

Vikas Rambal vs / on 12 October, 2022

Author: G.Jayachandran

Bench: G.Jayachandran

CrI.O.
& CrI.M.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.09.2022

Pronounced on : 12 .1

CORAM:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

CrI.O.P.No.11184 of 2019
& CrI.M.P.No.5726 of 2019

1. Vikas Rambal,
Director,
Sunrise International Labs Ltd,
(A Perdaman Group Company).
2. Sarojini Rambal,
Director,
Sunrise International Labs Ltd,
(A Perdaman Group Company).
3. Usha Rambal,
Director,
Sunrise International Labs Ltd,
(A Perdaman Group Company).
4. Samir Madhukar Garud,
Director,
Sunrise International Labs Ltd,
(A Perdaman Group Company).

All at
Plot No.100, Lane-5, Sector-II,
Phase-II, IDA Cherlapally,
Hyderabad.

... Petitioner

/versus/

<https://www.mhc.tn.gov.in/judis>
Page Nos.1/30

CrI.O.
& CrI.M.

The State Rep. by,
The Drugs Inspector,
Udumalpet Range,
O/o.The Assistant Director of Drugs Control,
Coimbatore Zone,
219, Race Course Road,
Coimbatore.

... Respondent/

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C. for the records in C.C.No.198 of 2019 and quash the summons issued by the Learned Chief Judicial Magistrate, Tiruppur, dated 11.04.2019 issued against the petitioners and pass order.

For Petitioners : Mr.B.Kumar, Senior Counsel
Mrs.Kiruthika Gokulakrishnan

For Respondent : Mr.N.S.Suganthan,
Government Advocate (Criminal)

ORDER

This Criminal Original Petition is filed under Section 482 of Cr.P.C to quash the criminal complaint in C.C.No.198 of 2019 on the file of the Learned Chief Judicial Magistrate, Tiruppur.

2. The petitioners are accused in the complaint filed by the Drugs Inspector, Udumalpet, alleging that, they are the Directors of the Company by name Sunrise International Labs Ltd., manufacturer of Drugs by name <https://www.mhc.tn.gov.in/judis> Carbimazole Tablets. During the surprise inspection of the drug supplied to the medical store, Government Hospital, Tiruppur, it was found on analysis that the drugs are not of standard quality. Hence, after conducting enquiry and affording opportunity to the Company, prosecution has been launched against the said Company and its Directors.

3. The petition to quash the complaint is filed on the ground that the 1st accused Company is run by the 4th accused Manoj Kumar, who is the Director and responsible for the day-to-day affairs of the Company. The rest of the Directors, who are the petitioners herein are not directly involved in the affairs of the Company. In fact, they are residing elsewhere particularly, A5 is the resident of New Delhi, A2 & A3 are permanent resident of Australia. It is further contended that the show cause notice dated 04.10.2018 sent to the A1 Company, a detailed response was sent by A4 on 13.11.2018, through registered post. However, in the complaint, it is stated that, no proper reply to the show cause notice sent. This itself would clearly indicate the mala fide intention of the complainant and prosecute the 1st accused company and its Directors, who were not even connected with the day-to-day affairs of the Company.

<https://www.mhc.tn.gov.in/judis>

4. Relying upon the judgment of the Hon'ble Supreme Court in State of Haryana -vs- Brij Lal Mittal reported in 1998 CrLJ 3287, the Learned Senior Counsel appearing for the petitioners submitted that bald statement in the complaint alleging the non-executive Directors guilty of the alleged offence have no legs to stand the prosecution. While, A4 admits that, he is the person responsible for the Company and others are name lenders and residence elsewhere. These petitioners ought not to have been prosecuted applying Section 34 of Drugs and Cosmetics Act, which mandates that apart from showing the Directors as accused, the complaint must indicate the offence has been committed with the consent or connivance of the said Directors. The negligence should be attributable to the Directors who are arrayed as accused.

The non-obstante clause in Section 34(2) of the Act as explained by the Hon'ble Supreme Court in Tidal Laboratories Pvt Ltd -vs- State of Tamil Nadu reported in 2013 (2) CTC NWN (Cr) 608 would clearly show that the prosecution against the petitioners are malafide and unsustainable under law.

Therefore, the trial Court ought not to have taken cognizance against these petitioners, having erroneously taken cognizance and same is liable to be quashed.

