2022 INSC 1061

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1757 OF 2022
[Arising out of SLP (Crl.) No. 8882 of 2015]

LALANKUMAR SINGH & ORS. ...APPELLANT (S)

VERSUS

STATE OF MAHARASHTRA ...RESPONDENT(S)

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.

2. This appeal arises out of the judgment and order dated 25th June 2015 passed by the learned Single Judge of the High Court of Judicature of Bombay, at Aurangabad, in Criminal Writ Petition No.288 of 2015, thereby dismissing the said criminal writ petition filed by the appellants herein and upholding the order of issuance of process dated 30th March 2009 passed by the learned Chief Judicial

Magistrate, Beed (hereinafter referred to as "the learned CJM") and the order passed by the learned Sessions Judge, Beed dated 25th November 2014 dismissing the Criminal Revision being Criminal Revision Petition No.115 of 2013 filed by the appellants thereagainst.

3. The facts, in brief, giving rise to the present appeal are as under:

3.1 The Appellants are the Directors of M/s Cachet Pharmaceuticals Private Ltd. (hereinafter referred to as "CPPL"). CPPL was granted permission to manufacture 'Hemfer Syrup' which falls under Schedule C & C(1) to the Drugs & Cosmetics Rules, 1945 (hereinafter referred to as "the said Rules").

3.2 On 30th August 2006, Sh. N. A. Yadav, the then Drugs Inspector, Food and Drugs Administration, Beed, Maharashtra, visited the premises of M/s. Priya Agencies at Beed and purchased 'Hemfer Syrup', from which he had drawn samples of the drug. On 31st August 2006, he sent one such sample to the Government Analyst, Maharashtra

State Drug Control Laboratory Mumbai so as to have the drug tested. On 26th February 2007, he received a test report dated 13th February 2007 from the Government Analyst stating that the sample was not of standard quality as the content of *Cyanocobalamin* was less than the permissible limit, i.e., 39% of the label amount. On the same day, the manufacturer of the drug, i.e., CPPL, was informed by a registered post about the test report.

3.3 On 29th March 2007, Sh. Vijay Jain, Deputy Manager, QA of CPPL requested the Drug Inspector to send the samples again for analysis. Pursuant to an application filed by M/s Alkem Laboratories, the distributor of CPPL, the learned CJM, Beed sent the samples of 'Hemfer Syrup' for re-analysis on 24th April 2007. On 10th July 2007, the Learned CJM, Beed received the test report from the Central Drug Laboratory, Calcutta stating therein that the sample was not of standard quality as it did not conform to the accepted limits of *Cyanocobalamin* content.

3.4 Vide letter dated 21st August 2008, the Drug Inspector called upon CPPL to furnish the particulars of Directors, Articles of Association, Memorandum of Association, copies of License to manufacture and sell drugs, particulars of technical persons, and all such information as was needed to be provided under the Drugs & Cosmetics Act, 1940 (hereinafter referred to as "the said Act"). In reply to this letter, CPPL informed the Drug Inspector that the report dated 10th July 2007 was signed by "In-Charge Director" and not the Director of Central Drugs Laboratory and thus requested him to send a proper report signed by the Director of the Central Drugs Laboratory.

3.5 Vide letter dated 12th January 2009, the Drug Inspector again called upon CPPL to furnish particulars that were previously sought. Vide letter dated 12th February 2009, CPPL provided the information and documents requested by the Drug Inspector and it was categorically stated therein that the 'Hemfer Syrup' was manufactured under the supervision and technical guidance of Sh. Ashok

Kumar, the FDA approved manufacturing chemist for liquid orals.

3.6 Mr. Ashok Kumar (Accused No. 9) wrote an individual letter dated 13th February 2009 to the Drug Inspector stating therein that the said batch of 'Hemfer Syrup' was manufactured under his supervision and that the drug complied with the requisite standards. Similarly, Mr. Naresh Roy (Accused No. 10) also wrote a letter dated 13th February 2009 to the Drug Inspector stating therein that the said batch of the 'Hemfer Syrup' was tested under his supervision and from the test results it appeared that the drug complied with the requisite standards.

