
Directors' Liability For Offence Under Drugs and Cosmetics Act – Overview of Case Law

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Agenda

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- Discussion on special features of the Act
 - Analyzing ingredients of Section 34
 - Discussion on Supreme Court and High Court judgments - understanding how case law is developed
 - Precautions to be taken by the Drugs Inspector during investigation and while filing complaint in the Court.

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Unique Features of the Act

- Concept of absolute liability
- Concept of vicarious liability
- Section 19
- Section 34

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Analyzing Section 34

Section 34(1) - Offences by Company

Persons / entities liable to be proceeded and punished

- 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
- Company

Explanation- Company means body corporate and includes firm or other association of individuals

Director in relation to firm means a partner

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Analyzing Section 34

Section 34(1) - Offences by Company Proviso to Section 34(1)

- Person referred in Section 34(1) not liable to any punishment provided in 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.

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Analyzing Section 34

Section 34(2) - Liability of a person not in-charge or responsible for conduct of business

Director, manager, secretary or other officer of the company is also liable if:

- It is proved that the offence has been committed with the consent or connivance of such person, or
- Is attributable to any neglect on the part of such person

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Supreme Court on Section 34

State of Karnataka, Appellant V. Pratap Chand and others, Respondents, Supreme Court, 1981 CRI.L.J. 595: AIR 1981 SC872

Liability of partner, Director - Factor for consideration

- **Facts - Respondent no.2 acquitted by CJM on the ground that he was not in-charge of business of firm.**

State of Karnataka's appeal in High Court summarily dismissed.

State of Karnataka preferred an appeal against this order.

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Supreme Court on Section 34

State of Karnataka, Appellant V. Pratap Chand and others, Respondents, Supreme Court, 1981 CRI.L.J. 595: AIR 1981 SC872

- **Reliance placed on Supreme Court decision in G.L. Gupta Vs. D.N. Mehta [1971] 3 SCR 748, AIR 1971 SC 28 in Foreign Exchange Regulation Act, 1947 - Section 23**

Held - When the partner is not in overall control of day to day business of the firm, he is not liable to be convicted merely because he has the right to participate in the business of the firm.

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Madras High Court on Section 34

D.K. Javer and others, Petitioners V. The State, Respondent, Madras High Court, 1985 CRI.L.J. 1372

- Reliance placed on Supreme Court decision in Municipal Corporation of Delhi Vs. Purushottam Das, 1983 Cri. L.J. 172-Section 17(1) PFA
- Allegations against petitioners are vague
- Petitioners impleaded only because they are Directors- No averment in complaint

Held - The prosecution under Drugs Act against a Director is not sustainable merely because he is a Director of the company.

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MP High Court on Section 34

M/s. Prem Pharmaceuticals and others, Petitioners V. State of M.P., Respondent, M.P. High Court [Indore Bench], 1989 CRI. L.J. 2028]

- Reliance placed on Supreme Court decision in Ramkishan Rohotgi's Case [1983] Cri. L.J. 159(SC) - Vicarious liability is an incidence of an offence
- Reliance placed on Delhi High Court decision in Municipal Corporation of Delhi 1985 Cri. L.J. 618(Delhi) - It is only on the fulfilment of specified conditions that a partner may be held liable.

Held - The proof that any of the partners was in charge of and responsible for the conduct of its business is a pre-condition for fastening vicarious liability on the partners.

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Madras High Court on Proviso to Section 34

M.N.A. Arumugha Perumal and others, Petitioners V. State, Respondent, Madras High Court, 1986(II) FAC2.

- Petitioners relied on Supreme Court decision in State of Karnataka Vs. Pratap Chand and Others AIR 1981(SC) 872
- Respondents contended that accused should prove that offence was committed without their knowledge or they had exercised due diligence. The proceedings cannot be quashed at this stage.

Held - The burden of proving that the offence was committed without their knowledge and they had exercised all due care and diligence shifts on the accused only when it is shown by the prosecution that the accused were in overall control of the business of the company.