<https://www.mhc.tn.gov.in/judis>

5. The Learned Government Advocate (Crl.Side) appearing for the respondent submitted that it is an admitted fact that these petitioners are Directors of the 1st accused Company. The crime alleged against the petitioners are manufacturing and supply of sub-standard Drugs to Government Hospital, which was supposed to be consumed by the general public. Though, it is contended that the 1st accused Company through 4th accused responded to the show cause notice, nothing received from the 1st accused company as an explanation to the show cause notice. Mere postal receipts for the posting of letter is not the proof for the receipt of the letter containing reply and enclosures. Be it as it may the same has to be proved in trial and it is not the matter to decide summarily in the quash petition.

6. As far as Section 34 of the Drugs and Cosmetics Act and the interpretation by the Courts regarding the vicarious liability of the Directors of the Company, being the offence against the person, the interpretation of provision which is in pari materia to Section 34 of Drugs and Cosmetics Act in the other statute dealing with offence against properties cannot be applied.

When an offence committed against the Society at large and the said offence is committed by the Company, all the Directors who accrued benefit out of the said act of crime ought to be prosecuted and they are all vicariously liable.

They cannot escape from criminal liability by indicating one of the Director as a person responsible for the offence of the Company and they are not connected with the day-to-day affairs of the Company. As long as their names are in the Board of Directors, violation of the provision of the Act concern with the products criminal liability shall fall on all the Directors for an offence committed by the Company as against the society at large. All the Directors are liable whether they have knowledge of the crime or directly involved in the crime. If the submission of the Learned Senior

Counsel for the appellant is accepted, then the persons living in abroad can float a Pharma Company in India, supply spurious drugs cause danger to the life of the public and go scot-

free stating that they are not directly involved in the affairs of the Company.

7. The strict interpretation of vicarious liability of the Company has explained by the Courts in respect of Section 141 of N.I Act or any other statute involving offence against property should not be extended to the offence against the persons. The interpretation of vicarious liability of the Company is based on the offence committed by the Company and not by enabling provision <https://www.mhc.tn.gov.in/judis> of prosecuting a Company which is the juristic body by itself but with limitation. Production of sub-standard drug is not related to managing the affairs of the Company, to apply the Principle of vicarious liability. By producing sub-standard drug, all the Directors of the Company are liable to be prosecuted. It is strict liability of the Board of Directors and others involved in production and marketing.

8. Therefore, the Learned Government Advocate (Crl.Side) submitted that by reading the Enabling Provision in isolation without considering the offence alleged to have committed by the Company will lead to miscarriage of justice.

9. In support of the respective submissions, the Learned Counsels relied upon the following judgments:-

(i). PRP Granite Exports Rep. by the Partner P.Palamchamy and others -vs- Directorate of Enforcement Rep. by its Assistant Director, Ministry of Finance reported in 2021 SCC OnLine Mad 16515.

(ii). Laborate Pharmaceuticals India Ltd., and others -vs- State <https://www.mhc.tn.gov.in/judis> represented by the Drugs Inspector, Tondiarpet-II Range reported in 2016 SCC Online Mad 15845.

(iii). Tidal Laboratories Pvt Ltd -vs- State of Tamil Nadu reported in 2013 (2) CTC MWN (Cr) 608.

(iv). S.P.Mani and Mohan Dairy -vs- Snehalatha Elangovan reported in 2020 SCC Online 1238.

(v). Kailesh Devi and another -vs- Union of India reported in CDJ 2022 MHC 6126.

10. Heard the Learned Senior Counsel for the petitioners and the Learned Government Advocate (Crl.Side) for the respondent. The relevant provisions of law and citations relied examined.

11. The complaint which is impugned in this petition is filed under Section 32 of Drugs and Cosmetics Act, 1940, for the contravention of Section 18(a) (1) of Drugs and Cosmetics Act, 1940, which is punishable under Section 37(d) of the Act. The complaint has been filed against six accused

wherein the 1st accused is the Company and rest of the accused are its five Directors. Except A4, other 4 Directors have filed this petition stating that they are not <https://www.mhc.tn.gov.in/judis> vicariously liable for the act of the Company.

12. Charging portion of the impugned complaint reads as below:-

a). Section 18(a)(i) of the Drugs and Cosmetics Act, 1940 for having manufactured for sale, sold and distributed the subject not of Standard quality Carbimazole Tablets IP 5 mg, B.No:DCBT1801, M/D: MAR/2018, E.D:

FEB/2020, which is punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940.

b). In this connection, a proposal dated 24.12.2018 was submitted to the Director of Drugs Control, Tamil Nadu, Chennai through the Assistant Director of Drugs Control, Coimbatore Zone to seek sanction order to prosecute the Company and its five Directors.