3.7 Pursuant to the orders to take legal action against the manufacturer of the drug by the Joint Commissioner (H.Q.) and Controlling Authority, Food & Drug Administration, Mumbai, the Complaint bearing RCC No. 233 of 2009 came to be filed before the Ld. Chief Judicial Magistrate, Beed under Section 18(a)(i) read with Sections 16 and 34 of the said Act and punishable under Section 27(d) of the said Act. In the said complaint, the present Appellants being

Directors of the Company were arrayed as Accused Nos. 5 to 8.

3.8 The learned CJM, Beed issued Summons to all the accused, including the Appellants herein vide Order dated 30th March 2009. The Appellants filed a Criminal Revision Petition against the summoning order before the learned Sessions Judge, Beed on the ground that there are no specific averments in terms of Section 34 of the said Act as to the role played by the Directors and thus sought for the Summoning Order to be quashed. However, the learned Sessions Judge, Beed rejected the said Criminal Revision Petition noting that there is a specific averment in the complaint that the appellants are concerned with the manufacture, distribution and sale of 'Hemfer Drug'.

3.9 The Appellants preferred a Criminal Writ Petition before the Bombay High Court assailing the order passed by the learned Sessions Judge. The High Court, vide the impugned judgment, dismissed the said Criminal Writ Petition on the ground that all the Directors were

conducting the business of CPPL and thus, they were involved in the manufacturing process.

3.10 Hence, the present appeal.

4. We have heard Shri C.U. Singh and Shri Anupam Lal Das, learned Senior Counsels appearing on behalf of the appellants and Shri Siddharath Dharmadhikari, learned counsel appearing on behalf of the respondent-State of Maharashtra.

5. Shri C.U. Singh and Shri Anupam Lal Das, learned Senior Counsels submit that Section 34 of the said Act specifically provides that only such person who, at the time of the commission of the offence, 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.

6. Shri C.U. Singh, learned Senior Counsel, further submits that Rule 76 of the said Rules prescribes a Form of licence to manufacture drugs specified in Schedule C and

C(1), excluding those specified in Part XB and Schedule X, or drugs specified in Schedule C, C(1) and X and the conditions for the grant of such licence. He further submits that, before a license in Form 28 or Form 28B is granted, certain conditions are required to be complied with by the applicant. He submits that under sub-rule (1) of Rule 76 of the said Rules, the manufacture is required to be conducted under the active direction and personal supervision of competent technical staff consisting at least of one person who is a whole-time employee and who possesses the requisite qualification as prescribed under the said Rules. He further submits that under sub-rule (4) of Rule 76 of the said Rules, an applicant is required to provide and maintain adequate staff, premises and laboratory equipment for carrying out such tests of the strength, quality and purity of the substances as may be required to be carried out by him under the provisions of Part X of the said Rules. He further states that under sub-rule (4A) of Rule 76 of the said Rules, the head of the testing unit is required to possess a degree in Medicine or Science or Pharmacy or Pharmaceutical

Chemistry of a University recognised for the said purpose. He is also required to have experience in the testing of drugs, which in the opinion of the licensing authority is considered adequate. He submits that Form 28 is a license to manufacture for sale or distribution of drugs in accordance with Rule 76 of the said Rules. Learned Senior Counsel submits that in Form 28, the names of the approved competent technical staff are required to be given. He further submits that condition No.3 of the Conditions of Licence requires that if there is any change in the competent technical staff, the same shall be forthwith reported to the licensing authority.

7. Learned Senior Counsel submits that Schedule M to the said Rules provides for good manufacturing practice and requirements of premises, plant and equipment for pharmaceutical products. Learned Senior Counsel submits that clause 6.1 of Part I of Schedule M specifically provides that the manufacture shall be conducted under the direct supervision of competent technical staff with prescribed qualifications and practical experience in the relevant

dosage form and/or active pharmaceutical products. It is further the submission of the learned Senior Counsel that as per clause 6.2 thereof, the head of the Quality Control Laboratory is required to be independent of the manufacturing unit. It also requires that the testing shall be conducted under the direct supervision of competent technical staff, who shall be whole time employees of the licensee.

8. Shri Singh further submits that in the licence which is duly signed by the designated licensing authority, the names of the approved competent technical staff are already given. It is further submitted that in the reply dated 13th February 2009 to the Drug Inspector, Food & Drug Administration, M.S. Beed, Mr. Naresh Roy, Assistant Manager Q.A. (Accused No.10) had stated that the raw material was analysed in the Quality Control Department by Mr. Aftab, Chemist under his supervision. It is further informed that the finished product of the said batch of the drug was analysed by Mr. M.K. Sharma under his supervision. Mr. Naresh Roy (Accused No.10) further

informed that he was approved by the Rajasthan FDA as a competent person.

