

(2003) 11 CAL CK 0037

Calcutta High Court

Case No: C.R.R. No. 868 of 1998

Glaxo India Ltd.

APPELLANT

Vs

State of West Bengal and
Another

RESPONDENT

Date of Decision: Nov. 25, 2003

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 120B, 420, 467, 468, 471

Citation: (2004) 2 CHN 215

Hon'ble Judges: G.C. De, J

Bench: Single Bench

Advocate: Joy Sengupta and R.K. Khanna, for the Appellant; Krishna Ghose, for the Respondent

Judgement

G.C. De, J.

Let the affidavit of service filed by the learned Counsel for the petitioner be kept with the record.

2. Heard both sides.

3. By this application a prayer has been made for quashing of the proceeding against the present petitioner M/s. Glaxo India Limited [formerly known as Glaxo Laboratories (India) Ltd.] in connection with G. R. Case No. 1620 of 1996 arising out of Jorasanko P. S. Case No. 350 dated 30.9.96 pending before the learned Additional Chief Metropolitan Magistrate, Calcutta.

4. The learned Counsel for the present petitioner has based his argument on the following two grounds :

(1) A criminal case, in which punishment is imprisonment as well as fine, cannot proceed against an artificial person like a company.

(2) The complaint itself does not *prima facie* make out a case against the present petitioner.

5. For the purpose of substantiating the first point, the learned Counsel for the petitioner placed reliance on a recent decision of the Apex Court in *Assistant Commissioner, Assessment II, Bangalore and Ors. v. Villiappa Textile Ltd. and Anr.*, reported in JT 2003 (Suppl 2) SC 99. In this case the majority view of the Apex Court is that a company cannot be prosecuted for an offence which requires mandatory term of imprisonment coupled with fine and leave no chance to Court to impose only fine.

6. Though the said case was in respect of offences committed under the Income Tax Act, 1961, but after analysing the law of different countries of the world and, the circumstances a view was taken that the company being an artificial person neither can be sentenced to death nor can be imprisoned for a term. It is pointed out by the learned Counsel for the petitioner that on the basis of the same principle the present case started against the artificial person under Sections 467/468/471/420/120B of I.P.C., in respect of which imposition of mandatory term of imprisonment is there, cannot proceed.

7. I fully agree with the submission of the learned Counsel of the petitioner on this point and take the view that the present petitioner cannot be prosecuted being an artificial person and accordingly, investigation started against it is liable to be quashed. Though the question of involvement of natural persons in the alleged offence was agitated, I do not like to comment on it inasmuch as it would be open for consideration by the Court taking cognizance.

8. As regards the second dimension of the argument, it is to be noted from the petition of complaint, that the *de facto* complainant has alleged some foul play at the hands of certain persons in respect of 200 equity sharps in Glaxo Laboratories (India) Ltd. So, the offence alleged in the complaint requires thorough investigation and as such, it is not correct to say that no *prima facie* case has been made out in the complaint as is rightly pointed out by Mrs. Krishna Ghose, learned Counsel for State. Accordingly the second dimension of the argument is not acceptable and it is not possible to quash the entire proceeding at this stage of investigation.

9. In view of the above discussion and the law on the point, I deem it proper to quash the entire proceeding against the present petitioner only. With this comment this application is disposed of.

10. All interim orders stand vacated.

11. Since the matter is long pending, the learned Magistrate is directed to take appropriate steps for early investigation of the case.

12. Let a copy of this order be sent down to the Court below forthwith.

13. Let urgent certified xerox copies of this order be made available to the learned Counsel of the respective parties.