

THE HONOURABLE SMT JUSTICE K. SUJANA

CRIMINAL PETITION No.147 OF 2024

ORDER:

This Criminal Petition is filed under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking to quash the order dated 07.12.2023 passed in PRC.No.52 of 2022 on the file of the I Additional Junior Civil Judge cum I Additional Judicial Magistrate of First Class, at Miryalaguda.

2. The brief facts of the case are that the petitioner is the former Director of accused company, namely, M/s.Gena Pharmaceuticals Limited. The respondent/*de facto* complainant filed PRC.No.52 of 2022 alleging contraventions of Section 18(a) (vi) read with Rule 106 and Schedule J point No.50 of the Drugs and Cosmetics Act, 1940 (for short 'Act, 1940') and Drugs and Cosmetics Rules, 1945 (for short 'Rules 1945') and also violation under Section 3(d) read with Schedule point 22 (Kidney Stones) of Drugs and Magic Remedies (Objectionable

Advertisements) Act, 1954 (for short 'Act 1954') against accused company - M/s. Gena Pharmaceuticals.

3. As per the complaint averments, on 18.05.2015 on receipt of credible information, LWs.3 and 4 went to the premises of M/s.Divya Medical and General Stores and on inspection of the said premises, they found stocks of 2x200ML of potrate MB6 oral solution bearing details, such as, batch No.IT 1503, manufacturing date January 2015, expiry date June 2016 and manufactured by M/s. Gena Pharmaceuticals Limited, Door No.7/2/1, Thakurpukur Road, Kolkata, West Bengal, marketed by M/s.Intas Pharmaceuticals Limited, Matoda, Ahmedabad, Gujarat - 382210. It was alleged that the indication on the label of the drug as potrate MB6 for management of calcium oxalate nephrolithiasis (especially in hyper oxaluria cases and uric acid neptrolithiasis) violates Section 18(a) (vi) read with Rule 106, read with Schedule J point No.50 of Act, 1940 and Rules 1945 and also Section 3(d) read with point 22 (kidney stones) of Act, 1954 (objectionable advertisements), thereby, the respondent/*de facto* complaint seized the drugs by listing them in

Form - 16 in the presence of witnesses under a cover of panchanama. For the offences as alleged, PRC., proceedings were initiated against the petitioner/accused stating that the accused company is represented by petitioner. Aggrieved thereby, this Criminal Petition is filed.

4. Heard Sri Zubin JF Poovathinkal, learned counsel for petitioner, and Sri D.Arun Kumar, learned Additional Public Prosecutor, appearing for respondent.

5. Learned counsel for petitioner, submitted that the petitioner is neither accused in the complaint, nor the authorized representative of the accused company. He contended that on 09.08.2019 the National Company Law Tribunal, Kolkata, admitted application bearing No.CP(IB)No.731/KB/2022 filed by the financial creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 for initiating CIRP against the accused company and *vide* CIRP commencement order, an Interim Resolution Professional (for short 'IRP') assumed charge and was in full control of the accused company. Consequently, the CIRP process was unsuccessful and the accused company

is under liquation till date. He asserted that as per the company data of accused company on the website of Ministry of Corporate Affairs (MCA) (www.mca.gov.in) the petitioner was the Director of the company till 30.09.2019 whereas, PRC.No.52 of 2022 was registered before the trial Court on 24.11.2022 and on that date, the petitioner was not the Director of the accused company and the company was under complete control of liquidator, as such, the petitioner is incapacitated to represent the accused company in the PRC proceedings.

6. In addition, learned counsel for petitioner incessantly contended that no individual criminal liability was imposed on petitioner in the complaint lodged by the Drugs Inspector. He reiterated that the only person against whom the complaint was made is against the accused company. In support of the said contention, he relied on the judgment rendered by the Hon'ble Supreme Court in **State of Haryana Vs. Brij Lal Mittal and Others**¹ whereunder, it was observed that '*...It is thus seen that the vicarious liability of a person for being prosecuted for an offence*

¹ (1998) 5 SCC 343

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.' Further, he also relied on the judgments of the Hon'ble Supreme Court in **Ravindranatha Bajpe Vs. Mangalore Special Economic Zone Limited and Others²** and **Shanmugam and Others Vs. Inspector of Police and Another³**.