9. Learned Senior Counsel submits that similarly, Mr. Ashok Kumar, Assistant Manager, Production (Accused No.9) had also informed the Drug Inspector by communication dated 13th February 2009 that he was approved by the Rajasthan FDA. The goods were released after the final approval from Quality Control. He further states that the manufacturing record of the said batch was prepared by him and it bears his signature.

10. Shri Singh further submits that merely mentioning that the present appellants, being the Directors of the accused company, were responsible to the company for the conduct of the business of the company would not be sufficient to initiate proceedings against them. It is submitted that, unless and until there is a specific averment as to what was the role in the conduct of the business of the company, a person cannot be proceeded against solely on the ground that he was a director of the company. He relies

on various judgments of this Court in support of this proposition.

11. Shri C.U. Singh further submits that there is no formal order of issuance of the process passed by the learned CJM. It is submitted that, while issuing process, a duty is cast upon the Magistrate to arrive at a subjective satisfaction that there is sufficient ground to proceed. He submits that there is no such order which would reflect the application of mind by the learned CJM and on this ground also, the impugned order is liable to be set aside.

12. Shri Siddharath Dharmadhikari, learned counsel, on the contrary, submits that perusal of the complaint, and specifically paragraphs 3 and 25 thereof would reveal that there is sufficient compliance of requirement of Section 34 of the said Act. He submits that the complaint has to be read as a whole and cannot be read in a piecemeal manner. Learned counsel relies on the judgment of this Court in the case of ***U.P. Pollution Control Board vs. Mohan Meakins Ltd. and others***[1] in support of the proposition that there is

1 (2000) 3 SCC 745

no legal requirement for the trial Court to pass a detailed order while issuing process. He also relies on the judgment of this Court in the case of ***Dinesh B. Patel and others vs. State of Gujarat and another***[2] to buttress his submission that the averments made in the complaint are sufficient to proceed against the present appellants.

13. In the case of ***State of Haryana vs. Brij Lal Mittal and others***[3], this Court observed thus:

> "**8.** Nonetheless, we find that the impugned judgment of the High Court has got to be upheld for an altogether different reason. Admittedly, the three respondents were being prosecuted as directors of the manufacturers with the aid of Section 34(1) of the Act which reads as under:
>
> "34. *Offences by companies*.—(1) Where an offence under this Act has been committed by a company, every person who at the time 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

2 (2010) 11 SCC 125
3 (1998) 5 SCC 343

> 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."
>
> It is thus seen that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises if at the material time he was in charge of and was also responsible to the company for the conduct of its business. Simply because a person is a director of the company it does not necessarily mean that he fulfils both the above requirements so as to make him liable. Conversely, without being a director a person can be in charge of and responsible to the company for the conduct of its business. From the complaint in question we, however, find that except a bald statement that the respondents were directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were in charge of the company and also responsible to the company for the conduct of its business."

14. It could thus be seen that this Court had held that simply because a person is a director of the company, it does not necessarily mean that he fulfils the twin requirements of Section 34(1) of the said Act so as to make him liable. It has been held that a person cannot be made liable unless, at the material time, he was in-charge of and

was also responsible to the company for the conduct of its business.

15. In the case of ***S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and another***[4], this Court was considering the question as to whether it was sufficient to make the person liable for being a director of a company under Section 141 of the Negotiable Instruments Act, 1881. This Court considered the definition of the word "director" as defined in Section 2(13) of the Companies Act, 1956. This Court observed thus:

> "**8.** ……. There is nothing which suggests that simply by being a director in a company, one is supposed to discharge particular functions on behalf of a company. It happens that a person may be a director in a company but he may not know anything about the day-to-day functioning of the company. As a director he may be attending meetings of the Board of Directors of the company where usually they decide policy matters and guide the course of business of a company. It may be that a Board of Directors may appoint sub-committees consisting of one or two directors out of the Board of the company who may be made responsible for the day-to-day functions of the company. These are

4 (2005) 8 SCC 89

> matters which form part of resolutions of the Board of Directors of a company. Nothing is oral. What emerges from this is that the role of a director in a company is a question of fact depending on the peculiar facts in each case. There is no universal rule that a director of a company is in charge of its everyday affairs. We have discussed about the position of a director in a company in order to illustrate the point that there is no magic as such in a particular word, be it director, manager or secretary. It all depends upon the respective roles assigned to the officers in a company. ....."

