

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 29.07.2022

Pronounced on:04.08.2022

CRM(M) No.01/2021
c/w
CRM(M) No.254/2020

NEENA GUPTA
ARUN KUMAR GUPTA ... PETITIONER(S)

Through: - Mr. Varut Kumar Gupta, Advocate (in CRM(M) No.254/2020)
Mr. Pankaj Kumar Sharma, Advocate (in CRM(M) No.01/2021)

Vs.

UT OF LADAKH ...RESPONDENT(S)

Through: - Mr. T. M. Shamsi, ASGI.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) By this common judgment, the afore-titled two petitions filed under Section 482 of the Cr. P. C, are proposed to be disposed of.

2) Through the medium of both these petitions, the petitioners have challenged the complaint filed by the respondent against them alleging commission of offences under Section 18(a)(i) read with Section 27(d) of the Drugs and Cosmetics Act, 1940, which is stated to be pending before the Court of Chief Judicial Magistrate, Kargil.

3) A perusal of the record reveals that the respondent Drugs Inspector, Kargil, has lodged the impugned complaint against the

petitioners and co-accused alleging that sample of the drug Tablet Uspas Forte collected from the shop of accused Nissar Ali was found to be not of standard quality. After completion of the necessary formalities and investigation, the Drugs Inspector lodged the impugned complaint against said Nissar Ali as well as against other accused in their capacity as distributors, dealers and manufacturers. Petitioner Arun Gupta, as per the complaint, is the competent person of M/S Janta Medical Hall, Pharmaceutical Distributor, Jammu and petitioner Neena Gupta is stated to be the proprietor-cum-Competent person of M/S S.P.G Pharmaceuticals, Sector 1A, Extension Bhalla Enclave-101, Channi Himmat, Jammu. Both the petitioners have been impleaded as accused in their capacity as dealers of the drug in question.

4) In order to challenge the impugned complaint and the order whereby process has been issued by the learned trial Magistrate against the petitioners, they have raised several grounds but the two grounds which have been highlighted by learned counsel for the petitioners during the course of arguments are as under:

- (I) That there are no specific allegations against the petitioners in the impugned complaint as it is not stated in the complaint that the petitioners are the persons responsible for the conduct of the business of the firms of which they are alleged to be the representatives;
- (II) That there is no allegation against the petitioners in the impugned complaint that the drug in question was not properly stored by them;

5) The respondent Drugs Inspector has filed his reply to the petitions in which, besides narrating the facts mentioned in the

impugned complaint, it has been contended that disputed questions of fact have been raised in the petitions which cannot be adjudicated upon in proceedings under Section 482 of the Cr. P. C. The official respondent has denied all the allegations and grounds urged by the petitioners in their petitions and claimed that these averments and contents are inconsistent. It has been further claimed that the contents of the impugned complaint clearly disclose commission of offences against the petitioners.

6) Heard learned counsel for the parties and perused the material on record including the trial court record.

7) So far as the first ground that in the impugned complaint it has not been mentioned that the petitioners are responsible for the conduct of business of the firms, is concerned, the said contention is not available to petitioner Neena Gupta because she, as per her own showing, happens to be the proprietor of the firm, meaning thereby that it is a sole proprietorship concern. Therefore, in the absence of any other partners of the firm, she cannot put up a case that she is not responsible for the conduct of business of the firm of which she happens to be the sole proprietor.

8) The contention of the petitioner Arun Gupta in the above context appears to be well-founded. As per Section 34 of Drugs and Cosmetics Act, where an offence under the Act is 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 conduct of the business of the

company as well as the company shall be deemed to be guilty of the offence. Explanation to the said provision provides that company means a body corporate and it includes a firm or other association of individuals. Thus, the provisions of Section 34 of the Drugs and Cosmetics Act are also applicable to a partnership firm. Therefore, for prosecuting a partner of the firm for an offence which has been committed by a partnership firm, it is to be shown that the said partner was responsible to the firm for conduct of its business. In the instant case, there is not even a whisper in the impugned complaint regarding the role of petitioner Arun Gupta in M/S Janta Medical Hall Pharmaceutical Distributor, Jammu, of which he is stated to be the partner. The only allegation in the impugned complaint is contained in para (22) of the said complaint according to which the dealers and the retailers are equally responsible for breach of the Act in terms of Section 18(a)(i). The complaint does not attribute any role to petitioner Arun Gupta. Therefore, even if we take the allegations made in the impugned complaint to be true, no offence can be stated to have been disclosed against petitioner Arun Gupta. The prosecution as against him on this ground alone is liable to be quashed.

9) That takes us to the second ground that has been urged by learned counsel for the petitioners. It has been contended that there is not even a whisper in the impugned complaint that the petitioners did not store the drug in question in proper condition, and as such they

cannot be held responsible for the sub standard quality of the drug in question, of which they were only dealers and not the manufacturers.

