

Sandeep Kumar Vs. State of Haryana

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Court : Punjab and Haryana

Decided On : May-03-2013

Appellant : Sandeep Kumar

Respondent : State of Haryana

Judgement :

CRM not M-28316 of 2012 -1- IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CRM not M-28316 of 2012 (O&M) Date of decision :

03. 05.2013 Sandeep Kumar ...Petitioner Versus State of Haryana ...Respondent
CORAM: HON'BLE Mr.JUSTICE JITENDRA CHAUHAN Present: Mr.R.S.Longia, Advocate, for the petitioner.

Mr.Ajay Gulati, DAG, Haryana, and Mr.Rudraneel Bhardwaj, AAG, Haryana.

JITENDRA CHAUHAN, J.

(Oral) The present petition under Section 482 of the Code of Criminal Procedure, (for short, 'the Cr.P.C.') is for quashing of complaint No.50 dated 10.03.2012, titled as 'State versus Sh.

Rakesh Chander Aggarwal & others', under Sections 16, 17, 17-A, 18-A(7).27(b)(i).27(c) and 27(d) of the Drugs and Cosmetic Act, 1940 (for short, 'the

Act').and Drugs and Cosmetics Rules, 1945, pending in the Court of Chief Judicial Magistrate, Ambala.

The learned counsel for the petitioner contends that the CRM not M-28316 of 2012 -2- petitioner is a lecturer in the Bharat Institute of Pharmacy.

The petitioner was never appointed not ever worked in the drugs factory of the co-accused, Atul Gupta.

The learned counsel further contends that Section 34 of the Act, completely bars prosecution of any person other than the one who is responsible for managing or incharge of the day-to- day affairs of the company.

He cites 1998(2) RCR (Criminal) 608, State of Haryana versus Brij Lal Mittal.

On the other hand, the learned State counsel, submits that the petitioner is a lecturer in the Institute but he stood as a Testing Chemist as and when there was inspection by the authorities.

I have heard the learned counsel for the parties.

As per the allegations, the petitioner has been shown to be working simultaneously, at two different place, which are about 110 kMs.apart.

He has been shown in Form Nos.25 and 28, as Testing Analyst.

He allegedly, being part of the conspiracy, presented himself as Testing Chemist before the Drug Authorities.

The allegations made in the complaint, Annexure P-4, and the documents attached therewith, make out a prima facie case against the present petitioner and therefore, the same cannot be quashed by this Court.

It is a question of fact as to whether or not the petitioner is responsible for managing day-to-day affairs of the company, which shall be gone into by the trial Court at appropriate stage.

In Vinta CRM not M-28316 of 2012 -3- Prasad Reddy versus State of A.P.and another, 2003 Criminal Law Journal 2264, it has been held as under:- 13.

M/S.Sai International purchased the drugs in question-Amoxycillin and Ampicillin-from A2.

The batch number, manufacturing date, expiry date and license number of the two drugs respectively are HP008, May 1996, April 19987, 110/KR/AP/95/F/G(L).and HP01, July 1996, June 1998, 110/KR/AP/96/F/G(L).Nowhere it is stated in the complaint that A2 is the dealer or distributor of the said two drugs.

The two drugs were purchased by Athakuri Venkateswara Rao, Proprietor of Sai International, vide invoice Nos.006/96-97, dated 7.7.1996 and 003/96-97, dated 28.5.1996 from A2-firm.

A2-firm obtained a license in Form No.26-A to manufacture for sale of drugs being drugs specified in Schedule C, C(1) excluding those specified in Schedule X to the Drugs and Cosmetic Rules, 1945, on the premises situated at door No.54-16-3/8, CEC Colony, Vijayawada, C/o.

Rossvel Pharmaceuticals.

The contention of the learned counsel for the petitioners is that Rossvel Pharmaceuticals is the manufacturer of the drugs in question and, therefore, the petitioners being wholesale distributors only cannot be prosecuted.

That argument is totally devoid of any merit.

The reason is that A2 obtained license to manufacture the drugs specified in the license, which include the drugs in question.

Therefore, the allegations in the complaint, coupled with the license obtained by A2 to manufacture for sale of the drugs in question, prima facie establish that A2, and not Rossvel Pharmaceuticals as contended by the CRM not M-28316 of 2012 -4- learned counsel for the petitioners.is the manufacturer of the drugs in question and A1 is the Proprietor of A2-firm.

14. In view of the above discussion, there are absolutely no grounds to quash the proceedings.

Hence the petition is dismissed.

Any observations made in this order are only for the purpose of deciding this petition and shall not weigh or affect the mind of the trial Court while proceeding with and deciding the case.

Therefore, this Court does not find any ground to accept the prayer made in the instant petition and the same is consequently, dismissed.

This order will not be an expression of opinion on the merits of this case.

03.05.2013 (JITENDRA CHAUHAN) atulsethi JUDGE Note : Whether to be referred to reporter ?.

Yes / No

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