16. It was held that merely because a person is a director of a company, it is not necessary that he is aware about the day-to-day functioning of the company. This Court held that there is no universal rule that a director of a company is in charge of its everyday affairs. It was, therefore, necessary, to aver as to how the director of the company was in charge of day-to-day affairs of the company or responsible to the affairs of the company. This Court, however, clarified that the position of a managing director or a joint managing director in a company may be different. This Court further held that these persons, as the designation of their office

suggests, are in charge of a company and are responsible for the conduct of the business of the company. To escape liability, they will have to prove that when the offence was committed, they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence.

17. In the case of ***Pooja Ravinder Devidasani vs. State of Maharashtra and another***[5] this Court observed thus:

> "**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 Corpn.* [*National Small Industries Corpn. Ltd.* v. *Harmeet Singh Paintal*, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] this Court observed: (SCC p. 336, paras 13-14)

5 (2014) 16 SCC 1

"*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."

(emphasis in original)

18. In *Girdhari Lal Gupta* v. *D.H. Mehta* [*Girdhari Lal Gupta* v. *D.H. Mehta*, (1971) 3 SCC 189 : 1971 SCC (Cri) 279 : AIR 1971 SC 2162] , 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* [*State of Karnataka* v. *Pratap Chand*, (1981) 2 SCC 335 : 1981 SCC (Cri) 453]).

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* [*Sabitha Ramamurthy* v. *R.B.S. Channabasavaradhya*, (2006) 10 SCC 581 : (2007) 1 SCC (Cri) 621] , it was held by this Court that: (SCC pp. 584-85, para 7)

> "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."

18. It could thus clearly be seen that this Court has held that merely reproducing 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.

19. A similar view has previously been taken by this Court in the case of ***K.K. Ahuja vs. V.K. Vora and another***[6]***.***

20. In the case of ***State of NCT of Delhi through Prosecuting Officer, Insecticides, Government of NCT, Delhi vs. Rajiv Khurana***[7]***,*** this 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."

6 (2009) 10 SCC 48
7 (2010) 11 SCC 469

21. Recently, in the case of ***Ashoke Mal Bafna vs. Upper India Steel Manufacturing and Engineering Company Limited***[8]**,** this Court observed thus:

> "**9.** To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of a defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the Company and in charge of and responsible for the conduct of the business *at the time of commission of an offence* will be liable for criminal action. (See *Pooja Ravinder Devidasani* v. *State of Maharashtra* [*Pooja Ravinder Devidasani* v. *State of Maharashtra*, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378 : AIR 2015 SC 675] .)
>
> **10.** 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 Act, there must be specific averments against the Director showing as to how and in what manner

8 (2018) 14 SCC 202

the Director was responsible for the conduct of the business of the Company."

22. In the light of these observations, let us examine the averments made in the complaint insofar as the present appellants are concerned:

"3. That, Accused no. 5 to 8 are the Directors of the M/s Cachet Pharmaceuticals Pvt. Ltd. village Thana Baddi, Tehsil Nalagarh dist. Solan (H.P.) Pin code 173205 head office 415, Shahanahar, Worli, Mumbai - 400018, and looking after day to day activities of the company.

That, Accused no. 4 is the Pvt. Ltd. Company and is doing the business of manufacturing, buying, selling, importing and exporting of and/or dealers in Pharmaceuticals, Cosmetics, Beauty aids, Oils, Chemicals, Food products and provisions, Veterinary and Surgical Equipments, Medicinal preparations including Spirit.

That, Accused no. 4 has mfg. unit at no. (1) Village Thana Baddi, Tehsil Nalagarh Dist. Solan (H.P.) Pin code 173205 and no. (2) at C-582, Ricco Ind. Area Bhiwadi, Dist. Alwar, Rajasthan.

That, Accused no.4 are holding drug mgf. License No. MNB/05/267 in form 25 and licence no. MB/05/268 in form 28 granted on 17.3.2006 valid upto 16.3.2011.