13. The petitioners relying upon the affidavit of 4th accused and the declaration besides Form-26, which is the license issued to the 1st accused Company for manufacturing Schedule C, C(1) and X drugs enclosing the list of Directors submitted that these petitioners have no role in the manufacturing and marketing of the drugs.

14. Whether the petitioners herein who are the Directors of the first <https://www.mhc.tn.gov.in/judis> accused Company can wriggle out from the criminal liability on the ground that they are not directly involved in the production of sub-standard Pharma products and if any sub-standard products are sold to public by the Company, it is only the person responsible for the production of it to be held liable and others cannot be held vicariously liable, is legally sustainable proposition of law is the point under consideration in this petition.

15. The latest among the judgments cited on either side is by the Hon'ble Supreme Court in S.P.Mani and Mohan dairy case (cited supra). This case arise from a private complaint taken cognizance for offence under Section 138 of N.I Act. Considering the fact that the cheque in dispute issued by a Company, Section 141 of the N.I Act which deals with offence by Companies, been interpreted and concluded as below:-

“a.) The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to sub-

<https://www.mhc.tn.gov.in/judis> section (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence,

he/she will not be liable of punishment.

b.) The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the court that at the relevant point of time they were not in charge of the affairs of the company. Adherence to Sections 138 and Section 141 respectively of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. The existence of any special circumstance that makes them not liable is something that <https://www.mhc.tn.gov.in/judis> is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm.

c.) Needless to say, the final judgment and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners 'qua' the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal.

d.) If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable <https://www.mhc.tn.gov.in/judis> circumstances to substantiate his/her contention. He/she must make out a case that making him/her stand the trial would be an abuse of process of Court."

16. While concluding as above, the Hon'ble Supreme Court being conscious of the fact that there are other statutes like Food Safety and Standards Act, Drugs and Cosmetics Act, PMLA Act etc., which contains Sections in pari materia to Section 141 of N.I Act, had reiterated the observations made by the Hon'ble Supreme Court in Rallis India Limited -vs- Poduru Vidhya Bhushan and others reported in (2011) 13 SCC 88. The said reiteration at paragraph No.48 of the latest judgment provides the key to the issue in hand, hence extracted below:-

"48. We reiterate the observations made by this Court almost a decade back in the case of Rallis India Ltd. v. Poduru Vidya Bhushan, (2011) 13 SCC 88, as to how the High Court should exercise its power to quash the criminal proceeding when such proceeding is related to offences committed by the companies. "The world of commercial transactions contains numerous unique intricacies, many of which are

yet to be statutorily regulated. More particularly, the principle laid down in Section 141 of the NI Act (which is *pari materia* with <https://www.mhc.tn.gov.in/judis> identical sections in other Acts like the Food Safety and Standards Act, 2006; the erstwhile Prevention of Food Adulteration Act, 1954; etc.) is susceptible to abuse by unscrupulous companies to the detriment of unsuspecting third parties.”

17. The interpretation of the expressions used in Section 141 of N.I Act, cannot be applied to Section 34 of Drugs and Cosmetics Act, though if read in isolation look in *pari materia*. When the offences are not cognate and enabling section to prosecute the Company a juristic body, has to be necessarily read along with the offence charged. Applying the interpretation of Section 141 of N.I Act to the other Acts ignoring the nature of the offence charged will lead to miscarriage of justice. Long ago, the Hon'ble Supreme Court in *S.Mohan Lal -vs- R.Kondiah* reported in (1979) 2 SCC 616 has clearly held:-

“It is not a sound principle of construction to interpret expressions used in one Act with reference to their use in another Act; more so, if the two Acts in which the same word is used are not cognate Acts. Neither the meaning, nor the definition of the term in one statute affords a guide to the construction of the same term in another statute and the sense in which the term has been understood in the several statutes does not necessarily <https://www.mhc.tn.gov.in/judis> throw any light on the manner in which the term should be understood generally. On the other hand it is a sound, and, indeed, a well known principle of construction that meaning of words and expressions used in an Act must take their colour from the content in which they appear.”

