

M/S Narain Dass Bhagwan Dass vs State Of J&K on 31 January, 2022

Author: Rajnesh Oswal

Bench: Rajnesh Oswal

HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT JAMMU

Reserved on 17.11.2021
Pronounced on 31.01.2022

CRMC No. 325/2011 (O&M)

M/s Narain Dass Bhagwan Dass
and another

.....Appellant(s)/Petitioner(s)

Through: Mr. Amrish Kapoor, Advocate
vs

State of J&K

..... Respondent(s)

Through: Mr. H. A. Siddiqui, Sr. AAG

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
ORDER

1. The present petition has been filed by the petitioners for quashing the complaint filed by the respondent, titled, "State versus M/s. Narayan Das Bhagwan Dass and others" pending before the court of learned Sub Judge (Special Municipal Magistrate) Jammu, on the following grounds:

(a) That there is no allegation in the complaint against the present petitioners that can even remotely suggest that the petitioners have committed any offence under the Drugs and Cosmetics Act 1940 (for short the Act).

(b) That in the present complaint there is no allegation in the complaint which would bring the case within the mischief of section 34 (2) of the Act.

(c) That the sale of the drugs has been made by the Medical Officer Government Gandhi Nagar Hospital but the respondent No.1 did not choose to file the complaint against the main accused so in absence of the main accused, it cannot be said that the petitioner has contravened the provisions of the Act.

(d) That the present complaint deserves to be quashed as the petitioner No.1 has been

arrayed as one of the accused but through no body and in the absence of person through whom the firm is to be served, the complaint is not maintainable.

(e) That for the last about 12 years the case is being dragged due to the fault of the prosecution and the petitioners are suffering mental, financial and physical strain due to the pendency of the case.

2. The brief facts necessary for disposal of the present petition are that the Drug Inspector lifted sample of Prchloroperazine tablets I.P. 5 mg, manufactured by M/S Associated Pharma, 8/29 Kirti Nagar Industrial Area, New Delhi from the stores of Government Hospital Gandhi Nagar along with other drug samples on 23.10.1998. The sample was divided into 4 portions of 50 tablets each and sealed in presence of Medical Officer In-charge Government Hospital Gandhi Nagar. As provided under the Act, one portion of the sample was sent to Government Analyst CFDL, Jammu vide letter dated 24.10.1998 for analyses, who vide its report dated 28.10.1999 declared the drug in question to be not of standard quality due to the reasons that the sample failed in description, uniformity of rates of tablets and contents of Prchloroperazine tablet. Thereafter, Medical Superintendent Government Hospital Gandhi Nagar vide its letter dated 12.11.1999 stated that the drug has been purchased from M/S Narayan Das Bhagwan Das, wholesale Druggist behind State Bank of India, Bhagirath Palace Chandni Chowk Delhi i.e. the petitioner No. 1 herein, vide invoice dated 23.10.1997. The petitioner No. 1 herein vide letter dated 22.11.1999 submitted that they had purchased the drug from M/s. Medicine Traders Pharmaceutical Distributor Bhagirath Palace Chandni Chowk Delhi vide invoice dated 18.10.1997 and from M/s. Associated Pharma, Bhagirath Palace Chandni Chowk Delhi vide invoice dated 08.03.1997. After the completion of requisite formalities, Deputy Controller Drugs and Food, Jammu conveyed the approval of the Controlling Authority for launching prosecution against the parties concerned and accordingly the complaint was filed against all accused including the petitioner No. 1. The said complaint was filed on 10.02.2000 and the learned trial Court vide order dated 24.02.00 issued the process against the accused including the petitioner No. 1 herein.

3. Mr. Amrish Kapoor, learned counsel appearing for the petitioners has vehemently argued that there is violation of section 34 (2) of the Act, as such, the proceedings are required to be quashed. He further submitted that petitioner No. 1 has not been arrayed as accused through someone and further that the petitioners are facing trial for the last 12 years and still some of the accused have not been served till date. He laid much stress that the main accused from whom the sample was lifted, has not been arrayed as an accused, as such, the proceedings are required to be quashed.

