

# Arvind Kumar vs The State Of Jharkhand ..... Opp. Party on 3 May, 2023

**Author: Sanjay Kumar Dwivedi**

**Bench: Sanjay Kumar Dwivedi**

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IN THE HIGH COURT OF JHARKHAND AT RANCHI  
Cr.M.P. No. 266 of 2014

Arvind Kumar ..... Petitioner  
Versus

The State of Jharkhand ..... Opp. Party  
With  
Cr.M.P. No. 486 of 2014

1. Mrs. Kiran Mazumdar Shaw  
2. M/s Biocon Ltd., represented through its Managing Director namely, Mrs. Kiran Mazumdar, Shaw ..... Petitioners  
Versus

1.The State of Jharkhand  
2. Shri Sujit Kumar ..... Opp. Parties

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI  
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For the Petitioners : Mr. Arwind Kumar, Advocate  
(in Cr.M.P. No. 266 of 2014)  
Mr. Indrajit Sinha, Advocate  
Mr. Ashish Verma, Advocate  
Mr. Rishav Kumar, Advocate  
Mr. Ravi Prakash Mishra, Advocate  
(in Cr.M.P. No. 486 /2014)

For the State : Mr. Prabhu Dayal, Agrawal, Spl. P.P.

15/Dated: 03/05/2023

Since in both the petitions common question of law are involved and similar complaint and cognizance order are under challenge that is why both the petitions have been heard together with the consent of the learned counsel for the parties.

2. Both the petitions have been filed for quashing entire criminal proceeding including order dated 16.09.2013 whereby cognizance has been taken under section 27(b) of the Drugs and Cosmetics Act,

1940 in connection with C-III Case No. 271/2013, pending in the Court of learned A.C.J.M, Ranchi.

3. O.P. No.2 filed a complaint petition stating therein that the O.P. No. 2 on 27.04.2013 inspected the INTAS Pharmaceuticals Private Limited, Ranchi and in respect of one of the product namely, Instasam 200 tablets it was found that instead of mentioning the Drug Manufacturing License No. on label (cartoon and Strip both), the License No. 10912011000171 and "dietary Supplement" were found mentioned.

It was further alleged that the each strip of 10 tablets was packed in a cartoon pack there was leaflet/insert in which the use of the tablet was claimed for treatment of mild to moderate depression, fibromyalgia, osteoarthritis and alcohol liver disease in adult patients. According to the Complainant opposite party no.2, the reply of the manufacturer was demanded in Form-15 and the sample was sent for analysis by the Government Analyst. The report of the Government Analyst was received vide letter dated 13.07.2013 wherein it was observed that as per the clinical particulars, clinical studies, precautions, side effects and interaction given in insert with the sample seems to be a Drug, because it comes under the definition of Drug under section 3 (a) and 3 (b) of the Drugs and Cosmetics Act, 1940 and rules framed there under. The complainant has prayed to take cognizance u/s.27 (b) of the Drugs and Cosmetics Act for violation of section 18 (c) of the said Act and punish them accordingly.

4. Mr. Indrajit Sinha, learned counsel for the petitioners in Cr.M.P. No. 486 of 2014 submits that the petitioner no.1 has been arrayed as an accused in the present complaint solely on account of the fact that she happens to be the Managing Director or the petitioner no.2-Company. He refers to Section 34 of the Drugs and Cosmetics Act, 1940 and submits that in view of this provision vicarious liability cannot be fastened upon managing director in absence of any averments of looking into day to day affairs of the company and to buttress his argument he relied in the case of "Managing Director, Castrol India Limited V. State of Karnataka and Another (2018) 17 SCC 275 wherein paragraphs 7, 8 and 9 the Hon'ble Supreme Court has held as under:

7. In the present complaint petition, there is no averment or statement whatsoever that the appellant as the Managing Director of the Company was responsible or incharge of the conduct of the business of the Company in respect of which the offence in question has been alleged to have been committed. Neither is there any averment to the effect that the appellant is otherwise connected or responsible for commission of any of the acts on the basis of which the offence(s) is alleged to have been committed.

8. It will not be necessary to burden this order by a detailed reference to numerous pronouncements of this Court interpreting similar provisions of other statutes holding that a clear and categorical statement to the above effect is required to be made in the complaint petition to proceed against an officer of the Company so as to determine his vicarious liability for the offence committed by the Company. In the present case, the Company is not even arrayed as an accused.

9. Taking into account the provisions of Section 74 of the Act, the views expressed by this Court on *pari materia* provisions contained in different statutes and the absence of any specific averments in the complaint petition, as indicated above, we are of the view that the proceedings against the appellant-accused are liable to be quashed.