18. When interpretation of Section 70 of the PMLA Act came for consideration, argument similar to what submitted in this case was placed before the Division Bench of this Court on behalf of the accused petitioners in *PRP Granite Exports*, case (cited *supra*). The Division Bench of this Court after extensive discussion, had held as below:-

“32. Coming to the interesting question, that was raised across the Bar with regard to the interpretation of Explanation 2 to Section 70 of the PML Act that has been added by Act 2 of 2013, it would be useful to extract Section 70 of the PML Act:

“70. Offences by companies (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company every person who, at the time the contravention was committed, was in <https://www.mhc.tn.gov.in/judis> 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 contravention 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 punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-

section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly Explanation:1. For the purposes of this section, <https://www.mhc.tn.gov.in/judis>

(i) “company” means any body corporate and includes a firm or other association of individuals; and

(ii) “director”, in relation to a firm, means a partner in the firm.

Explanation:2. For the removal of doubts, it is hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual.”

33. To understand the true import of the 2nd Explanation, it is necessary to travel back in time to the early years of the 21st century to examine the position of law as it then stood vis-a-vis corporate liability In Assistant Commissioner, Assessment-II, Bangalore v. Velliappa Textiles Limited [(2003) 11 SCC 405], the Supreme Court held that where the offence complained of is punishable with a mandatory sentence of imprisonment, a company cannot be prosecuted as the sentence of imprisonment cannot be enforced against an artificial juristic entity i.e., a company However, this view was subsequently overruled by a Constitution Bench (by a 3 : 2 majority) in Standard Chartered Bank v. Directorate of Enforcement, [(2005) 4 SCC 530], wherein it was held by the majority (K.G. Balakrishnan, J. as he then was) as under:

<https://www.mhc.tn.gov.in/judis> “31. As the company cannot be sentenced to imprisonment, the court cannot impose that punishment, but when imprisonment and fine is the prescribed punishment the court can impose the punishment of fine which could be enforced against the company. Such a discretion is to be read into the section so far as the juristic person is concerned. Of course, the court cannot exercise the same discretion as regards a natural person. Then the court would not be passing the sentence in accordance with law. As regards company, the court can always impose a sentence of fine and the sentence of imprisonment can be ignored as it is impossible to be carried out in respect of a company. This appears to be the intention of the legislature and we find no difficulty in construing the statute in such a way. We do not think that there is a blanket immunity for any company from any prosecution for serious offences merely because the prosecution would ultimately entail a

sentence of mandatory imprisonment. The corporate bodies, such as a firm or company undertake a series of activities that affect the life, liberty and property of the citizens. Large-scale financial irregularities are done by various corporations. The corporate vehicle now occupies such a large portion of the industrial, commercial and sociological sectors that amenability of the corporation to a criminal law is essential to have a peaceful society with stable economy.” <https://www.mhc.tn.gov.in/judis>

34. Close on the heels of the aforesaid dictum was the decision in SMS Pharmaceuticals (supra), wherein in the context of prosecutions under Section 138 and 141 of the NI Act, it was held that criminal liability was primarily on the drawer company and that the liability could be extended to the other officers only if the conditions under Section 141 were satisfied. A few years later, in Anita Hada v. Godfather Travels and Tours Private Limited [(2008) 13 SCC 703], the company was not arrayed as an accused in a complaint under Section 138 of the NI Act. S.B. Sinha, J. held that the complaint against the Directors could not be maintained as the primary offender i.e., the company was not before the Court. Sirpurkar, J. dissented and held that the prosecution was maintainable. The matter was referred to a larger bench in view of the difference of opinion between the two learned judges.

35. When matters stood thus, India joined the Financial Action Task Force (FATF), an international inter-governmental body formulating guidelines at the global level for action against money laundering and terrorist financing, as its 36th member in 2009. On 25th June 2010, a mutual evaluation report was submitted by the FATF evaluating the existing provisions of the PML Act, in line with the benchmarks set out by the FATF. In <https://www.mhc.tn.gov.in/judis> the context of the present case, the relevant recommendations of the FATF are as under:

“155. Section 70 of the PMLA and section 38 of the NDPS Act provide that where the violation of the Act is committed by a company, both the company and the individuals in charge of the company will be deemed to be guilty of that contravention unless they did not have the knowledge of contravention or they have exercised all due diligence to prevent it.

