
Glaxo India Ltd. Vs State of West Bengal and Another

C.R.R. No. 868 of 1998

Court: Calcutta High Court

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.