyst that he intends to adduce evidence in controversion of the report. The complaint and its accompaniments (which include correspondences that took place the Inspector and the manufacturers) clearly disclose that on February 19, 1991 the Inspector served the original copies of the Analyst's report upon the Managing Director of the manufacturers along with two letters asking for their comments. They further disclose that receiving no reply from the manufacturers the Inspector again wrote a letter on March 6, 1991 directing them to reply to his letters dated February 19, 1991 and asked whether they wanted to take benefit of the provisions of Section 25(3) of the Act. Inspite thereof the manufacturers did not exercise their right (much less within 28 days from the date of the receipt of the report of the Government Analyst i.e. February 19, 1991); and, on the contrary, in their letter dated April 8, 1991 annexed to the complaint), sent in response to the letter dated March 6, 1991, asserted, that their quality control department examined and tested samples of the two drugs and found that they complied with the test of sterility. It must, therefore, be said that consequent upon their failure to notify the Inspector that they innded to adduce evidence in controversion of the report within 28 day, not only the right of the manufactures to get the sample tested by the Central Drugs Laboratory through the Court concerned stoo extinguished but the report of the Government Analyst also became conclusive evidence under sub-section (3). The delay in filling the complaint till the expiry of the shelf life of the drugs could not, therefore, have been made a ground by the High Court to quash the prosecution. It will not be out of place to mention that the manufacturers' right under sub-section (3) expired four months before the expiry of the shelf life of the drugs. In view of the above discussion, the reasoning of the High Court for quashing the prosecution against the three respondents cannot at all be sustained.

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 rectors of the manufacturers with the aid of Section 34(1) of the act which reads as under:

> "OFFENCES BY COMPANIES:
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> (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 quality, 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 its knowledge or that he exercised at 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 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 baid 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.

9. In Delhi Municipality vs. Ram Kishan [(1983) 1 S.C.C.1] while dealing with the applicability of Section 17(1) of the Prevention of the Food Adulteration Act, 1954, which is in pari materia with Section 34(1) of the Act, on similar facts, this Court observed as under:

> "So far as the Manager is concerned, we are satisfied that from the very nature of his duties it can be safely inferred that he would undoubtedly be vicariously liable for the offence, Various liability being and incident of an offence under the Act. So far as the Directors are concerned, there is not even a whisper not a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any act committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable. In these circumstances, therefore, we find ourselves in complete agreement with the argument of the High Court that no case against the Directors (accused Nos. 4 to 7) has been made out ex facie on the allegations made in the complaint and the proceedings against them were rightly quashed."

(emphasis supplied)

10. Since we are in respectful agreement with the view si expressed we dismiss this appeal and uphold the order of the High Court quashing the prosecution against the three respondents on a different ground.