

**\*HON'BLE SRI JUSTICE K. SURESH REDDY**

**+CRIMINAL PETITION Nos. 7619, 7621 and 7625 of 2015**

**%Dated: 08-12-2023**

# Ajay Bhatia (Director), Age: 48 years,  
S/o. Prithvi Raj Bhatia,  
R/o. L.Model Town,  
Panipat, Haryana, and others.

... Petitioners

VERSUS

\$ The State of Andhra Pradesh,  
Through the Drugs Inspector, Bhimavaram,  
W.G. Dist., Rep. by P.P. High Court of A.P.

... Respondent

!Counsel for the petitioners : Mr. M.S. Srinivasa Iyengar, Senior Counsel,  
assisted by Mr. S. Lakshmi Narayana Reddy.

^Counsel for the respondent : Assistant Public Prosecutor

**<GIST :**

**>HEAD NOTE :**

**?Cases referred :**

1. 2022 SCC OnLine SC 1383.
2. (2011) 1 SCC 74
3. (2014) 16 SCC 1
3. (2010) 3 SCC 330
4. (1971) 3 SCC 189
5. (1981) 2 SCC 335
6. (2006) 10 SCC 581
7. (2010) 11 SCC 469

**HON'BLE SRI JUSTICE K. SURESH REDDY****CRIMINAL PETITION Nos. 7619, 7621 and 7625 of 2015****COMMON ORDER:**

Since similar issue is involved in all these criminal petitions filed under Section 482 Cr.P.C., they were heard together and are being disposed of by this common order.

2. Accused Nos.3 to 6 in C.C.Nos.129 of 2014, 131 of 2014 and 132 of 2014 on the file of the learned Principal Junior Civil Judge, Bhimavaram, West Godavari District, filed the present Crl.P.Nos.7619 of 2015, 7621 of 2015 and 7625 of 2015 respectively, seeking to quash the proceedings against them in the said C.Cs.

3. Facts of the cases, briefly stated, are as under:

The subject C.Cs. have been registered on the complaints filed by the State under Section 11 of the Essential Commodities Act, 1955 (for short, 'the Act of 1955'), for contravention of Para 8(3) and 14(1) of the Drugs (Prices Control) Order, 1995 read with Section 3 of the Act of 1955, liable for punishment under Section 7(1)(a)(ii) of the Act of 1955. It was alleged in the complaints that on 20.05.2010, during inspection of M/s. Sri Lalitha Medical and General Distributors at Bhimavaram, the Drugs Inspector, Bhimavaram, found violations in respect of fixation of Maximum Retail Price of the drugs manufactured by M/s. Laborate Pharmaceuticals India Ltd. (accused No.1-

Firm). The violation alleged in the complaint in respect of C.C.No.129 of 2014 is in relation to pricing of LB Drox 500 mg. tablet, which contains chemical compound Cefadroxil, the price of which is fixed at Rs.30.42 ps. per 10 tablets by the Government of India, vide S.O.No.2049(E) dated 30.11.2007, whereas accused No.1-Firm was stated to be selling the said tablets at Rs.72.50 ps. per 10 tablets, i.e., at an excess of Rs.40.08 ps. The violation alleged in the complaint in respect of C.C.No.131 of 2014 is in relation to pricing of LB Drox 250 mg. tablet, which contains chemical compound Cefadroxil, the price of which is fixed at Rs.30.42 ps. per 10 tablets by the Government of India, vide S.O.No.2049(E) dated 30.11.2007, whereas accused No.1-Firm was stated to be selling the said tablets at Rs.43.52 ps. per 10 tablets, i.e., at an excess of Rs.13.10 ps. Similarly, the violation alleged in the complaint in respect of C.C.No.132 of 2014 is in relation to pricing of N. Flox tablet, which contains chemical compound Norfloxacin, the price of which is fixed at Rs.7.30 per one drop by the Government of India, vide S.O.No.1335(E) dated 16.09.2005, whereas accused No.1-Firm was stated to be selling the said drug at Rs.15.25 per one drop, i.e., at an excess of Rs.7.95 ps. Upon seeking clarification from the manufacturer, i.e., accused No.1-Firm, it was admitted by accused No.1-Firm that the prices so printed on the subject drugs manufactured by them were in excess than the Maximum Retail Price fixed by the Government of India and pleaded that the said mistake was due to ignorance and not intentional. It was, therefore,

