

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.6743 OF 2020

BETWEEN

1 . M/S HINDUSTAN MEDICAL PRODUCTS

REPRESENTED BY ITS PARTNER
MR PAWAN KUMAR LOHARUKA

2 . MR PAWAN KUMAR LOHARUKA

... PETITIONERS

(BY SRI DESU REDDY G., ADVOCATE)

AND

STATE OF KARNATAKA
AT THE INSTANCE OF
THE DRUGS INSPECTOR
INTELLIGENCE REGIONAL OFFICE
DRUGS CONTROL DEPARTMENT,
BENGALURU-560001

REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
AMBEDKAR VEEDHI
BENGALURU-560001

... RESPONDENT

(BY SRI B.J. ROHITH, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN S.C.NO.139/2013 ON THE FILE OF THE LEARNED PRINCIPAL DISTRICT AND SESSIONS BENGALURU RURAL DISTRICT AT BENGALURU.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 6.12.2022 THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed by the accused No.1 and 3 under section 482 of Cr.P.C for quashing the criminal proceedings in S.C.No.139/2013, pending on the file of Principal and District and Sessions Judge, Bangalore Rural District for the offence punishable under Sections 18(a)(i) read with 17B (d) and 27(d), 27(c) of Drugs and Cosmetics Act, 1940 (herein after referred as Act).

2. Heard the arguments of learned counsel for the petitioner and learned HCGP for the State.

3. The case of the prosecution is that on the complaint filed by the Drug Inspector of Drug Control Department Bangalore against the petitioner alleging that the accused No.1/Hindusthan Medical Product is a partnership firm possessing license for manufacture and sale of HIMOXONA Inj I.P. (Dexamethasone Sodium Phosphate Inj I.P) 30 ml. The accused Nos.2 and 3 are partners of the firm. On 12.10.2009 the Drug Inspector inspected at Sri. Ranga Medicals, BH. Road, Nelamangala , Bangalore Rural District and drawn sample of 4 x 4 x 30mi HIMOXONA Inj I.P. (Dexamethasone Sodium Phosphate Inj I.P) 30 ml and sent the portion of the said drug to the Government Analyst, Drug Testing Laboratory, Bangalore for the test analysis and they received the report that the drug was not of standard quality as it does not confirm to IP Standards. It is further alleged that on 18.01.2010 the Drug Inspector delivered it to the proprietary of Ranga Medicals, B.H. Road, Nelamangaia, Bangalore Rural District to disclose the source of purchase and then it was disclosed that he had purchased drug from M/s.Siddi Health Care, R.S. Complex, Sondekoppa Road, Nelamangala and they have disclosed that the drug was purchased from M/s.Medi point and later it was found the same was purchased form M/s.Kusum Pharma, Bangalore and they

have disclosed this drug was purchased from the petitioner/accused No.1. Accordingly, the CrI.Misc.No.82/2010 under section 25 of the Act was filed and sent the samples to the Central Drugs Laboratory, Kolkatta for the analysis as per the order of the Trial Court.

4. It is further alleged that on 29.6.2010 the analysis report received in form No.2 dated 15.6.2010 from the Kolkatta that sample was not of standard quality. It is further alleged that Drug Inspector on 31.7.2010 requested the permission from the Drug Controller for State of Karnataka for holding investigation and obtained the investigation permission then he has visited the accused No.1 manufacturing unit at Patna Bihar and later private complaint has been filed for the above said offences which is under challenge.

5. Learned counsel for the petitioner contended the criminal proceedings against petitioners are not sustainable under the law. The drug inspector drawn the legal sample from Ranga Medicals and the samples were found of sub-standard quality as per the report of the Government Lab. Later, it was sent to Kolkatta laboratory and it was found that it was spurious medicine and accused No.3 is only a partner of the accused

No.1-Company. The chemist who is in-charge of manufacture is responsible for manufacturing unit who are the technical staff. The petitioners are only a partners, they are not responsible and not liable for prosecution. It is only the technical staff who are responsible for manufacture of drugs. Therefore, the proceedings cannot be sustainable against accused Nos.2 and 3. Learned counsel also submits as per Section 34 of the 'Act' these petitioner are not responsible for manufacture of the drugs. Therefore, prayed for quashing the criminal proceedings. In support of his argument he has relied upon the judgment of coordinate bench of this court in ***Crl.P.No.6875/2020 dated 10.05.2022*** and judgment of High court of Madras in ***Crl.O.P.No.11184/2019 & Crl.M.No.5726/2019.***

6. Per contra learned HCGP objected the petition and contended that the complainant is very specifically stated that the petitioner are the partners of the company and they are liable for prosecution, as it is the firm where partners are equally responsible and the petitioners are required to prove that they are responsible for the manufacture of drugs only during the trial. Therefore that cannot be a ground of quashing

the criminal proceedings hence prayed for dismissing the proceedings.

