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**(1993) 02 MP CK 0015**

**Madhya Pradesh High Court**

**Case No:** M.Cr.C. No. 2692/92

Vostok Laboratories

APPELLANT

Vs

The Controller, Food and Drug  
Administration

RESPONDENT

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**Date of Decision:** Feb. 26, 1993

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Drugs and Cosmetics Act, 1940 - Section 27(A), 27(D), 34(1), 34(10)

**Citation:** (1993) CriLJ 3693

**Hon'ble Judges:** A.R. Tiwari, J

**Bench:** Single Bench

**Advocate:** M. Dalal, for the Appellant; Desai, Dy. G.A., for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

A.R. Tiwari, J.

This petition is directed against the registration of the Criminal Case No. 4779/1989 in the Court of Chief Judicial Magistrate, Indore as regards some of the partners, arranged as accused Nos. 4 to 8 in the complaint, u/s 27A and 27D of the Drugs and Cosmetics Act, 1940.

2. Briefly stated, the facts of the case are that the petitioner-firm is engaged in the business of formulation of different varieties of Drugs under the License No. 25/158/73 issued by the Controller of Food & Drugs, Bhopal. It is thus a drug manufacturer. Oxyphenbutozone tablets IP is one of their products. The partner Jaikumar is said to be the person in charge of the activities and thus, responsible for all acts and omissions of the petitioner-firm. The sample of this drug manufactured by the petitioner-firm was drawn on 24-1-86 from M/s. Modi Medicals, Bhilwada (Rajasthan). The report dated 29-8-86 evidenced this as sub-standard. It was thus

opined as adulterated. After completion of investigation and certain formalities, the non-applicant through its Senior Drug Inspector, filed Private Complaint in the Court on 31-7-89 for prosecution of the petitioner firm and its alleged partners as accused Nos. 2 to 8 in the complaint. Non-applicant had obtained the copy of the partnership-deed as well and annexed it with the complaint. The complaint on the question of criminal liability appears to be vague in that in para 18 all that is alleged is that the firm and its partners have manufactured and sold the drug in question to M/ s. Bhardwaj Medicos, Jaipur which in turn sold it to M/s. Modi Medicals, Bhilwada and which on analysis found to be sub-standard and thus, adulterated. It is said that the accused persons failed to perform their duties and were negligent.

3. I have heard the parties and perused the documents like copies of complaint and partnership deed annexed with this petition.

4. It is urged that the criminal prosecution against the accused Nos. 4 to 8 is an abuse of the process of the Court and merits quashment to this extent in exercise of the powers conferred u/s 482 of the Cr. P.C. This submission rests on the undernoted linchpin --

a) The offence is alleged to be committed by the Firm. Under the law, persons i.e. partners, in charge of and responsible to the firm for the conduct of the business of the firm at the time of commission of the offence alone as well as the firm shall be deemed to be guilty and shall be liable to be proceeded against and punished accordingly. The accused No. 2 alone is the person in charge of and responsible to the petitioner-firm for the conduct of its business. Accused No. 3 is the person in whose presence the sample was drawn at Bheelwada. There is no specific allegation against accused Nos. 4 to 8 so as to justify or permit prosecution against them and as such, there is no material or foundation to hold these partners vicariously liable under the penal statute.

b) The drug in question is said to be manufactured and sold on 19-10-84. The partnership-deed, documented on 9-4-84, clearly showed that accused Nos. 4 to 8 (Smt. Manorama Devi W/o Santoshkumar, Smt. Manorama Devi w/o Satis Kumar, Smt. Padmabai w/o Tikamdas Barjatiya, Smt. Sushila Devi w/o Pramod Kumar and Shri Suryakant s/o Durga Prasad) voluntarily retired from the petitioner firm on 31-3-84. These persons thus, had no participation and were not in charge of or responsible to the firm in conduction of its business at the relevant time.

5. It is apt to reproduce Section 34(1) of 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 of 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."

The person concerned thus has a right to offer proof in rebuttal and to show his impecability. But this burden can come only when allegation in terms of Section 34(10) are made imprimis.

6. It is seen that the averments in the complaint in terms of Section 34(10) of the Drugs and Cosmetic Act, 1940 are conspicuously absent. The complaint thus does not tear up the tenebrosity in that no light is thrown as to why these accused persons have been lugged into prosecution which on the face of it at least to this extent is inutile and futile.

7. The proceeding is liable to be quashed where no offence is disclosed. The decision reported in [Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others](#), Municipal Corporation of Delhi v. Ramkishan Rohtagi is pertinent. It is held that vicarious liability is an incidence of an offence under the Act. It is only on the fulfilment of specified conditions that a partner may be liable. 1985 Cr LJ 618, Municipal Corporation v. Desraj throws enough light on this aspect.

8. In the case on hand, there is no statement that the accused Nos. 4 to 8 were incharge of and responsible to the firm for the conduct of its business at the relevant time. This is pre-condition and sinequa non for the tenability of the case of this nature.

9. In 1991 MPLJ 473, Prem Pharmaceuticals v. State of M. P., it is held that:--

"As pointed out in the decision in [J.P. Sharma Vs. Vinod Kumar Jain and Others](#), in determining whether proceedings should be ordered to be dropped in exercise of the powers u/s 482 of the Code, the question is not whether there is any truth in the allegations made but the test is whether the allegations as they stand without any addition or subtraction can be said to make out an offence. The decision in [L.V. Jadhav Vs. Shankarrao Abasaheb Pawar and Others](#), is also pertinent. The decision in [Steel Authority of India Ltd., Bhilai Steel Plant Vs. Aeltemesh Rein and Others](#), and the Full Bench decision in [Sher Singh Vs. State of M.P.](#), may also be usefully perused."

10. It may be observed that ends of justice, are higher than the ends of law. Prosecution, which involves time and torture, cannot be sustained when the allegation, taken at their face value without any plus or minus in that, do not constitute the acts or omissions punishable under the law. In such case, the prosecution against the persons such as Nos. 4 to 8 becomes liable to be anaesthetized at its infancy. In fact, here the challenge is on much stronger footing in the face of retirement of these persons from the date prior to the one alleged as

the date of commission of the offence.

11. To sum up, I find that the criminal proceedings against Nos. 4 to 8 are liable be dropped in exercise of inherent powers u/s 482 of the Cr. P.C.

12. In the result, this petition succeeds and is allowed. The Criminal Case (4779/ 89), pending before the Chief Judicial Magistrate, Indore, is thus, ordered to be quashed as regards accused Nos. 4 to 8, as particularised in the complaint and noted above. Consequently, it shall now proceed only against the remaining accused persons Nos. 1 to 3. Consequently, the accused persons Nos. 4 to 8 are discharged and their bailbonds, if any, are cancelled.