We order accordingly

5. Learned counsel for the petitioners further submits that strip was sent to the public analyst and the report was annexed as Annexure J to the complaint. By way of referring the same, he submits that without analyzing the said supplement on the basis of insert provided by the said supplement drug analyst found that the said product is drug. He further refers to 3 (1) (j) of the Food Safety and Standard, Act and submits that the food excludes drugs. He submits that only on the assumption the said report has been made and nothing has been supplied to the petitioners. He further submits that in terms of Section 23 (4) (iii) of the Drugs & Cosmetics Act which is mandatory provision and in absence of that complaint case has been filed and to buttress his argument with regard to section 23 (4) (iii) of the Act he relied in the case of " Laborate Pharmaceuticals India Ltd. V. State of Tamil Nadu"

(2018) 15 SCC 93 where in para 8 the Hon'ble Supreme Court has held as under:-

All the aforesaid facts would go to show that the valuable right of the appellant to have the sample analysed in the Central Laboratory has been denied by a series of defaults committed by the prosecution; firstly, in not sending to the appellant manufacturer part of the sample as required under Section 23(4)(iii) of the Act; and secondly, on the part of the Court in taking cognizance of the complaint on 4-3-2015 though the same was filed on 28-11-2012. The delay on both counts is not attributable to the appellants and, therefore, the consequences thereof cannot work adversely to the interest of the appellants. As the valuable right of the accused for reanalysis vested under the Act appears to have been violated and having regard to the possible shelf life of the drug we are of the view that as on date the prosecution, if allowed to continue, would be a lame prosecution."

6. On these grounds, he submits that entire criminal proceeding may be quashed as it amounts abuse of process of law.

7. Mr. Arwind Kumar, learned counsel appearing for the petitioner in Cr.M.P. No. 266 of 2014 adopted the submission of Mr. Indrajit Sinha.

8. On the other hand, Mr. Prabhu Dayal Agrawal, learned counsel for the State disputes the submission of Mr. Indrajit Sinha, and submits that Analyst has rightly held that those items are drugs for which licence is required. He further submits that looking into complaint petition, learned court has rightly taking cognizance by order dated 16.09.2013. On these grounds, he submits that the these petitions are fit to be quashed.

9. In view of above submissions of the learned counsel for the parties the Court has gone through the contents of complaint petition as well as analyst report and order taking cognizance. It is an admitted fact that for sale of such supplement the case has been filed. Annexure-J of the complaint petition suggests that only on the insert provided by the petitioner the analyst has come to the conclusion that the said supplement is drug and the separate finding on that point of the analyst is not there. For correct appreciation of section 3 (1) (j) of the Food Security and Standards Act are quoted herein below:-

"3(1)(j): "Food" means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food to the extent defined in clause (zk), genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants, prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances :

Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, nature, substance or quality;"

10. Looking into above provision it is crystal clear that food excludes drugs. The substance can either be food within the meaning of the Food Safety and Standards Act, 2006 or drugs within the meaning of the Drugs and Cosmetics Act, 1940. The petitioner was provided the licence under the Food Safety & Standards Act for manufacturing of the said supplement. 11 Further in view of Section 23 (4) (iii) of the Act the valuable right of the petitioner has been taken away and considering this aspect of the matter the Hon'ble Supreme Court has quashed the proceeding as relied by Mr. Sinha in the case of " Laborate Pharmaceuticals India" (supra).

12. Even this Courts accepts the submission of Mr. Agrawal that the said product was drugs the case of the petitioner is fully covered in the light of judgment of the Hon'ble Supreme Court in " Laborate Pharmaceuticals India" (supra) as statutory provision of Section 23 (4) (iii) of the Act has not complied with. Further liability can be fastened upon any of the officer if there is averment that person was looking day to day affairs of the company. For ready reference of the case section 34 of the Drugs & Cosmetics Act, 1940 are quoted here-in-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 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.

13. Further the case of the petitioner is fully covered with "Managing Director, Castrol India Limited (supra). The Hon'ble Supreme Court has gone to the extent in one of the case to hold that even merely stating a bald statement accused was looking day to day affairs of the company is not sufficient and specific nature of supervision of that person is required to be disclosed in the complaint petition as has been held by the Hon'ble Supreme Court in the case of State of "Haryana v. Brij Lal Mittal", (1998) 5 SCC

343.

14. Further the petitioners are having the licence under the Food Safety & Standards Act for such supplement.

15. Further the Court has perused the cognizance order and finds that the word 'cognizance' has been filled up in blank space which suggests non application of judicial mind.

16. In view of above facts, reasons and analysis to allow the proceeding will amount the abuse of process of law. Accordingly, the entire criminal proceeding including order dated 16.09.2013 whereby cognizance has been taken under section 27(b) of the Drugs and Cosmetics Act, 1940 in connection with C-III Case No. 271/2013, pending in the Court of learned A.C.J.M, Ranchi, is quashed. Interim order is vacated.

(Sanjay Kumar Dwivedi, J.) Satyarthi/