7. Having heard the arguments of the learned counsel for the petitioner and learned HCGP and perused the records, it is not in dispute that the Drug Inspector has inspected the Sri Ranga medicals at Neglamanga Rural District and drawn the sample of the 4 x 4 x 30ml HIMOSONA Inj I.P. (Dexamethasone Sodium Phosphate Inj I.P) 30 ml and sent for laboratory where the state laboratory has declared that the said injection is not that of standard quality. Subsequently, the said sample also was sent to Kolkatta lab where the report was received and the drug was spurious and not standard quality. It is an admitted fact, the petitioner No.1 is a manufacturer and the said drug was obtained by the license and is running the factory at Patna in Bihar. It is also an admitted fact the accused Nos.2 and 3 are the partners of the accused No.1/firm. The medicine has been purchased by the dealers and sub dealers from the petitioner accused No.1 and it was found that it was not that of a standard quality. Accordingly, the complaint came to be filed.

8. Now the contention of the petitioner counsel is that the petitioners are only partners, they are not responsible for

the manufacturing and as per section 34 of the 'Act' the technical staff, the chemist are responsible for manufacturing the same and they are not made as accused. Therefore, the petitioners cannot be prosecuted. In this regard learned HCGP contended there is proviso to section 34 of Drugs and Cosmetics Act, that this petitioner also liable for prosecution. For the convenience Section 34 of Drugs and Cosmetics Act is defined as under:-

"Section 34 in 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 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 subsection 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 subsection (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."

9. Learned counsel for the petitioner relied upon the judgment of the coordinate bench of this Court ***Crl.P.No.15263/2011 C/w. Crl.P.No.15243/2011, 15093/2011, 15092/2011 and 15094/2011*** and connected matters in case of ***Ritesh Vs State of Karnataka dated 19.11.2011 (Guibarga Bench)*** allowed the petition and proceedings has been quashed on the ground that the petitioner in Crl.P.No.15093/2011 was a Director of accused No.1 company and he ceased to be the Director at the time of commission of offence, therefore the proceedings has been quashed. But the Co-ordinate Bench at para 19 of the judgment has categorically held when the director of the company was responsible for day to day affairs of the company, then proceedings cannot be quashed. Therefore, the judgment relied by the counsel is not helpful for the learned counsel for the petitioner. In another judgment reported in ***2002 Cri.L.J page***

1353 in case of **Sanjay G.Ravankar and etc Vs State of Karnataka** the Co-ordinate Bench of this high court has quashed criminal proceedings against director of the company and rejected the relief to other accused where they are responsible for the day to day affairs of the company. However, here in this case the petitioner No.1 is partnership firm and petitioner Nos.2 and 3 are the partners of the firm. It is well settled and as per the definition and explanation to the Section 34 that Company means including firm and Director including the partners. Normally, as per the definition of Partnership Act, they are individually called as partners and collectively they are called as firm. Therefore, it cannot be said the partners are not responsible for the day to day affairs of the firm. Even otherwise, the petitioners have not produced any document before this Court regarding who is the incharge of the firm for the purpose of the manufacturing of the drugs which was declared as spurious or substandard. If at all the petitioner is having no knowledge and due diligence and without their knowledge, if any offence committed without consent of connivance and without their knowledge they are not held to be guilty for the offences as per section 34 (2) of Drugs and Cosmetics Act. The petitioner has not produced any document

to show who is the actual chemist or technical staff at the time of manufacture. If they want to take any contention, that somebody else is responsible and not this petitioner, then they are exempted from punishment as per Section 34 of the Companies act, but that contention requires to be taken by the petitioners only during the trial and it cannot be considered under Section 482 of Cr.P.C.

10. The Madras High Court held in the case of **Vikas Rambal and Ors Vs State in Crl.O.P.No.11184/2019 and connected matter** has taken similar view at para 24 of the judgment which is as under:

24. The offences and the offenders in the case of this nature is manufacturing and distribution of sub-standard drugs by a Company which is managed by its Board of Directors. The decision to manufacture the drugs is the collective decision of the Board of Directors. Therefore, the Directors cannot claim that they are not directly involved in the product of the drugs, when the decision to produce the drugs itself is the out come of their decision. Therefore, the case of Directors signing the cheque on behalf the Company and the case of Directors participating in the decision to produce sub-standard drugs are not one and the same to hold that these petitioners are not involved in day-to-day affairs of the Company.

Here in this case, petitioners Nos.2 and 3 are partners of petitioner No.1 firm and they are directly involved in the

manufacturing of the drugs and responsible for the day to day affairs of the firm. Therefore, at this stage the criminal proceedings cannot be quashed against them until they face the trial and take the defense, as they are not responsible at the time of manufacturing of the spurious or sub standard drugs.

11. Apart from that, the matter is pending before court almost since 10 years and the petitioner are dragging the matter with one or the other reasons, inspite of case being posted for framing of charge. Such being the case, petition is devoid of merits and liable to be dismissed.

Accordingly, the petition filed by petitioner Nos.1 to 3, is hereby ***dismissed***.

**Sd/-
JUDGE**

AKV