

Vostok Laboratories Vs. the Controller, Food and Drug Administration

Vostok Laboratories Vs. the Controller, Food and Drug Administration

SooperKanoon Citation : sooperkanoon.com/505699

Court : Madhya Pradesh

Decided On : Feb-26-1993

Reported in : 1993CriLJ3693

Judge : A.R. Tiwari, J.

Acts : [Drugs and Cosmetics Act, 1940](#) - Sections 27(A), 27(D), 34(1) and 34(10);
Code of Criminal Procedure (CrPC) , 1974 - Sections 482

Appeal No. : M.Cr.C. No. 2692/92

Appellant : Vostok Laboratories

Respondent : The Controller, Food and Drug Administration

Advocate for Def. : Desai, Dy. G.A.

Advocate for Pet/Ap. : M. Dalal, Adv.

Disposition : Petition allowed

Judgement :

ORDER

A.R. Tiwari, J.

1. This petition is directed against the registration of the Criminal Case No. 4779/1989 in the Court of Chief Judicial Magistrate, Indore as regards some of the

partners, arranged as accused Nos. 4 to 8 in the complaint, Under Section 27A and 27D of the [Drugs and Cosmetics Act, 1940](#).

2. Briefly stated, the facts of the case are that the petitioner-firm is engaged in the business of formulation of different varieties of Drugs under the License No. 25/158/73 issued by the Controller of Food & Drugs, Bhopal. It is thus a drug manufacturer. Oxyphenbutozone tablets IP is one of their products. The partner Jaikumar is said to be the person in charge of the activities and thus, responsible for all acts and omissions of the petitioner-firm. The sample of this drug manufactured by the petitioner-firm was drawn on 24-1-86 from M/s. Modi Medicals, Bhilwada (Rajasthan). The report dated 29-8-86 evidenced this as sub-standard. It was thus opined as adulterated. After completion of investigation and certain formalities, the non-applicant through its Senior Drug Inspector, filed Private Complaint in the Court on 31-7-89 for prosecution of the petitioner firm and its alleged partners as accused Nos. 2 to 8 in the complaint. Non-applicant had obtained the copy of the partnership-deed as well and annexed it with the complaint. The complaint on the question of criminal liability appears to be vague in that in para 18 all that is alleged is that the firm and its partners have manufactured and sold the drug in question to M/ s. Bhardwaj Medicos, Jaipur which in turn sold it to M/s. Modi Medicals, Bhilwada and which on analysis found to be sub-standard and thus, adulterated. It is said that the accused persons failed to perform their duties and were negligent.

3. I have heard the parties and perused the documents like copies of complaint and partnership deed annexed with this petition.

4. It is urged that the criminal prosecution against the accused Nos. 4 to 8 is an abuse of the process of the Court and merits quashment to this extent in exercise of the powers conferred under Section 482 of the Cr. P.C. This submission rests on the undernoted linchpin --

a) The offence is alleged to be committed by the Firm. Under the law, persons i.e. partners, in charge of and responsible to the firm for the conduct of the business of the firm at the time of commission of the offence alone as well as the firm shall be deemed to be guilty and shall be liable to be proceeded against and punished

accordingly. The accused No. 2 alone is the person in charge of and responsible to the petitioner-firm for the conduct of its business. Accused No. 3 is the person in whose presence the sample was drawn at Bheelwada. There is no specific allegation against accused Nos. 4 to 8 so as to justify or permit prosecution against them and as such, there is no material or foundation to hold these partners vicariously liable under the penal statute.

b) The drug in question is said to be manufactured and sold on 19-10-84. The partnership-deed, documented on 9-4-84, clearly showed that accused Nos. 4 to 8 (Smt. Manorama Devi W/o Santoshkumar, Smt. Manorama Devi w/o Satis Kumar, Smt. Padmabai w/o Tikamdas Barjatiya, Smt. Sushila Devi w/o Pramod Kumar and Shri Suryakant s/o Durga Prasad) voluntarily retired from the petitioner firm on 31-3-84. These persons thus, had no participation and were not in charge of or responsible to the firm in conduction of its business at the relevant time.

5. It is apt to reproduce Section 34(1) of the [Drugs and Cosmetics Act, 1940](#) :--

'34. Offences by Companies.-- (1) Where an offence under this Act has been committed by a Company, every person who at the time of 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.'

The person concerned thus has a right to offer proof in rebuttal and to show his impecability. But this burden can come only when allegation in terms of Section 34(10) are made imprimis.

6. It is seen that the averments in the complaint in terms of Section 34(10) of the Drugs and Cosmetic Act, 1940 are conspicuously absent. The complaint thus does

not tear up the tenebrosity in that no light is thrown as to why these accused persons have been lugged into prosecution which on the face of it at least to this extent is inutile and futile.

7. The proceeding is liable to be quashed where no offence is disclosed. The decision reported in AIR 1983 SC 67 : (1983 Cri LJ 159) Municipal Corporation of Delhi v. Ramkishan Rohtaji is pertinent. It is held that vicarious liability is an incidence of an offence under the Act. It is only on the fulfilment of specified conditions that a partner may be liable. 1985 Cr LJ 618, Municipal Corporation v. Desraj throws enough light on this aspect.

8. In the case on hand, there is no statement that the accused Nos. 4 to 8 were incharge of and responsible to the firm for the conduct of its business at the relevant time. This is pre-condition and sinequa non for the tenability of the case of this nature.

9. In 1991 MPLJ 473, Prem Pharmaceuticals v. State of M. P., it is held that:--

'As pointed out in the decision in J. P. Sharma's case AIR 1986 SC 833 : (1986 Cri LJ 1917), in determining whether proceedings should be ordered to be dropped in exercise of the powers under Section 482 of the Code, the question is not whether there is any truth in the allegations made but the test is whether the allegations as they stand without any addition or subtraction can be said to make out an offence. The decision in L.V. Jadhav's case AIR 1983 SC 1219: (1983 Cri LJ 1501) is also pertinent. The decision in SAIL, Bhilai's case, 1984 MPLJ 408 : 1984 JLJ 552 : (1984 Cri LJ 1284) and the Full Bench decision in Sher Singh's case 1989 MPLJ 116 : (1989 Cri LJ 632) may also be usefully perused.'

10. It may be observed that ends of justice, are higher than the ends of law. Prosecution, which involves time and torture, cannot be sustained when the allegation, taken at their face value without any plus or minus in that, do not constitute the acts or omissions punishable under the law. In such case, the prosecution against the persons such as Nos. 4 to 8 becomes liable to be anaesthetized at its infancy. In fact, here the challenge is on much stronger footing in the face of retirement of these persons from the date prior to the one alleged as

the date of commission of the offence.

11. To sum up, I find that the criminal proceedings against Nos. 4 to 8 are liable be dropped in exercise of inherent powers Under Section 482 of the Cr. P.C.

12. In the result, this petition succeeds and is allowed. The Criminal Case (4779/89), pending before the Chief Judicial Magistrate, Indore, is thus, ordered to be quashed as regards accused Nos. 4 to 8, as particularised in the complaint and noted above. Consequently, it shall now proceed only against the remaining accused persons Nos. 1 to 3. Consequently, the accused persons Nos. 4 to 8 are discharged and their bailbonds, if any, are cancelled.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com