*** *** ***

> 25. That, on 12.2.2009, the complainant visited and inspected the premises of M/s Cachet Pharmaceuticals Pvt. Ltd. village Thana Baddi, Tehsil Nalagarh Dist. Solan (H.P.) Pin code 173205 that is accused no.4. At the time of inspection, Shri Ajay Prakash Gupta Vice President Technical, accused no. 9 and 10 were present. During enquiry, it was revealed that Accused no. 4 to 10 manufactured "Hemfer syrup Mfg. Lic. No. MB/05/268/B. No. HMS/6015 CMfg. Date May-2006 which has been declared to be NOT OF STANDARD QUALITY at the premises of M/s Cachet Pharmaceuticals Pvt. Ltd. village Thana Baddi, Tehsil Nalagarh Dist. Solan (H.P.) Pin code 173205 that is accused no.4 under licence No. MB/05/268 and sold the above said drugs to M/s Priya Agencies Behind Dr. Vaidya Hospital Jalna Road, Beed, Dist. Beed through M/s Alkem Laboratories Ltd. situated at reality warehousing Pvt. Ltd., Gut No.2323/1 property no. 115, Pune Nagar road, At. Post Wagholi, Tai. Haveli, Dist. Pune - 412207."

23. It can thus be seen that there are no specific averments insofar as the present appellants are concerned. It is further to be noted that the present appellants are

neither the managing director nor the whole-time directors of the accused company.

24. It is further to be noted that, in accordance with the provisions of Rule 76 of the said Rules read with Form 28, the Accused Nos. 9 and 10 have specifically been approved by the licensing authority in Form 28. Accused No.9 was approved as a person under whose active direction and personal supervision the manufacture would be conducted as required under sub-rule (1) of Rule 76 of the said Rules. Similarly, Accused No.10, who was approved as a head of the testing unit, was to be in-charge for carrying out the test of the strength, quality and purity of the substances as may be required under the provisions of Part X of the said Rules. We are therefore of the considered view that the complaint is totally lacking the requirement of Section 34 of the said Act.

25. The impugned orders are liable to be quashed and set aside on another ground also.

26. Perusal of the order passed by the learned Single Judge of the High Court would itself reveal that the learned CJM has not even cared to pass a formal order of issuance of process. It will be relevant to refer to the following part of the judgment and order of the learned Single Judge of the High Court:

> "....Though, it is true that on the certified copy produced by the petitioners there is no such formal order but copy of Roznama (daily notings of the proceeding) shows that such order was made on 30-3-2009. The Roznama dated 30-3-2009 reads as follows :
>
> (i) Complaint filed by Vilas Vishwanath Dusane.
>
> (ii) Copy of list of documents containing 44 document.
>
> Order was made on Exhibit 1 (of issue process). Take entry in register of criminal cases and issue summons against accused. List the matter for appearance of accused on 18-6-2009.
>
> This record is sufficient to infer that the order of issue process was made and after that summons were issued against accused to ask them to appear in the Court."

27. It could thus clearly be seen that the learned Single Judge of the High Court held that though there was no formal order of issuance of process, the record was sufficient to infer that the order of issue process was made.

28. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a *prima facie* case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of ***Sunil Bharti Mittal vs. Central Bureau of Investigation***[9]**,** which reads thus:

> "**51.** On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate

9 (2015) 4 SCC 609

taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons.

> A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

29. A similar view has been taken by this Court in the case of ***Ashoke Mal Bafna (supra)***.

30. In the present case, leaving aside there being no reasons in support of the order of the issuance of process, as a matter of fact, it is clear from the order of the learned Single Judge of the High Court, that there was no such order passed at all. The learned Single Judge of the High Court, based on the record, has presumed that there was an order of issuance of process. We find that such an approach is unsustainable in law. The appeal therefore deserves to be allowed.

31. In the result, the appeal is allowed. The impugned order of issuance of process dated 30th March 2009 passed by the learned Chief Judicial Magistrate, Beed and the order passed by the learned Sessions Judge, Beed dated 25th November 2014 dismissing the Criminal Revision being Criminal Revision Petition No.115 of 2013 are quashed and

set aside. The complaint against the present appellants is dismissed. Needless to state that the complaint shall proceed against rest of the accused in accordance with law.

.....J.

[B.R. GAVAI]

.....J.

[C.T. RAVIKUMAR]

NEW DELHI;

OCTOBER 11, 2022