

**IN THE HIGH COURT OF JHARKHAND, RANCHI**

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**Cr.M.P. No. 1525 of 2014**

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1.Krishna Nand Shastri @ K.N. Shastri  
 2.Anil Kumar Gupta  
 3.Harpal Singh

.... Petitioners

-- Versus --

1.The State of Jharkhand, through Inspector of Drugs, Deoghar  
 .... Opposite Party

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**CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

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For the Petitioners :- Mr. Pandey Neeraj Rai, Advocate  
 For the State :- Ms. Kumari Rashmi, APP

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**5/03.05.2023** Heard Mr. Pandey Neeraj Rai, the learned counsel appearing on behalf of the petitioners and Ms. Kumari Rashmi, the learned counsel appearing on behalf of the respondent State.

2. This petition has been filed for quashing of the entire criminal proceeding in connection with G.O.C.R No.61 of 2013, T.R.No.879 of 2014 including order taking cognizance dated 15.07.2013 pending in the court of learned Chief Judicial Magistrate, Deoghar.

3. The complaint case has been lodged alleging therein, in nutshell, that On 02.03.2011 the then Inspector of Drugs inspected premises of M/s Bajpai Medicals, Deoghar and the Inspector issued Form-16 on Ciproplus B-WS, 100 mg manufactured by M/s Intercorp Biotech, New Delhi and as per the composition mentioned on the label ciprofloxacin hydrochloride-100 mg is present in 1 gm of the product, which implies that the product is a drug but no drug manufacturing license no. is mentioned on the label and the product is sold as 'nutritional supplement'. The said company was informed regarding the seizure and it was asked to produce the constitution details of the firm. The manufacturer requested for 15 days' time. After receipt of the judgment of Hon'ble High Court, the Drug Inspector sought approval for prosecution from the Director in Chief (Drugs) to prosecute the manufacturer company under section 27(b) and (d) for violation of section 18(a) and (c) of the Drugs and Cosmetics Act, 1940 and in turn approval has been granted. The special

leave petition preferred by the manufacturer before the Hon'ble Supreme Court was dismissed. Ciprofloxacin Hydrochloride is a potent antibacterial agent which is categorized under schedule-H of the Drugs and Cosmetics Rules, 1945. The manufacturer by claiming ciprofloxacin hydrochloride as a nutritional supplement has tried to misguide and hamper the instigation process. The manufacturer distributed and sold the drug without obtaining the drug manufacturing license which violates section 18(c) and is punishable under section 27(b). Hence this case.

4. The learned counsel for the petitioners submits that the complaint case was lodged on 12.7.2013 and on the same day the learned court has taken cognizance on 15.7.2023. He submits that however it appears that summons have been issued on same day. He submits that the petitioners are the Directors of the company in question. He submits that in the entire complaint there is no allegation that these petitioners are looking into the day to day affairs of the company and to buttress his argument he has relied in the case of *State (N.C.T. of Delhi) v. Rajeev Khurana, (2010) 11 SCC 469*, paragraph nos.17 of the said judgment is quoted below:

*"17. The ratio of all these cases is that the complainant is required to state in the complaint how a Director who is sought to be made an accused, was in charge of the business of the company or responsible for the conduct of the company's business. Every Director need not be and is not in charge of the business of the company. If that is the position with regard to a Director, it is needless to emphasise that in the case of non-Director officers, it is all the more necessary to state what were his duties and responsibilities in the conduct of business of the company and how and in what manner he is responsible or liable."*

5. The learned counsel for the petitioners submits that the petitioners were stationed at Delhi and it is also admitted in the complaint and the learned court without following the mandatory provision under section 202 Cr.P.C has taken cognizance which is against the mandate of law.

6. On the other hand, Ms. Kumari Rashmi, the learned State counsel submits that irregularity has been found and that is why the learned

court has taken cognizance and there is no illegality in the cognizance order.

7. In view of the above submission of the learned counsel appearing for the parties the Court has gone through the contents of the complaint petition as well as the order taking cognizance and finds that there is no averment to the effect that these petitioners are looking into the day to day affairs of the company. In this regard a reference may be made to section 34 of the Drugs and Cosmetics Act, 1940 which is quoted 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.”*

8. Looking to the above provision, it is crystal clear that the person who is looking into the day to day affairs of the company and was responsible at the time of offence can only be prosecuted and in that view of the matter in absence of any averment to that effect vicarious liability upon the petitioners are not liable to be fastened upon them as there is no such averment in the complaint petition and the case of the petitioners is fully covered in view of the judgment rendered in the case of *State (N.C.T. of Delhi) v. Rajeev Khurana* (supra). So far the record further suggest that in absence of any enquiry under section 202 Cr.P.C the learned court has taken cognizance. Reference may be made to the case of *Udai Shankar Awasthi v.*

*State of U.P. and Another, (2013) 2 SCC 435.* Paragraph no.40 of the said judgment is quoted below:

*“40. The Magistrate had issued summons without meeting the mandatory requirement of section 202 Cr. P.C though the appellants were outside his territorial jurisdiction. The provisions of section 202 Cr.P.C were amended vide Amendment Act, 2005, making it mandatory to postpone the issue of process where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned. The same was found necessary in order to protect innocent persons from being harassed by unscrupulous persons and making it obligatory upon the Magistrate to enquire into the case himself, or to direct investigation to be made by police officer, or by such other person as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused before issuing summons in such cases.”*

9. Considering that argument this Court has also decided the same issue in the case of *M/s Maithon Power Limited and Others v. The State of Jharkhand and Others*”, 2022 0 Supreme (Jhk) 700. It is worth considering that there is no exception to the section 202 Cr.P.C, and in that view of the matter, even in the Government complaint case, section 202 Cr.P.C is mandatory and it is admitted that the petitioners are stationed at Delhi and seeing that the learned magistrate was required to follow the mandatory provision of section 202 Cr.PC which has been amended vide Amendment Act, 2005, making it mandatory to postpone the issue of process where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned.

10. With cumulative effect of the above discussion and the analysis of the Court hereinabove, the entire criminal proceeding in connection with G.O.C.R No.61 of 2013, T.R.No.879 of 2014 including order taking cognizance dated 15.07.2013 pending in the court of learned Chief Judicial Magistrate, Deoghar are quashed.

11. Cr.M.P. No.1525 of 2014 is allowed and disposed of.

12. Pending petition if any also stands disposed of.

**( Sanjay Kumar Dwivedi, J.)**

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