7. Learned counsel for the petitioner lamented that cognizance of a time barred complaint amounts to abuse of

² (2022) 15 SCC 430

³ (2019) SCC MAD 20101

process of law. He asserted that as per Section 469 of Cr.P.C., the period of limitation in relation to an offender shall commence on the date of offence or where the commission of the offence was not known to the person aggrieved by the offence or to any Police Officer, the first day on which such offence comes to the knowledge of such person or to any Police Officer, whichever is earlier, whereas, in the present case, the date of detection of offence is 18.05.2015 as per the language of Section 469 of Cr.P.C., the period of limitation shall commence from the date of offence, which means the computation of limitation begins from 18.05.2015 and finishes on 18.05.2018. He divulged that the complaint against the petitioner was lodged only after a period of three years from the date of detection of offence i.e., post 18.05.2018 and that the signature of the Drug Inspector in the complaint was done on 11.06.2018 and that the same amounts to filing of complaint beyond the period of limitation.

8. In support of the above contentions, learned counsel for petitioner relied on the judgments of the Hon'ble Supreme Court in **Cheminova India Limited and Others**

Vs. State of Punjab and Others⁴ and Agron Remedies Private Limited and Others vs. Drug Inspector, Vanchiyoor and Others⁵. In addition, he contended that the respondent No.2 abused the process of law by approaching the trial Court with unclean hands and reiterated that the proceedings initiated against the petitioner amounts to abuse of process of law. Therefore, while relying on the judgments rendered by the Hon'ble Supreme Court in the cases **Madhavrao Jiwajirao Schindia Vs. Sambhajirao Chandrojirao Angre⁶, State of Haryana Vs. Bhajanlal⁷, Zandu Pharmaceutical Works Limited Vs. Mohd. Sharaful Haque⁸, Inder Goswami Vs. State of Uttaranchal⁹, Chunduru Siva Ram Krishna Vs. Peddi Ravindra Babu¹⁰, Devendra Vs. State of Uttar Pradesh¹¹ and Kailashi**

⁴ (2021) 8 SCC 818

⁵ MANU/KE/0977/2022

⁶ (1998) 1 SCC 692

⁷ (1992) Supp (1) SCC 335

⁸ (2005) 1 SCC 122

⁹ (2007) 12 SCC 1

¹⁰ (2009) 11 SCC 203

¹¹ (2009) 7 SCC 495

Bai Vs. Aarti Arya¹², prayed this Court to quash the proceedings initiated against petitioner.

9. On the other hand, the learned Additional Public Prosecutor, appearing for respondent – State, submitted that though the accused – company is under the control of liquidator, whether the petitioner is liable on behalf of accused – company is a matter which can be decided only after trial. Therefore, prayed this Court to dismiss the criminal petition as the same lacks merits.

10. Having regard to the rival submissions made and on going through the material placed on record, it is noted that the respondent – State initiated PRC., proceedings whereunder, it was shown that the accused – company is being represented by the petitioner who was the former Director of the accused – Company, whereas, the contention of learned counsel for the petitioner is that on the date of registration of case against the accused – company, the petitioner was not the Director of the company, as such, he cannot be liable for the acts of

¹² (2009) 13 SCC 548

accused – Company which is now under the complete control of the liquidator.

