



2025 INSC 995

REPORTABLE
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). OF 2025
(Arising out of SLP(Crl.) No (s). 5618 of 2023)

SHAILYAMANYU SINGH APPELLANT(S)

VERSUS

STATE OF MAHARASHTRA RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. Heard.
2. Leave granted.
3. The instant appeal is preferred against the judgment and order dated 12th April, 2023 passed by the High Court of Judicature at Bombay¹ whereby the

¹ Hereinafter, being referred to as the 'High Court'.

Criminal Application No. 1422 of 2019 filed by the appellant under Section 482 of Code of Criminal Procedure, 1973² came to be rejected.

4. By way of the said petition filed under Section 482 CrPC, the appellant had challenged the order dated 3rd December, 2016 passed by the Metropolitan Magistrate 15th Court, Mazgaon, Mumbai in Criminal Case No. 1500201/SW/2016, taking cognizance of the offences under Section 18B punishable under Section 28A, Section 18(a)(vi) and Section 22(1)(cca) punishable under Section 27(d) of the Drugs & Cosmetics Act, 1940³ and issuing process against numerous accused including the appellant.

Brief Facts: -

5. The appellant (accused No.6) was summoned as an accused in the complaint case in capacity of the

² For short “CrPC”.

³ Hereinafter being referred to as the ‘D&C Act’.

Director of Procter and Gamble Hygiene and Healthcare Limited⁴ (accused No.7), which was the distributor of the drug in question, *i.e.*, Vicks Multi Pain Relief Gel. The said drug was manufactured by its licensed manufacturer, Akums Drugs and Pharmaceuticals Ltd. (accused No. 8). The expiry date of the drug was January, 2016. As per the Standard Operating Procedure (SOP) of P&G Ltd., drugs set to expire within the next six months were required to be destroyed. Accordingly, the company initiated the process of recalling and destroying the said batch of the subject drug in May 2015.

6. On 3rd June, 2016, upon receiving information from the Vigilance Department, the Drug Inspector visited the premises of an enterprise namely, M/s Action Soap Center. The inspection revealed that a stock of the aforesaid drug of which expiry date had

⁴ Hereinafter, referred to as the 'P&G Ltd. or Company'

already lapsed, was illegally stored in the godown. On questioning the person-in-charge of M/s Action Soap Center, it came to light that the drug had been procured from P&G Ltd. Subsequently, on 7th June, 2016 a notice was sent by the Drug Inspector to P&G Ltd. inquiring about the drugs seized from the premises of M/s Action Soap Center.

7. The inquiry notice dated 7th June, 2016 was responded to *vide* letter dated 13th June, 2016, by Ms. Saumya Ranjan in the capacity of the competent person acting on behalf of P&G Ltd. explaining that the purchase and sale of the drug was being carried out under her supervision. Thereafter, two further show cause notices dated 15th June, 2016 and 17th June 2016 were issued to P&G Ltd. seeking explanation for supply of drug to M/s Star Express, an enterprise which did not possess a valid license under the D&C Act.

8. The appellant in discharge of his duties as the legal officer of the company responded to these show cause notices and the queries raised therein by the Drug Inspector *vide* letter dated 5th July, 2016. It was stated in the reply that the drugs in question were in the legal custody of the Clearing and Forwarding Agent (C&F) *i.e.* M/s. KD Supply Chains Solution Pvt. Ltd. and were forwarded to M/s Star Express by the said C&F Agent.

9. However, it is not necessary to delve into the above aspect of the matter, as the controversy in the present appeal is confined to the question as to whether the appellant, being a Non-Executive Director of the company, can be held vicariously liable and prosecuted for the alleged offences committed by the company.

10. Pursuant to the completion of the inquiry, the Drug Inspector proceeded to file a complaint in the

Court of Metropolitan Magistrate, Mazgaon, Mumbai which came to be registered as Criminal Case No. 1500201/SW/2016. The array of the respondents in the aforesaid complaint is as below: -

S. No.	Name	Description
1.	Yusuf Khan	Person-in-charge of M/s Action Soap Center
2.	Rahis Gaman Khan	Proprietor, M/s Action Soap Center
3.	Girish Chamadia	Director of M/s C.G. Marketing Pvt. Ltd.
4.	C.G. Marketing Pvt Ltd.	-
5.	Amol Sawant	Asst. Logistic Executive, C.G. Marketing Pvt Ltd.
6.	Shailyamanyu Singh	Director of P&G Ltd.
7.	Procter & Gamble Hygiene Ltd.	Company
8.	Akums Drugs & Pharmaceutical	Manufacturing Company

