SUNITA DHAWAN v. UOI, 2023 PLRonline 006, (2023-3)211 PLR 143 (SN)

2023 PLRonline 006

PUNJAB AND HARYANA HIGH COURT

Before:-Mr. Sandeep Moudgil, J.

SUNITA DHAWAN and Anr. – Petitioners

Versus

UOI – Respondents

CRM-M-15224 of 2023.

11.07.2023 .

Drugs and Cosmetics Act, 1940 Sections 32/16/17-A(f)/17- B(d)/18(a)(i)/ 18(a)(vi) and 18(c).

Drugs and Cosmetics Act, 1940 Section 34 – Vicariously liability – Basic material and averment required so far as Sub-section (1) of Section 34 of the Act is concerned is to prima facie show that the particular person/accused is in charge of and was responsible to the company for the conduct of its business – Through this clause though almost every person connected with the company may be arrayed as accused and be prosecuted, be it the Director, Manager, etc., in its wisdom the legislature has added the second clause to this section creating specific vicarious liability so far as Director, Manager, Secretary and other officers are concerned also and this provision starts with non obstante clause – Under Sub-section (2) of Section 34 of the said Act, apart from showing that the accused person is a Director, Manager, Secretary or other officer of the company, it must be shown or proved that the offence has been committed with his consent or connivance or is attributable to any neglect on the part of such Director, Manager, Secretary or other officer of the company – there are certain restrictions and preventive measures placed by the legislation itself for making them co-accused along with the company – Prima facie requirement is that the complainant to substantiate the basic requirements like the present accused is, to show he is in charge of, or responsible for the conduct of the business of the company, be it in any capacity and if he is the Director, Manager, Secretary or officer of the company it should be averred and shown that the offence took place with his consent or connivance or is also attributable to the neglect on the part of such person viz.Director.

Drugs and Cosmetics Act, 1940 Section 18(a)(i) – Plea that the order passed by the trial court is absolutely silent as to on which basis, the provisions of Section

18(a)(i) of the Drugs are made out against the petitioners – Trial court, at the very first instance, is not expected to carry out any investigation at its own level since such an issue is required to be ascertained during trial – The trial court is only required to see if prima facie offence, as alleged, is made out against the petitioners or not.

Facts; Petitioners are partners of the firm, while the owner is also their family member. The firm has admitted that no proper testing of raw material and finished product was undertaken. By any stretch of imagination, it is expected from the petitioners and its company to verify and test the contents of the hand sanitizer and ensure that the same is utilizable by the masses which are already facing the anathema of pandemic. Even otherwise, the petitioners have to face the music of its mis-action because ultimately, the product which was allegedly purchased by the petitioners and its company, has been found to be adulterated and sub-standard. Product was launched without proper testing only to earn huge profits during the time of crisis when people were scared due to onset of Covid-19 pandemic. The petitioners had thus played with the lives of the people for their personal gains. Due to seriousness of the matter, the punishment provided under various provisions of Drug and Cosmetic Act is also very high. Simply because the petitioners have been summoned in a complaint case is no ground to grant them benefit of anticipatory bail. The allegations against the petitioners are very serious. Moreover, main complaint is pending before the trial court. Trial court was justified in taking cognizance of the offence alleged against petitioners and rejecting the prayer for anticipatory bail of the petitioners. Petitioners does not deserve to be granted the concession of anticipatory bail, at this stage.

Counsel: *Mr. Keshav Pratap Singh, For the Petitioners. Ms. Gurmeet Kaur Gill, Sr.Panel Counsel, For UOI.*

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