

**Sessions Case No.25 of 2019**  
**CNR – WBCS01-00458-2019.**

**State – vs. M/s. MS. Life Drug House Pvt. Ltd and two others.**

Order no. 27

Dated 2<sup>nd</sup> March, 2022.

Today is fixed for hearing petition under section 227 of the Criminal Procedure Code praying for discharge of the accused from this case, contention of the petitioners, the company and its directors are that the accused persons were not at all involved in the offence alleged, nothing has been seized or recovered from the possession of the accused persons which is the prime consideration of the offence so alleged. According to the petitioners, they are completely innocent as they have never failed to maintain required and prescribed records and documents and the allegations made in the complaint, particularly in paragraphs 6 to 12 cannot relegate the petitioners to invite any penal mischief under sections 28A and 28B of the Drugs and Cosmetics Act, 1940 and the documents so relied by the prosecution at most shows that petitioner no.1 purchased those drugs from Wockhardt Ltd who is the manufacturer of the drug Spasmo Proxivon which was prohibited by the Central Government by notification dated 23.05.2013 wherein sale is debarred but not the purchase. Petitioner further contended that they are bonafide purchaser in compliance to the provisions of the Drugs and Cosmetics Act and did not contravene the provisions of the said Act. The petitioner contended further that no prima facie materials against them is available which justifies the framing of charge against the petitioner and prayed for discharge. During the course of hearing, learned Counsel for the petitioner submitted that since there is no ingredient of the offence against this accused persons/petitioner, they may be discharged from the case. He submitted that the prosecution proceeded against the accused on the basis of presumption which can never be the basis of charge. He referred the decisions reported in:

- (a) 1984 Cri.L.J 931 Cal [ Dr. Sanat Kumar Basu vs State of West Bengal]
- (b) 2006 Cri.L.J 4418 AP

Raising objection against the petition, learned Public Prosecutor submitted that learned C.M.M took cognizance on 19.05.2014 and subsequently the record was transferred to this Court by learned Chief Judge for trial on the offence under sections 28A and 328B of the Drugs and Cosmetics Act. He submitted that during inquiry, 9 tax invoices and 9 bills were found have been issued in favour of the accused persons by Wockhardt Limited, the manufactured of the said drug being prohibited and admitted that no such drugs were recovered from the possession of the accused persons. He submitted that in the attaining circumstance, prima facie materials are available against the accused for the offence under section 28A of the Drugs and Cosmetics Act.

This is a case under sections 28A and 28B of Drugs and Cosmetics Act.1940 (hereinafter referred as 'the Act') for the contravention of provisions of sections 18B and 26A of the said Act received under commitment from learned 6<sup>th</sup> Metropolitan Magistrate, Calcutta in C/17521 of 2014 which was initially registered as Complaint Case filed by the Inspector of Drugs, Directorate of Drugs Control for contravention of the provisions of the Act mentioned herein above. After appearance before this Court, record was fixed for evidence of the

prosecution witnesses and subsequently vide order dated 11.02.2021, this record was fixed for framing of charge when the accused filed instant petition.

S.227. Discharge. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

According to the complaint, there is material against the accused persons for the offence under sections 28A and 28B of the Act. Section 28A of the Act states about penalty for non-keeping of documents etc., and non-disclosure of information without reasonable cause, excuse and explanation being shown by the accused persons contravening provision of section 18B of the Act.

Section 18B prescribes that every person holding license under section 18 (c) shall keep and maintain prescribed records, registers, documents etc., and shall furnish those documents to authorised officer and or provide information so sought by him.

Complaint speaks that having information from whole selling firm, Wockhardt Limited that drug 'spasmoproxyvon' had been sold to M/s Life Drug House Pvt. Ltd of BRB Avenue (petitioner no.1) by various invoices dated 31.05.2013 and accordingly officers of the directorate visited the shop of the petitioners but found no such stock of the prohibited drugs. The officers then asked accused/petitioner to produce sell record in respect to the said drug at their office but by letter dated 16.12.2013, informed their inability and this resulted further inspection by the official of the directorate and accountant of the petitioner company submitted declaration to produce the sale records but could not produce the same though they produce purchase copies in original on 16.04.2014. it further revealed on inquiry that they made payment to whole-seller for purchase of said drug and the copies of the referring documents were annexed to the complaint.

At the stage of the hearing for discharge, the duty of the Court is to ascertain whether there is prima facie case against the accused or not. It is settled principle of law that at the stage of hearing petition under section 227 Cr.P.C or for framing of charge, Court has to consider whether the prima facie materials in record or not and there is no scope to hold a mini trial and decide before trial whether the prosecution case is fit for conviction or not.

In ***L. Krishna Reddy v. State, (2014) 14 SCC 401***, Hon'ble Supreme Court held:

*"Our attention has been drawn to Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia [(1989) 1 SCC 715 : 1989 SCC (Cri) 285] as well as K. Narayana Rao [CBI v. K. Narayana Rao, (2012) 9 SCC 512 : (2012) 4 SCC (Civ) 737 : (2012) 3 SCC (Cri) 1183] but we are unable to appreciate any manner in which they would persuade a court to continue the prosecution of the parents of the deceased. After considering Union of India v. Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609], this Court has expounded the law in these words : (Stree Atyachar Virodhi Parishad case [(1989) 1 SCC 715 : 1989 SCC (Cri) 285], SCC p. 721, para 14)*

*"14. ... In fact, Section 227, itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that 'the Judge shall discharge when he*

*considers that there is no sufficient ground for proceeding against the accused'. The 'ground' in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into."*

From the materials available in the record, this Court finds that there is sufficient materials against the accused to proceed for trial against them. The decisions so referred are all related to the proceedings not at the stage of hearing petition for discharge and the circumstances in which such views were expressed are completely different and are not therefore applicable in this case.

Considering materials on record, this Court finds that there is prima facie materials against the accused to proceed for trial against them. Therefore, the petition under section 227 of the Criminal Procedure Code filed by the petitioners is rejected on contest.

Fixing 12.04.2022 for framing of Charge.

D/ C by me.

Addl. Dist. & Sessions Judge,  
1st Fast Track Court ,  
Calcutta.

Addl. Dist. & Sessions Judge,  
1<sup>st</sup> Fast Track Court ,  
Calcutta.