156. While the legal person is liable to be punished with a fine, imprisonment can obviously be imposed only on the natural persons in charge of and responsible for the conduct of the company. The combination of penalty provisions (PMLA S.4/NDPS Act S.32) with the company provisions of section 70 of the PMLA/section 38 of the NDPS Act is interpreted by some prosecutors in the sense that no charges can be brought against a company without concurrently prosecuting the responsible natural person for the ML offence.”

36. In the opinion of the FATF, Section 70 of the PML Act had been construed, or rather misconstrued, in some quarters to mean that a prosecution for an offence of money laundering against a company was not <https://www.mhc.tn.gov.in/judis> maintainable without concurrently prosecuting natural persons for offences under the Act. The FATF added:

“157. Parallel or additional proceedings can be initiated under other relevant statutes against a legal person being prosecuted under the PMLA. First of all, the assets of the company are liable to confiscation. Section 388B of the Companies Act provides for the possibility of destitution of managerial personnel of a company for indulging in e.g. fraudulent practices and money laundering that is found to have indulged in fraud etc. and against which company prosecution proceedings under relevant statutes including PMLA are likely to be initiated upon conclusion of investigations. Section 433 of the Companies Act provides for the dissolution of a company by the court. Also, licences of (financial) institutions can be revoked (see for instance s. 10(3) of the FEMA).”

37. The aforesaid recommendation of the FATF was incorporated into the PML (Amendment) Bill, 2011. The Bill was, thereafter, referred to a Standing Committee of the Ministry of Finance. The Committee submitted its 56th Report on the PML Amendment Act, 2011. For the present purposes, the relevant observations are as under:

“3. Punishment for money-laundering : FATF Recommendation requires that “legal persons” also (and <https://www.mhc.tn.gov.in/judis> not just “natural persons”) should be subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions for money laundering. In PMLA the punishment prescribed in section 4 is rigorous imprisonment not less than 3 years but which may extend to 7 years and also fine which may extend to Rs. 5 lakh. This amount appears disproportionately low, given the gravity of the offence of money laundering. It has therefore been proposed to amend Section 4 so as to provide for imposition of fine proportionate to the gravity of the offence which will be determined by the court. The limit of Rs. 5 lakh is therefore proposed to be deleted altogether. Further an explanation has been inserted in Section 70 that the prosecution or conviction of any legal juridical person shall not be contingent on the prosecution or conviction of any individual.”

38. Explanation 2 to Section 70 was accordingly, inserted vide the PML (Amendment) Act, 2012 (Act 2 of 2013).

39. Quite evidently, the explanation is rather unhappily worded as it makes a reference to “company followed by the words “legal juridical person” giving the impression that the explanation was intended for a company within a company as was sought to be pointed out at the Bar. Having considered the <https://www.mhc.tn.gov.in/judis> backdrop to the insertion of Explanation 2, vide the 2013 Amendment, in the light of the recommendations made by the FATF and the Standing Committee of the Ministry of Finance, we are satisfied that all it purports to do is to clarify that the prosecution of a legal juridical person (juristic person) for an offence under the PML Act is not contingent upon the prosecution of natural persons. In plainer terms, the prosecution of juristic persons is not contingent upon the prosecution of natural persons for offences under the PML Act.”

19. Therefore, the judgments of the Learned Single Judge Bench in Tidal Laboratories Pvt Ltd case cited supra and Kailesh Devi and another case cited supra, are not good law and not binding in view of the Division Bench judgment of this Court in PRP Granite Exports case cited supra. That apart, the above said judgments are not in conformity with the rule of interpretation of statute explained by the Supreme Court in S.Mohan Lal case cited supra. That apart, the recent judgment of the Hon'ble Supreme Court in S.P.Mani and Mohan Diary case cited supra had reiterated the observation made by the Hon'ble Supreme Court in Rallis India Ltd case cited supra, which indicates that the enabling provision to prosecute the Company (juristic person) and the Directors (natural person) of the Company applying the <https://www.mhc.tn.gov.in/judis> principle of vicarious liability has to read together with the penal provision for proper interpretation.

