



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous (Petition) No. 5944/2019

Yogendra Durlabhji S/o Late Shri K.s. Durlabhji, Aged About 69
Years, R/o Amrald House, D-31, Subhash Marg, C Scheme,
Jaipur.

-----Petitioner

Versus

State Of Rajasthan, Through P.P.

-----Respondent

For Petitioner(s) : Mr. Suresh Kumar Sahni
Mr. Ravi Shankar Sharma
Mr. Ram Mohan Sharma
Mr. Pawan Sharma
Ms. Rashmi Jain
For Respondent(s) : Mr. Ramesh Choudhary, PP

HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Order

29/01/2020

REPORTABLE

1. The present criminal misc. petition has been filed by the petitioner stating that the cognizance against the petitioner has been wrongfully taken as there is no specific averment made in the complaint of being directly responsible for the conduct of the business or even indirectly the petitioner cannot be said to be responsible for the conduct of the business of sale of drugs and the allegations levelled under Section 18(c) of the Drugs and Cosmetics Act, 1940 (hereinafter referred as 'the Act of 1940') would be barred in terms of Section 34 of the Act of 1940. Thus, the petitioner cannot be said to have committed any offence and therefore, it is prayed that the cognizance of offences under



Section 18 (c) and 27 (b)(ii) of the Act of 1940 vide order dated 30.10.2014 taken as against him be quashed.

2. Learned counsel submits that the petitioner challenged the order dated 30.10.2014 in a revision, which has been wrongfully rejected by the learned Additional District & Sessions Judge No.10, Jaipur Metropolitan, Jaipur vide order dated 27.4.2018. Counsel relies on **State of Haryana Versus Brij Lal Mittal & Others** reported in **1998 CRI.L.J. 3287**, **Ashok H. Maheshwari & Others Versus State of Rajasthan** reported in **2004 (2) CR.L.R. (Raj.) 1627** and the order dated 15.12.2011 passed in **Sharad Kumar Sanghi Versus The State of Rajasthan, S.B. Criminal Misc. Petition No.688/2005** in support of his contentions.

3. *Per contra*, learned Public Prosecutor submits that the petitioner would come within the ambit of being responsible to the company for the conduct of its business and would thus be liable in terms of Section 34(1) and therefore, the cognizance has been rightly taken as he was holding the post of Trustee and authorized Secretary of the hospital and it has been specifically averred that he was responsible for the administration of the hospital.

4. I have considered the submissions.

5. In **State of Haryana (supra)**, the Apex Court while considering the case in relation to the Act of 1940, has observed as under:-

"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 directors of the manufacturers with the aid of Section 34(1) of the Act which reads as under:

"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."

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 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."

6. In **Ashok H. Maheshwari & Others (supra)**, the Apex

Court has observed as under:-

"8. It is evident that the only allegation made in the complaint is that the offence was committed by the company with the consent, knowledge and connivance of its directors and the officers. There is no allegation that so far as the present petitioners in either of the petitions are concerned any of them was responsible for the company for its conduct and business. In these circumstances, in my opinion continuation of proceedings against the petitioners would be an abuse of the process of the Court and is liable to be quashed."





7. In **Sharad Kumar Sanghi (supra)**, following the aforesaid judgments, it was held as under:-

“It is obvious from the complainant that there is no direct allegation against the petitioner. Though, he is partner of the firm but there is no allegation against the petitioner to hold him responsible for the conduct of the business of the company.”

Section 34 of the Act reads as under:-

“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.

[34A. Offences by Government departments.—Where an offence under Chapter IV or Chapter IVA has been committed by any department of Government, such authority as is specified by the Central Government to be in charge of manufacture, sale, or distribution of drugs or where no authority is specified, the head of the department





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 section shall render any such authority or person liable to any punishment provided in Chapter IV or Chapter IVA, as the case may be, if such authority or person proves that the offence was committed without its or his knowledge or that such authority or person exercised all due diligence to prevent the commission of such offence.]

[34AA. Penalty for vexatious search or seizure.—

Any Inspector exercising powers under this Act or the rules made thereunder, who,—

- (a) without reasonable ground of suspicion searches any place, vehicle, vessel or other conveyance; or
- (b) vexatiously and unnecessarily searches any person; or
- (c) vexatiously and unnecessarily seizes any drug or cosmetic, or any substance or article, or any record, register, document or other material object; or
- (d) commits, as such Inspector, any other act, to the injury of any person without having reason to believe that such act is require for the execution of his duty, shall be punishable with fine which may extend to one thousand rupees.]”

8. In the present case, a complaint has been filed before the Chief Metropolitan Magistrate, Jaipur, by the prosecution under the Act of 1940 alleging offences committed by the persons named in the complaint under Section 18(c) and under Section 27 (b) (ii) of the Act of 1940. It is alleged that the accused petitioner was holding the post of Trustee and authorized Secretary of M/s. Santokba Durlabhji Memorial Hospital and thus, he was responsible for the administration of the hospital along with the other accused, who have violated the provisions of Section 18 (c) and 27 (b) (ii) of the Act of 1940 and would be therefore jointly and severally liable.

9. **Section 18(c) of the Act of 1940** reads as under:-





“(c) [manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute any drug [or cosmetic], except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter:

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis :

Provided further that the 10[Central Government] may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the 11[manufacture for sale or for distribution, sale, stocking or exhibiting or offering for sale] or distribution of any drug or class of drugs not being of standard quality.”

10. **Section 27(b)(ii) of the Act of 1940** reads as under:-

“(ii) without a valid licence as required under clause (c) of section 18, shall be punishable with imprisonment for a term which shall [not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more]:

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 three years and of fine of less than one lakh rupees];”

11. Thus, essentially alleged charge is that without there being a valid license the drugs were being sold/ distributed in the hospital is an offence. So far as the submission of learned counsel that there is no specific averment alleging the responsibility of the petitioner or specific allegations against him is concerned, I find that when the petitioner was holding the post of Trustee as well as authorized Secretary, he would, therefore, be responsible for the administrations of the hospital as an overall responsibility. The other accused are the Medical Superintendent and the Chief Administrator of the hospital. The complaint, however, does not mention as to the specific role of the petitioner with regard to the





concerned sale of the medicines and whether the license was to be obtained by him for the purpose of sale, storage and distribution. As held by the Supreme Court in the **State of Haryana (supra)**, the vicarious liability of the persons arises only when he is at the relevant time incharge for the conduct of the said business. The overall responsibility of a hospital would not entail the liability of all actions which any other person may be responsible for obtaining license as made out under Section 34(1) of the Act of 1940. The said aspect has not been examined by the learned Magistrate before taking cognizance. The criminal process has to be initiated after taking due caution.

12. There is no specific averment of petitioner overt act except making bald statement of overall responsibility. Keeping in view the law as noticed above, the cognizance taken as against the petitioner is held to be without any basis.

13. Accordingly, the criminal misc. petition stands allowed. The order dated 30.10.2014 passed by Chief Metropolitan Magistrate, Jaipur and the order dated 27.4.2018 passed by the Additional District and Sessions Judge No.10, Jaipur in revision petition are quashed and set aside. All pending applications also stand disposed of.

(SANJEEV PRAKASH SHARMA),J

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