11. At this stage, it is pertinent to note the observation made by the Andhra Pradesh High Court in the case of **Mannam Venkata Krishna Rao Vs. The State of Andhra Pradesh and Others**¹³. The relevant paragraph No.7 of the said judgment reads as under:

“7. The above provision permits service of summons on a company by serving the said summons on any of the principal officers of the company mentioned in the Section 63. However, the manner in which the company is to be represented before a court, after service of summons, is contained in section 305 of the criminal procedure code which reads as follows:

305. Procedure when corporation or registered society is an accused.

(1) In this section, “corporation” means an incorporated company or other body corporate, and includes a society registered under the Societies Registration Act, 1860 (21 of 1860).

(2) Where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the

¹³ 2022 SCC OnLine AP 3027

inquiry or trial and such appointment need not be under the seal of the corporation.

(3) Where a representative of a corporation appears, any requirement of this Code that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused, shall be construed as a requirement that that thing shall be done in the presence of the representative or read or stated or explained to the representative, and any requirement that the accused shall be examined shall be construed as a requirement that the representative shall be examined.

(4) Where a representative of a corporation does not appear, any such requirement as is referred to in subsection (3) shall not apply.

(5) Where a statement in writing purporting to be signed by the managing director of the corporation or by any person (by whatever name called) having, or being one of the persons having the management of the affairs of the corporation to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section, is filed, the Court shall, unless the contrary is proved, presume that such person has been so appointed.

(6) If a question arises as to whether any person, appearing as the representative of a corporation in an

inquiry or trial before a Court is or is not such representative, the question shall be determined by the Court.

8. A reading of the above provision would make it clear that, after receipt of the notice, it would be open to the company to decide whether the person named in the notice would continue to represent the company or not. It would also be open to the person named as the representative of the company to decline to represent the company. In both the situations, applications may be made before the trial Court under Section 305 Cr. P.C., to remove the name of the person who is arrayed as the representative of the said accused-company. This view is fortified by the judgment of the Hon'ble High Court at Bombay, dated 14.01.2020, in criminal Writ Petition No. 4942 of 2019, in the case of *Sanjeev S. Malhotra v. the State of Maharashtra*.”

12. Reverting to the facts of the case on hand, it is seen that petitioner was not the Director of the accused – Company on the date when PRC.No.52 of 2022 was filed against the accused – Company. Perusal of the record reveals that on 09.08.2019 the NCLT, Kolkata admitted application bearing No.C.P.(IB)No.731/KB/2022 filed by the financial creditor under Section 7 of the Insolvency and

Bankruptcy Code, 2016 and *vide* CIRP commencement order, Mr. Anup Kumar Singh, IRP assumed charge and was in full control of accused – Company, but consequently the CIRP process was unsuccessful and the accused – Company was under liquidation and the same came under the complete control of liquidator in the year 2016 itself.

13. That apart, the accused – Company data available on the portal of the Ministry of Corporate Affairs (MCA) reveals that the end date of the petitioner as the Director of the accused – Company was 30.09.2019 and the same would clearly show that on 24.11.2022 i.e., when PRC.No.52 of 2022 was registered before the trial Court, the petitioner was not the Director of the accused – Company and the same was under the control of liquidator. That being so, this Court is of the opinion that the petitioner cannot be compelled to represent the accused – Company.

14. In addition, it is also imperative to mention that the provisions of Section 305 Cr.P.C., provides for a situation where the company may refuse to name any person as its

representative and in such circumstances, Section 305(4) Cr.P.C., provides that the trial Court may take up trial of the matter without having to insist upon any person representing the company and all the requirements that are set out in the Cr.P.C., for doing certain acts in the presence of accused would stand waived.

15. In view of the above and having regard to the judgment rendered in the case of **Mannam Venkata Krishna Rao** (supra 13) this criminal petition is allowed, quashing the order dated 07.12.2023 passed in PRC.No.52 of 2022 on the file of the I Additional Junior Civil Judge cum I Additional Judicial Magistrate of First Class, at Miryalaguda, and directing the trial Court to expunge the name of petitioner from the records in PRC.No.52 of 2022 as person representing the accused – Company.

Miscellaneous applications, if any pending, shall also stand closed.

K. SUJANA, J

Date:02.09.2024
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