alleged that accused No.1-Firm represented by A2 and its Directors - A3 to A6 contravened Para 8(3) and 14(1) of the Drugs (Prices Control) Order, 1995, punishable under Section 7(1)(a)(ii) of the Act of 1955. The trial Court took cognizance of the offences alleged and issued summons to accused Nos.3 to 6/petitioners herein. Aggrieved thereby, the petitioners filed the present criminal petitions seeking to quash the proceedings against them in the subject C.Cs. respectively.

4. Mr. M.S. Srinivasa Iyengar, learned Senior Counsel assisted by Mr. S. Lakshmi Narayana Reddy, learned counsel for the petitioners, contends that the petitioners, who are Directors of the Firm, are in no way responsible for the conduct of the business of the Firm or day-to-day affairs of the Firm and, therefore, they cannot be vicariously held liable and prosecuted for the alleged offences. He further contends that it is only the persons who, at the time of commission of the offence, were in-charge of the affairs of the company and were responsible for the conduct of the business of the company, are liable to be prosecuted. It is further contended that in the complaint, specific averments should be made as to the role of the Directors in the day-to-day activities of the company, but in none of the complaints, such averments were made. Learned Senior Counsel, thus, contends that in the absence of specific averments to show that the petitioners are responsible for the day-to-day activities of the Firm and are involved in the offences alleged, continuation of the subject criminal proceedings against

them, merely because they are Directors of the Firm, is nothing but an abuse of process of law and, therefore, prays to quash the proceedings against the petitioners. In support of his argument, learned Senior Counsel relies on the judgment of the Hon'ble Supreme Court in **Lalankumar Singh v. State of Maharashtra** reported in **2022 SCC OnLine SC 1383**.

5. On the other hand, learned Assistant Public Prosecutor appearing for the respondent-State opposes the criminal petitions and submits that the petitioners, being Directors of the Firm, are responsible for the day-to-day affairs of the Firm and are, therefore, vicariously liable for the offences committed by the Firm. In support of his argument, he places reliance on the judgment of the Hon'ble Supreme Court in **Iridium India Telecom Limited v. Motorola Incorporated and others** reported in **(2011) 1 SCC 74**.

6. This Court has considered the submissions made on either side and perused the entire material available on record.

7. As per Section 10 of the Act of 1955, a Director of a company is liable to be convicted for an offence committed by the company if he/she was in charge of and was responsible to the company for the conduct of its business, at the time the offence was committed, or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the Director concerned. Thus, the liability under Section 10 of the Act of 1955 arises from being in charge of and responsible for the conduct of the business of the company at the relevant

time when the offence was committed and not on the basis of merely holding a designation or office in the company.

8. In **Pooja Ravinder Devidasani v. State of Maharashtra** reported in **(2014) 16 SCC 1**, the Hon'ble Supreme Court, while dealing with Section 141 of the Negotiable Instruments Act, which is in *pari materia* to Section 10 of the Act of 1955, and while referring to its earlier decisions on the subject, observed as under at paragraphs 17 to 21:

"17..... Every person connected with the Company will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. A Director, who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time, will not be liable for an offence under Section 141 of the NI Act. In **National Small Industries Corporation** [National Small Industries Corporation Limited v. Harmeet Singh Paintal (2010) 3 SCC 330], this Court observed:

"13. Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company *without anything more as to the role of the Director*. But

the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

14. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfilment of the requirements under Section 141."