4. Per contra, Mr. H. A. Siddiqui has vehemently argued that section 34 of the Act has no applicability in the instant case and further merely on account of delay, the proceedings cannot be quashed. He also argued that the mere non-arraying of the person as an accused from whom the sample was lifted, cannot result in quashing of the criminal proceedings against the petitioners.

5. Heard and perused the record.

6. From the record, it is evident that the drugs have been supplied by the petitioner No. 1 to the Government Hospital Gandhi Nagar Jammu. The petitioner No. 1 appeared through Mr. Tarun Kumar Kochar on 03.03.2004 before the trial court and submitted the bail bonds. The first contention of the petitioner is that there is violation of the section 34 (2) of the Act. Section 34 of the Act deals with the offences by the companies and it provides that where an offence under the Act has been committed by a company, every person who, at the time the offence was committed, was in-charge 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. Thus, the prosecution can be launched against the company, if the offender is the company and at the same time, any 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, can also be simultaneously proceeded against. In the instant case, no partner of the petitioner No. 1 has been arrayed as an accused and this Court does not find that section 34 (2) of the Act has any application, as such, this contention is rejected. The judgments relied upon by the learned counsel for the petitioners reported in 2007AIR SCW 656 and 1992 AIR(SC) 1168 are not applicable in facts and circumstances of the present case.

7. The second contention of the petitioners is that petitioner No. 1 has not been arrayed as an accused through someone to represent the partnership concern. The explanation appended to section 34 of the Act provides that for the purposes of this section, company means a body corporate and includes a firm or other association of individuals. As already observed, the company can be proceeded alone or along with any other person, who at the time was In-charge of and responsible to the business of the company. The petitioner No. 2 i.e. Tarun Kumar Kochar has been representing the petitioner No. 1 ever since 03.03.2004, as such, this contention too becomes irrelevant.

8. The third contention raised by the petitioner is that the person from whom the sample was lifted was not arrayed as an accused is also without any substance, as merely not arraying the said person as an accused, cannot result in the quashing of the proceedings against the other accused, particularly when the requisite information with regard to the purchase of the drugs from petitioner No. 1 was disclosed by the Medical Superintendent Government Hospital Gandhi Nagar. Also, there is no allegation in the complaint that the drugs were supplied in the Government Hospital with connivance of the person from whom the sample was lifted.

9. The last contention of the petitioner is with regard to the delay in the conclusion of the criminal proceedings. There appears to be some justification in the said contention as perusal of the record of the trial court reveals that Mr. S. K. Jain, who was representing the accused No. 5 expired on 11.11.2006 and ever since then the complaint had been pending for the service of accused No. 5 for want of fresh particulars till 02.02.2012 and despite grant of last opportunity by the trial court to furnish the fresh particulars of accused No. 5, the respondent No. 1 has done nothing. In the meanwhile, the record of the complaint was summoned from the trial court and perhaps because of summoning of the record, no proceedings could be conducted before the trial court. The allegations are serious in nature and are concerned with the safety and health of the common people, as such, the proceedings cannot be quashed merely on account of delay. But in view of the fact that the respondent No. 1 has not been able to furnish the fresh particulars of the accused No. 5, this Court

deems it proper to dispose of the present petition with direction to the learned trial court to conclude the trial within the period of 6 months from the date of receipt of order of this Court and further it shall be the responsibility of the respondent No. 1 to ensure that the accused No. 5 is served and in the event, the respondent No. 1 fails to do so, the trial court shall be at liberty to proceed in accordance with law and conclude the trial within the period mentioned above.

10. Record, if summoned in original, be sent back forthwith.

11. Disposed of.

(Rajnish Oswal) Judge JAMMU 31.01.2022 Rakesh Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No