20. In this context, it is worth borrowing the observation made by the Learned Single Judge in Laborate Pharmaceuticals India Ltd and others -vs-

State Represented by the Drugs Inspector, Tondiarpet-II Range Zone-I, Chennai reported in 2016 SCC Online Mad 15845, (though later reversed by the Hon'ble Supreme Court in Laborate Pharmaceuticals v. State of Tamil Nadu reported in (2018) 15 SCC 93, but not on this point) “28. The prosecution for an offence under Section 138 read with Section 141 of the Negotiable Instruments Act is between two individuals in connection with dishonoured cheque, whereas, the prosecution under the Act is not a lis between two private individuals, but, is intended for securing and safeguarding public health. Hence, Section 34(2) of the Act cannot be interpreted through the prism of the judgments governing Section 141 of the Negotiable Instruments Act. When a sub-standard drug is manufactured and sold in the market, the company and its Directors do reap the monetary benefits from it. It is for them to show during trial that things had happened without their knowledge or consent, for, facts that are exclusive to their knowledge, have to be established by <https://www.mhc.tn.gov.in/judis> them by virtue of Section 106 of the Evidence Act. Thus, the prosecution cannot be quashed under Section 482 Cr.P.C. in a matter arising under the Act by placing reliance upon judgments given under the Negotiable Instruments Act.”

21. The Drugs and Cosmetics Act, 1940 came into force on 10.04.1940. It is an existing law when the Constitution came into force. In the year 1982 there was an amendment to this Act, the statement of Objects and Reasons for the said Amendment, explains the purpose of the Act as below:-

“Amendment Act 68 of 1982- Statement of Objects and Reasons:- The Drugs and Cosmetics Act, 1940, regulates the import into, manufacture, distribution and sale of drugs and cosmetics in the country. The problems of adulteration of drugs and also of production of spurious and sub-standard drugs are posing serious threat to the health of the community. It is, therefore considered necessary to amend the Drugs and Cosmetics, Act, so as to impose more stringent penalties on the anti- social elements indulging in the manufacture or sale of adulterated or spurious drugs or drugs not of standard quality which are likely to cause death or grievous hurt to the user. This opportunity is also being availed of to incorporate certain other provisions on the other aspects <https://www.mhc.tn.gov.in/judis> of effective control on the manufacture, distribution, sale of drugs and cosmetics on the basis of experience

gained in the working of the Act.”

22. In the case in hand, the petitioners are prosecuted for the offence under Section 18(a)(i) of the Drugs and Cosmetic Act, 1940, which is punishable under Section 27(d) of the Act.

Section 18(a)(i):-

18. Prohibition of manufacture and sale of certain drugs and cosmetics.— From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf—

(a). manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale or distribute—

(i) any drug which is not of a standard quality, or is misbranded, adulterated or spurious;

Section 27(d):-

27. Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter.—Whoever, himself or by any other person on his behalf, manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes, —

a).....

<https://www.mhc.tn.gov.in/judis>

b).....

c).....

(d). any drug, other than a drug referred to in clause (a) or clause (b) or clause (c), in contravention of any other provision of this Chapter or any rule made thereunder, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to two years [and with fine which shall not be less than twenty thousand rupees]:

Provided that the Court may, for any adequate and special reasons, to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year.

23. In the said context, Section 34 of the Act to be read and understood. Section 34 reads as below:-

“34. Offences by companies:-(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 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 <https://www.mhc.tn.gov.in/judis> 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.”

24. The offences and the offenders in the case of this nature is manufacturing and distribution of sub-standard drugs by a Company which is managed by its Board of Directors. The decision to manufacture the drugs is the collective decision of the Board of Directors. Therefore, the Directors cannot claim that they are not directly involved in the product of the drugs, when the decision to produce the drugs itself is the out come of their decision. Therefore, the case of Directors signing the cheque on behalf the Company and the case of Directors participating in the decision to produce sub-standard drugs are not <https://www.mhc.tn.gov.in/judis> one and the same to hold that these petitioners are not involved in day-to-day affairs of the Company.

25. This Court, on considering the facts of the case in the light of the judgments discussed above holds that the contention of the petitioners is wholly unsustainable. If the said preposition is accepted it will go against the object and reasons of the legislations namely Drugs and Cosmetics Act.

26. As a result, this Criminal Original Petition is dismissed.

Consequently, connected Miscellaneous Petition is closed.

Index : Yes.
Internet :Yes.
bsm

To,

1. The Learned Chief Judicial Magistrate, Tiruppur
2. The Drugs Inspector, Udumalpet Range, O/o.The Assistant Director of Drugs Control, Coimbatore Zone, 219, Race Course Road, Coimbatore.
3. The Public Prosecutor, High Court, Madras.

<https://www.mhc.tn.gov.in/judis> Dr.G.Jayachandran, J bsm Pre-Delivery order made in 12.10.2022
<https://www.mhc.tn.gov.in/judis>