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Rajasthan High Court on Section 34

M/s. Mehta and Company, Jaipur and others, Petitioners V. State of Rajasthan, Respondent, Rajasthan High Court, 1989 CRI.L.J. 2165.

- Process issued by Trial Court challenged before the High Court by way of revision petition.
- Petitioners relied on Supreme Court decision in State of Karnataka Vs. Pratap Chand AIR 1981 (SC) 872.

Held - The partners not in charge of the business of the firm or conducting its affairs when the offence was committed - Issue of process is bad in law.

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Supreme Court on Section 34

State of Haryana, Appellant V. Brij Lal Mittal and others, Respondents, Supreme Court, 1998 Drugs Cases, 11.

- Vicarious liability of a person arises only if at the material time he was in-charge of and also responsible to the company for conduct of business.
- Simply because a person is a Director does not necessarily mean that he fulfils both the above requirements so as to make him liable.
- Conversely, without being a Director person can be incharge and responsible for conduct of business.

Held - Vicarious liability is an incidence of the offence under the Act. In the absence of allegation to indicate, even prima facie that director is responsible for conduct of business, presumption to vicarious liability cannot be drawn.

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Supreme Court on Section 34

Dinesh B. Patel and others V/s. State of Gujarat and 2010(2) Drug Cases (DC) 231 Supreme Court.

Judgment of Supreme Court in Brijlal Mittal case referred above distinguished and not relied

- Petition under Section 482 of CRPC filed by the company and its Directors was dismissed by the Gujarat High Court taking a view that the directors are responsible for the affairs of the company and therefore when a drug manufactured by the company was found to be defective, all the Directors would be prosecuted.
- The High Court, however, left it to the concerned parties to prove before Trial Court that they were not in any way responsible for the manufacture process

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Supreme Court on Section 34

Dinesh B. Patel and others V/s. State of Gujarat and 2010(2) Drug Cases (DC) 231 Supreme Court.

Judgment of Supreme Court in Brijlal Mittal case referred above distinguished and not relied

- Dinesh Patel and others filed an appeal in Supreme Court against the order of the High Court.
- Petitioners relied on the Supreme Court judgment in the State of Haryana V/s. Brijlal Mittal and others
- Appeal dismissed by the Supreme Court

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Supreme Court on Section 34

Dinesh B. Patel and others V/s. State of Gujarat and 2010(2) Drug Cases (DC) 231 Supreme Court.

Supreme Court's observations while dismissing appeal

- The factual position in both the matters is quite different which is apparent from the facts
- In Brijlal Case there were no averments and there was only bald statement that the respondents were Directors
- In Dinesh Patel case respondents were not arrayed only because they were Directors but in the complaint statement has been made about the role of Directors and thus there was allegation that Directors were privy to the manufacturing of medicines by the company.

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Supreme Court on Section 34

Dinesh B. Patel and others V/s. State of Gujarat and 2010(2) Drug Cases (DC) 231 Supreme Court.

Supreme Court's observations while dismissing appeal

- The Supreme Court also did not accept the contention of the appellant that as per the settled law by this Court in complaint under Section 138 of the Negotiable Instrument Act against the company and the Directors also specific averment about the active role of the Directors in running the company has to be made, failing which the Directors cannot be proceeded against.
- The Supreme Court observed that the language of Section 34(2) of the Act substantially differs from the language of Section 141 of Negotiable Instrument Act and therefore same logic do not apply in the present case.

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Karnataka High Court on Section 34

G. Ramesh Reddy and others, Petitioners V. State by Drugs Inspector, Respondent, 2015(2) Drugs Cases (DC) 206.

- The order of the Trial Court taking cognizance challenged before High Court.
- There is no averment to show that two Directors were in-charge and were responsible for conduct of business.

Held - In the absence of any averment in the complaint as required by Section 34(1) of the Act, the prosecution cannot be sustained.

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Bombay High Court on Section 34

Dr. Krishna Gopal Agrawal V. State of Maharashtra, Bombay High Court, 2011(1) Drug Cases (DC) 449.