11. The averments set out in the complaint *qua* the appellant (accused No. 6) are as below: -

“**7.** That the Accused No.6, is Mr. Shailyamanyu Singh - Director of M/s. Procter and Gamble Hygiene and Health Care Ltd., P & G Plaza, Cardinal Gracias Road, Chakala Andheri (E), Mumbai 400099 which is the manufacturing company which had manufactured the said drug at the manufacturing site at M/s. Akums Drugs & Pharmaceuticals Ltd., Plant V, Hardware

under manufacturing no. 16/UA/2010 dated 13.08.2010 and **distributed the said drug to Accused No.5.**

“31. That the investigation carried out by complainant, it is revealed as under –

iv. That, **Accused No.6 and 7 distributed drugs for the purpose of sale and distribution to M/s. Star Express, Navi Mumbai who is not holding any requisite license under Drugs and Cosmetics Act. 1940.** Accused No.7 and 8 have not submitted properly relevant document for destruction of the said drug and not provided relevant documents of destruction and thereby contravened Section of 18(c) p/u Section 27(b) (ii) and 18-B P/u 28 A of Drugs and Cosmetics Act, 1940.”

“36. That the Investigation carried out by complainant, it is revealed as under –

(4) That, **Accused No.6 and 7 distributed drugs for the purpose of sale and distribution to M/s. Star Express, Navi Mumbai who is not holding any requisite license under Drugs and Cosmetics Act. 1940.**”

(Emphasis supplied)

12. It is, in the said background, and asserting that there is no material whatsoever on record of the

complaint regarding the role of the appellant in commission of alleged offence and for the day-to-day affairs of the company (accused No. 7), the appellant herein approached the High Court of Bombay for assailing the summoning order dated 3rd December, 2016 passed by the Metropolitan Magistrate, by preferring the subject petition under Section 482 CrPC which stands rejected *vide* order dated 12th April, 2023 which is under challenge in this appeal by special leave.

Submissions on behalf of appellant: -

13. Mr. Sidharth Luthra, learned senior counsel appearing for the appellant, vehemently and fervently urged that the High Court fell in grave error by holding that the averments made in the complaint and the supporting material are sufficient to invoke the mischief of Section 34(2) of the D&C Act thereby validating the prosecution of the appellant. He took us through the complaint and supporting documents

to urge that there is no averment whatsoever that the Drug Inspector had made any inquiry/investigation in relation to any Director (including the appellant), Manager, Secretary, or other responsible Officer of the company (accused No. 7), with whose connivance or neglect, the alleged offence was committed. He urged that the only inquiry the Drug Inspector carried out regarding the active role of the Director/person responsible of the company was *qua* the manufacturing company (accused No. 8).

14. He urged that as per the communication issued from the Registrar of Companies, the appellant was a Non-Executive Director in the company and hence, to hold the appellant as vicariously liable for the alleged offence in the capacity of the person in-charge of P&G Ltd. (accused No. 7) is uncalled for.

15. To buttress his submissions, learned senior counsel relied upon the judgments of this Court in

Lalankumar Singh & Ors. v. State of Maharashtra⁵, Sunita Palita & Ors. v. Panchmani Stone Quarry⁶, Siby Thomas v. Somay Ceramics Ltd.⁷ and Dayle De'Souza v. Union of India⁸ and urged that summoning order *qua* the appellant is absolutely unjustified and liable to be quashed.

16. He further urged that in the entire complaint, there is not even a whisper about the inquiry made by the Drug Inspector, if any, regarding the active participation or responsibility of the appellant in the day-to-day affairs of the company (accused No. 7).

Submissions on behalf of respondent-State: -

17. *Per contra*, Ms. Rukhmini Bobde, learned counsel for the respondent vehemently and fervently urged that the judgments relied upon by the learned

⁵ (2022) SCC OnLine SC 1383.

⁶ (2022) 10 SCC 135.

⁷ (2024) 1 SCC 348.

⁸ (2021) 20 SCC 135.

counsel for the appellant do not deal with the concept of vicarious liability with reference to Section 34(2) of the D&C Act. She urged that, by virtue of the aforesaid provision, any Director who is responsible for the conduct of business of the company can be held vicariously liable and made to face prosecution for the acts/omissions by the company leading to the commission of offence/s under the provisions of the D&C Act. As per Ms. Bobde, the appellant responded to the show cause notice of the Drug Inspector in the capacity of the Director of the company, hence, the arraignment of the appellant was logical and justified because it is he who was having exclusive knowledge about the functioning and business of the company.

18. She further submitted that the appellant's contention that he was not responsible for the day-to-day affairs of the company can only be agitated as a defence when evidence is recorded at the trial.

Claim of such immunity in a quashing petition that too based on disputed questions of facts is premature, and therefore, the High Court did not commit any error in rejecting the appellant's prayer for quashing of the proceedings.

19. We have given our thoughtful consideration to the submissions advanced by learned counsel for the parties and have gone through the impugned judgment and the material available on record.

