

SUPREME COURT OF INDIA

Dinesh B. Patel

Vs.

State of Gujarat

CrI.A.No.1464 of 2010

(V.S. Sirpurkar and Cyriac Joseph JJ.)

06.08.2010

JUDGEMENT

V.S.Sirpurkar, J.

1. Leave granted.

2. The present appeal challenges the order of the High Court whereby the petition under Section 482 Cr.P.C. filed by the company and its directors (appellants herein) was dismissed by the High Court. The High Court took the view that the directors are responsible for the affairs of the company and, therefore, when a drug manufactured by the company was found to be defective, all the directors could be prosecuted. The High Court, however, left it to the concerned parties to prove before the Trial Court that they were not in any way responsible for the manufacture process. The High Court proceeded on the basis of specific language of Section 34(2) of the Drugs & Cosmetics Act, 1940 (for short "the Act") and proceeded to hold that the complaint filed against the directors could not be disposed of under Section 482 Cr.P.C. as it required appreciation of the facts on the basis of the evidence to be led before the Trial Court.

3. When the matter came up before this Court, the Special Leave Petition filed on behalf of the company and Managing Director - Himanshu C. Patel was dismissed. However, notice was issued in case of the remaining appellants No. 3 to 7.

4. Mr. H.A. Raichura, learned Counsel appearing for the appellants contends before us that from the reading of language of Section 34(2) of the Act, it would be apparent that thereby criminal liability is created against the directors but their active involvement in the offence has to be pleaded and established. He contends that, in fact, the complaint was totally silent about such involvement of any of the directors and a mere bald statement appeared in the complaint in para 6. He, therefore, prays that the High Court erred in not quashing the complaint. He relied on the SCC 343] and argues that the said case squarely covers the present case also.

5. Para 6 of the complaint reads as under:- "Looking to the testing report of above medicine Denilyte M 506072, presence of fungus is noted, hence it has been declared as uneven.

“Therefore, by manufacturing of this medicine for sale, firm of M/s. Denis Chem Lab. Ltd., Chhatral, Ta. Kalol, District Gandhinagar and its Directors have made breach of this act. Therefore, this is punitive offence at first sight.” (Emphasis supplied).

In para 8 of the complaint, it has been contended as under:- "Thus, I request to carry out legal proceedings against above accused M/s. Denis Chem Lab Ltd., Block No. 457, Chhatral, Ta. Kalol, District Gandhinagar and its directors."

Earlier to that, in para 4 of the complaint, the complainant had referred to the written representation given by accused No. 1 - director of the firm and accused No. 2 Himansu C. Patel and Quality Assurance Manager - Mr. Mehul M. Rao during the inspection to the inspecting authorities. That representation is not before us.”

6. We have gone through the decision of Brij Lal Mittal (supra). In Brij Lal Mittal case (supra), the offence complained of was under Section 27 of the Act.

“The High Court had quashed the proceedings therein on the ground that the prosecution was launched after shelf-life of drugs had expired in the month of July, 1991 and as a consequence thereof, the accused were deprived of their right under Section 25 (4) of the Act to get the drugs tested by Central Drugs Laboratory. This Court did not agree with the reasoning of the High Court, however, upheld the quashing of the proceedings. The Court went on to hold as under:

"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 fulfills 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.”

7. In our opinion, the factual situation in both the matters is quite different which is apparent from the fact that firstly the controversy of the complaint not having any necessary averments was not present before the High Court in the reported decision. Secondly, in that case, there was only a bald statement that the respondents were directors of the manufacturers. In the present matter, however, the respondents were not arrayed only because they were the directors. That is certainly one reason. However, in addition to that, a statement has been made in paragraph 6 of the complaint that by manufacturing of the concerned medicine for sale, the company and its directors had committed the breach of the Act. Thus, there was an allegation that the directors were privy to the manufacturing of medicine by the company.

8. In our opinion, the averments in paras 4, 5, 6 and 8 of the complaint cannot be described as the bald statements. The emphasized portion in para 6 of the complaint suggests manufacturing of the medicine by the company and its directors. The averments in all these paras would have to be read together and the para 6 of the complaint would have to be read in the light of the other averments. It seems that in the reported decision in the complaint, there was no link pleaded in the directors and the manufacturing process.

“That is not the situation here. This was the case of the manufacture of the drug for human consumption and, after it was tested in laboratory, was found to be defective since there was a growth of fungus, which is a very serious 5 matter related to public health.”

9. Under the peculiar circumstances of this case and realizing the seriousness of the allegations, we would not take a technical view based on pleadings in the complaint. Mr. Raichura contended that as per the settled law by this Court in complaints under Section 138 of the Negotiable Instruments Act against company and directors also specific averment about the active role of directors in running the company has to be made, failing which the directors cannot be proceeded against. Same logic should apply even in the present case. We cannot agree. Firstly, the language of Section 34 (2) of the Act substantially differs from the language of Section 141 of the Negotiable Instruments Act. Secondly, here we are dealing with the offence which has the direct impact on the public health. We, therefore, would choose not to interfere with the order of the High Court. It will be open for the directors to

show to the Trial Court that they had nothing to do with the manufacture process and, therefore, they should not be held liable under Section 34 (2) of the Act.

10. With these observations, the appeal stands dismissed.