- The documents on record clearly indicate that from 01.03.1991 onwards, the present applicant ceased to be the Director of the company.
- Therefore, he cannot be prosecuted taking recourse to the provisions of Section 34.

Held - The accused who was not director of the company at the material time cannot be held responsible for the offence omitted by the company, if any, by virtue of provisions of Section 34 of the Act.

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Bombay High Court [Goa] on Section 34

State of Goa, Appellant V. M/s. Shivani Laboratories and others, Respondent, Bombay High Court at Goa, 2015(1) Drugs Cases (DC) 19.

- There was no averment in the complaint that the accused no. 5 was responsible for carrying out business of the accused no. 1.
- The question of establishing the extent of liability of the accused no. 5 subsequently by evidence does not arise.

Held - It is mandatory to make averment in the complaint that accused is in-charge of and responsible for the conduct of business.

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Bombay High Court on Section 34

Lalan Kumar Singh and others, Petitioners, V. State of Maharashtra, Respondent, Bombay High Court, 2015(2), Drugs Cases (DC) 52

- No force in submission of the learned Senior Council that there are no specific allegations against the petitioners.
- The allegations made in the complaint and the record which is mentioned in the complaint need to be considered by the Criminal Court.

Held - Offences by the company, liability of the Directors when material record clearly show that all directors were conducting business of the company.

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Supreme Court on Section 34

Drugs Inspector Bangalore V. Dr. B.K. Krishnaiah and another, Respondents, Supreme Court, O. Chinnappa Reddy and Bahural Islam, JJ., 1981 CRI.L.J. 627

- Trial Court rejected the contentions of the petitioners that the criminal case no longer survived as the only person who was managing the firm had expired as the partnership deal shows that all partners are responsible.
- The High Court in an appeal held that the complainant has not complained against the accused no. 2 and 4 that they were in any manner in-charge and responsible for conduct of business.
- Supreme Court observed that High Court committed an error in holding that there was no allegation that the respondents were not responsible for the management and conduct of firm.

Held - Death of one of the partners is not the ground for quashing the proceedings.

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Madhya Pradesh High Court on Section 34

Ranbaxy Laboratories Ltd. and others, Petitioners V. State of Madhya Pradesh, Respondent, Madhya Pradesh High Court 1996 Drugs Cases 128

- In petition under Section 482 the petitioners contended that they are neither in-charge nor responsible to company and there is no averment in this regard to the complaint.
- On the other hand, the respondents contended that while exercising the power for quashing a criminal prosecution no detail enquiry is required to be made. Statement made in the complaint petition is to be prima facie accepted.
- Petitioners relied on decision of Supreme Court in Municipal Corporation of Delhi Vs. Ramkishan Rohatagi and other 1982 (II) FAC 355, AIR 1983 SC 67 and Shamsundar and other Vs. State of Haryana 1990 (I) FAC120, AIR 1989-SC 1982

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Madhya Pradesh High Court on Section 34

- Decision of Supreme Court in Municipal Corporation of Delhi Vs. Ramkishan Rohatagi distinguished as in the present case there is specific allegation against the Managing Director of the company that he was conducting business of the company under directions of the Board of Directors.
- Decision of Supreme Court in Sham Sundar and other Vs. State of Haryana distinguished as in the said case judgment was rendered after conclusion of trial whereas the petitioner in this case has approached the High Court at the threshold of trial.

Held - Prosecution not to be quashed when foundational facts constituting the offence has been averred in the complaint. Statements made in the complaint petition are to be prima facie accepted

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Conclusion

- Prosecution will be successful if investigations are conducted thoroughly and complaint is drafted with care.
 - The Directors / Partners should be cited as an accused on the basis of evidence and not merely because they are Directors or partners
 - Role of each accused in commission of offence should be clearly spelt out in the complaint.
 - Investigating officer should be conversant with Supreme Court and High Court judgment which are favorable and against prosecution
 - Prosecutors should be briefed properly
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