Discussion and Conclusion: -

20. Section 34 of the D&C Act provides the procedure for prosecution of companies and its Directors, etc., for the offences under the Act and is being reproduced hereinbelow for the sake of ready reference: -

“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.”

(Emphasis supplied)

21. A holistic reading of the language of Sections 34(1) and 34(2) of the D&C Act would make it clear that every person who is in-charge of the day-to-day affairs of the company would be liable to face prosecution under the Act. The Director or Directors, other than the one who is in-charge of the day-to-day affairs of the company can also be prosecuted **‘where**

it is proved' that the offence has been committed with the consent, connivance or is attributable to any neglect on the part of such Director.

22. No doubt, at the stage of taking cognizance, the standard of proof required would be much lower than that required at the stage of final decision of a criminal case. Nevertheless, there definitely has to exist a *prima facie* allegation in the complaint which can satisfy the Court regarding the consent, connivance or attributable neglect on the part of the Director who is sought to be prosecuted by taking recourse to the concept of vicarious liability as provided under Section 34(2) of the D&C Act.

23. This Court in the case of ***Dayle De'Souza v. Union of India***⁹, while relying upon an earlier judgment in ***National Small Industries***

⁹ (2021) 20 SCC 135.

***Corporation Limited v. Harmeet Singh Paintal*¹⁰**

held that the primary responsibility is upon the complainant to make specific averments in the complaint so as to make the accused vicariously liable for the offence committed by the company. While fastening the criminal liability, there is no presumption that every Director knows about the transactions of the company. Criminal liability can be fastened only upon those directors or persons, who, at the time of the commission of the offence, were in-charge of and were responsible for the day-to-day business of the company.

24. To establish this, something more than a bald assertion would be necessary because Section 34(2) begin with a caveat, that the prosecution would be required to provide proof regarding the active involvement of the Director or person concerned in

¹⁰ (2010) 3 SCC 330.

the affairs of the company which would justify drawing an inference about his/her inculpability.

25. It may be reiterated that the complaint in the present case is totally silent on this vital aspect.

26. The High Court, while rejecting the quashing petition filed by the appellant, was persuaded by the fact that by virtue of the averments made in Para No.31(iv) and 36(4) of the complaint, it could be inferred that the appellant (accused No. 6) had distributed the drugs in favour of M/s Star Express which did not possess a valid license under the D&C Act.

27. However, the said finding is erroneous on the face of record. The allegation of distributing the drugs to an enterprise without a license is omnibus against both *i.e.*, accused No. 6 (appellant) as well as against accused No. 7 (P&G Ltd.) and thus, something more than a bald allegation is required

which satisfies the necessary ingredients of the offences under the D&C Act, to make the appellant vicariously liable for the acts and omissions of the company.

28. It is observed that neither of the Director, Manager or any other officer in-charge of the company (accused No. 7) has been impleaded in the complaint by virtue of procedure provided under Section 34(1) of the D&C Act. The conclusion drawn by the High Court on the aspect of inquiry made by the Drug Inspector, regarding the persons with whose consent, connivance or attributable neglect the offence was committed in light of Section 34(2) of the D&C Act, is also erroneous and contrary to record because in the entire complaint, there is no such assertion regarding such an inquiry with respect to P&G Ltd. (accused No. 7).

29. Upon thorough perusal of the documents annexed with the complaint, it transpires that the Drug Inspector had addressed a letter dated 14th July, 2016 to P&G Ltd. seeking information regarding the affairs of the company. In response, the Associate Manager of P&G Ltd., *vide* letter dated 29th July, 2016, stated that the list of Directors along with the Articles and Memorandum of Association of the company had already been furnished to the Drug Inspector *vide* letter dated 15th July, 2016. It is, however, significant to note that the complaint itself makes no reference whatsoever to the aforementioned communications exchanged between the Drug Inspector and the P&G Ltd. We may also note that the complaint is totally devoid of averments regarding any inquiry into the role of the Directors of the P&G Ltd. (accused No. 7) or the person/s responsible for the conduct of the day-to-day business of P&G Ltd. (accused No. 7). Thus, there

being no such averment or material against the appellant, the order summoning him is *ex facie* unjustified and uncalled for.

30. Resultantly, we conclude that prosecution of the appellant herein on the anvil of vicarious liability simply being a Director of the company is absolutely unjustified and tantamounts to a gross abuse of the process of law. The impugned judgment and order dated 12th April, 2023 rendered by the High Court is unsustainable in the eyes of law and hence, the same is set aside. The summoning order and all proceedings sought to be taken against the appellant in Complaint No. 1500201/SW/2016 are hereby quashed. However, the proceedings of the complaint shall continue against the other accused arraigned therein.

31. Accordingly, the appeal is allowed.

32. Pending application(s), if any, shall stand disposed of.

.....**J.**
(VIKRAM NATH)

.....**J.**
(SANDEEP MEHTA)

**NEW DELHI;
JULY 22, 2025.**