18. In **Girdhari Lal Gupta v. D.H. Mehta & Anr.** (1971) 3 SCC 189, this Court observed that a person "in charge of a business" means that the person should be in overall control of the day-to-day business of the Company.

19. A Director of a Company is liable to be convicted for an offence committed by the Company if he/she was in charge of and was responsible to the Company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the Director concerned [See: *State of Karnataka v. Pratap Chand & Ors.* (1981) 2 SCC 335].

20. In other words, the law laid down by this Court is that for making a Director of a Company liable for the offences committed by the Company under Section 141 of the NI Act, there must be

specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company.

21. In **Sabitha Ramamurthy v. R.B.S. Channabasavaradhya** (2006) 10 SCC 581, it was held by this Court that:

*"7.....it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused is vicariously liable. Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company."*

*(emphasis supplied)*

By verbatim reproducing the words of the Section without a clear statement of fact supported by proper evidence, so as to make the accused vicariously liable, is a ground for quashing proceedings initiated against such person under Section 141 of the NI Act."

9. In **State of NCT of Delhi through Prosecuting Officer, Insecticides, Government of NCT, Delhi v. Rajiv Khurana** reported in **(2010) 11 SCC 469**, the Hon'ble Supreme Court reiterated the position thus:

“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.”

10. Having taken note of the above decisions and in the light of the ratio laid down to the effect that mere reproduction of the words of the Section, without a clear statement of fact as to how and in what manner a Director of the company was responsible for the conduct of the business of the company, would not *ipso facto* make the Director vicariously liable, the Hon'ble Supreme Court, in **Lalankumar Singh** (supra), held that the subject complaint therein was totally lacking the requirement of Section 34 of the Act of 1940, since no specific averments were made against the appellants therein/Directors of the company.

11. Thus, from the above decisions, it is evident that for making a Director of a company liable for the offences committed by the company, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the company. A company may have a number of Directors and to array them as an accused in a complaint, making them vicariously liable for the offences merely on the basis of a statement to the effect that they are in charge of and responsible for the conduct of the business of the company, without attributing any specific role to them in the conduct of the business of the company, is not a sufficient or adequate fulfillment of the requirements under Section 10 of the Act of 1955.

12. Coming to the cases on hand, as seen from the complaints, except alleging that A1-Firm represented by A2 and its Directors - A3 to A6 contravened para 8(3) and para 14(1) of the Drugs (Prices Control) Order, 1995, nothing has been stated regarding the role of A3 to A6 as Directors in the conduct of the business of A1-Firm or its day-to-day activities, at the time the alleged contraventions took place. There is not even a whisper that A3 to A6 were in charge of and were responsible for the conduct of the business of A1-Firm at the relevant time. Thus, in the absence of specific averments indicating the duties and responsibilities of each of the petitioners in the conduct of business of the Firm, being its Directors, and how and in what manner they are responsible for the day-to-day activities of the Firm,

prosecuting them for the offences alleged, would amount to abuse of process of law. Reliance placed by the learned Assistant Public Prosecutor on the judgment of the Hon'ble Supreme Court in **Iridium India Telecom Limited** (supra), to contend that the petitioners, being Directors of the Firm, can be prosecuted for the offences alleged, does not assist him in any manner, for the reason that the same is distinguishable as in the said case, elaborate details were furnished in the complaint pertaining to allegations of cheating under Section 420 r/w Section 120-B I.P.C., with regard to the acts of the company and its representatives willfully concealing facts so as to deceive the complainant.

13. For reasons discussed above, proceedings in C.C.Nos.129 of 2014, 131 of 2014 and 132 of 2014 on the file of the learned Principal Junior Civil Judge, Bhimavaram, West Godavari District, are hereby quashed so far as accused Nos.3 to 6 therein/petitioners herein are concerned.

14. The criminal petitions are, accordingly, allowed. Pending interlocutory applications, if any, shall stand closed.

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**K. SURESH REDDY, J**

Dt: 08.12.2023  
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