10) To test the merits of this contention, it would be apt to notice the provisions contained in Section 19(3) of the Drugs and Cosmetics Act, 1940. It reads as under:

19. Pleas.—(1) xxx xxxx xxx xxx xxx

(2) xxx xxx xxx xxx xxx xxx xxx

(3) *A person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall not be liable for a contravention of section 18 if he proves—*

(a) that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof;

(b) that he did not know and could not, with reasonable diligence, have ascertained that the drug or cosmetic in any way contravened the provisions of that section; and

(c) that the drug or cosmetic, while in his possession, was properly stored and remained in the same state as when he acquired it.

11) From a perusal of the aforesaid provision, it is clear that a person, other than a manufacturer of a drug, cannot be held liable for contravention of Section 18 of the Act if he shows that he has acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof and that he did not know and could not, with reasonable diligence, ascertain the contravention of the provisions of the Section and further that the drug or cosmetic, while in his possession, was properly stored and remained in the same state when he acquired it.

12) As is clear from the language of the provision, the burden to prove the aforesaid three conditions would be upon the concerned

dealer but then in the instant case there are averments in the impugned complaint which indicate that the drug in question was stored properly by the petitioners who had, admittedly, acquired the same from a duly licensed manufacturer. In this regard it would be apt to notice the averments made by the complainant in para (22) of the complaint:

22. That the partners of manufacturing firm have breached the provisions of the Act by manufacturing and distributing Not of Standard quality drug and being a licensee, they are accountable & responsible to adhere to the provisions of the Act while manufacturing & distributing Drugs & has to take out most care before letting the stock out of the manufacturing premises & ensure there is no any violation of the provisions of the Act. But nothing such has happened in the instant case & now mere putting the blame on others for the drug quality reasoning the storage condition without any notable evidence is not enough to consider themselves innocent. The law maker of the land has framed law for manufacturing, sale & distribution of Drugs, so that quality drug could pass on to the consumer/General public of the country. In addition the law maker of the land has also framed stringent punishment for those who contravene or breach any provision of the Act & hence as per section 34 of the Act, the partners who are overall in-charge & responsible person for activities of the manufacturing firm is responsible for the laps on part of the manufacturing firm which has also been declared by them in the affidavit submitted to the licensing authority & liable to be proceeded & punishment accordingly.

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In the premises of above, the complainant is in opinion that the manufacturing firm headed by both partners has contravene the section 18(a)/27(d) of the Act by manufacturing & distributing Drug of not of standard quality & is responsible under section 34 of the Act for breach of the Act. The dealers & the retailers (accused No.3 to 6) are equally responsible for breach of the Act in terms of Section 18(a)(i).

13) From the afore-quoted averments made in the impugned complaint, it is clear that the complainant, after investigation of the case, has found that the manufacturer of the drug in question has breached the provisions of the Act by manufacturing and distributing not of standard quality drug. It is also mentioned in the afore-quoted contents of the impugned complaint that the manufacturer is putting blame on the others for drug quality on the ground that the storage condition of the drug was not proper without there being any notable evidence in this regard. The aforesaid contents of the impugned complaint get further substantiated by the report of investigation submitted by Assistant Drug Controller and the Drugs Inspector which has been annexed to the impugned complaint. In the said inspection report, it has been remarked that since the manufacturing firm has not challenged the test report, their putting blame at seller, that too without any concrete evidence and reasons, their request to drop the proceedings against them cannot be considered. It further goes on to state that all the firms in chain are licensed premises, their storage condition cannot be challenged, that too without any concrete evidence or complaint.

14) From the above, it is clear that the Drugs Inspector, after investigation, has found that there is no evidence that the drug in question was not stored in a proper condition by the petitioners, who happen to be the dealers and who have, admittedly, obtained the supply of the drug from a licensed manufacturer. Thus, in the aforesaid

circumstances, even though the burden of showing that the drug in question was stored in proper conditions after having been obtained from a licensed manufacturer is upon the petitioners but then the material on record goes on to show that this burden stands discharged because of the case set up by the complainant. Once it is shown from the material on record that the conditions mentioned in Section 19(3) of the Drugs and Cosmetics Act have been satisfied by the petitioners, they could not have been prosecuted by the respondent Drugs Inspector. The prosecution against them is, therefore, unsustainable in law.

15) For the forgoing reasons, continuance of the criminal proceedings on the basis of the impugned complaint against the petitioners would be an abuse of process of law as there are no chances of their conviction on the basis of the allegations made in the impugned complaint and the material annexed thereto.

16) Accordingly, both the petitions are allowed and the impugned complaint and the proceedings emanating therefrom as against the petitioners are quashed.

(SANJAY DHAR)
JUDGE

Srinagar,
04.08.2022
"Bhat Altaf, PS"

Whether the order is speaking: **Yes/No**
Whether the order is reportable: **Yes/No**