

2025 LiveLaw (SC) 247

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

B.V. NAGARATHNA; J., PRASANNA B. VARALE; J.

SPECIAL LEAVE PETITION (CRL.) NO(S).4912/2023; FEBRUARY 12, 2025

YASHPAL CHAIL versus STATE OF UTTAR PRADESH & ANR.

Code of Criminal Procedure, 1973: Section 482 - Drugs and Cosmetics Act, 1940; Sections 18 and 27 - Manufacture of substandard 'Fena' tablets, seized during a raid on 15.06.2010 – Held, the appellant, who resigned as manufacturing chemist on 15.12.2008 and as director on 01.06.2009, was not liable for the company's actions post-resignation. Form 32, filed with the Registrar of Companies, confirmed the appellant's disassociation from the company prior to the raid. The Court rejected the contention that the appellant's name on the manufacturing license (valid 2006-2011) implied ongoing liability, as no evidence established his association with Elmac after 01.06.2009. The High Court's impugned order was set aside, and the appellant's application under Section 482 of CrPC was allowed, quashing the FIR and charges under Sections 18 and 27 of the Drugs and Cosmetics Act, 1940, read with the Drugs and Cosmetics Rules, 1945. (Para 11, 12)

For Petitioner(s): Mr. Shivam Batra, AOR Mr. Mohd. Ibrahim, Adv. Mr. Abhishek Bhushan, Adv. Mr. Sandiv Kalia, Adv. Mr. Rahul Tyagi, Adv.

For Respondent(s): Mr. Namit Saxena, AOR Mr. Sr Singh, Sr. Adv. Mr. Ankur Prakash, AOR

J U D G M E N T

Leave granted.

2. The appellant herein has assailed the order dated 02.09.2022 passed by the High Court of Judicature at Allahabad, Lucknow Bench, in Application U/S 482 No.970 of 2016.

3. Briefly stated, the facts of the present case are that on 15.06.2010, the Drugs Inspector, Gonda conducted a raid on M/s. Jai Medical Store situated in Dharampur Bhagwatiganj, Balrampur and collected a sample of 'Fena' tablets manufactured by M/s. Elmac Remedies Private Limited (hereinafter referred to as "Elmac"). Upon testing of the collected sample of drugs, a report dated 21.07.2011 was prepared, according to which the said drugs were found to be below the prescribed standard and falling within the category of 'adulterated' and 'spurious' drugs under Section 17 of the Drugs and Cosmetics Act, 1940 [in short, "the Act"]. The Drugs Inspector issued show-cause notices to the staff of Elmac and other companies involved in the sale of the seized drug and based upon the investigation, the Drugs Inspector filed Special Case No. 9 of 2013 under Section 32 of the Act before the Additional District & Sessions Judge-I, Gonda.

The petitioner herein was the manufacturing chemist of Elmac from 01.07.2006, as per the statutory requirement under Rule 71 the Drugs and Cosmetics Rules, 1945 [in short, "Rules"]. The license to manufacture was granted to the company on 22.07.2006. The petitioner was also one of the directors of Elmac. However, the petitioner resigned from the post of manufacturing chemist at Elmac by resignation letter dated 15.12.2008 and informed the Drug Controlling and Licensing Authority about the same by its letter dated 15.01.2009. The petitioner also resigned from the directorship of Elmac with effect from 01.06.2009 and requisite Form 32 was issued to that effect in terms of the provisions of the Companies Act. However, pursuant to the raid conducted on 15.06.2010 and as part of the proceedings in Special Case No. 9 of 2013 instituted by the Drugs Inspector, summons were issued against the petitioner as well *vide* order dated 26.09.2013 passed

by the Court of Additional Sessions Judge, Gonda. Being aggrieved by the same, the petitioner filed the Application U/S 482 No.970 of 2016 before the Allahabad High Court, Lucknow Bench.

4. By the said application before the High Court, the proceedings in Special Case No. 9 of 2013 (*State vs. Satish Prakash Yadav and others*) pending in the Court of the Additional District and Sessions Judge, Gonda, under Section 18/27 of the Drugs and Cosmetics Act, 1940 and the Rules as well as the summoning order dated 26.09.2013 as against the appellant herein, were assailed.

5. The High Court by the impugned order dated 02.09.2022 had dismissed the said application filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, "CrPC") and alternatively, reserved liberty to the appellant herein to file an application seeking discharge if so advised. Being aggrieved by the dismissal of the said application, the appellant is before this Court.

6. We have heard Sri Shivam Batra, learned counsel for the appellant and Sri Namit Saxena, learned standing counsel for the first respondent-State at length. Second respondent is not present before this Court.

7. We have perused the material on record.

8. The documents appended to the appeal, the additional documents annexed along with the counter affidavit filed by the first respondent-State, and the additional documents filed on behalf of the appellant have been perused by us.

9. Learned counsel for the appellant submitted that voluminous documents were produced before the High Court to contend that as on the date of the raid, which was on 15.06.2010, the appellant herein was no longer a Director of Elmac. In that regard, our attention was drawn to Form 32, which had been filed by the appellant herein before the Registrar of Companies so as to corroborate the fact that the appellant was no longer associated with Elmac with effect from 01.06.2009 owing to his resignation.

Learned counsel for the appellant also submitted that although a licence was issued to the said Company and consequently, *inter alia*, to the appellant herein to discharge his duties as a manufacturing chemist and the said licence was for the period from 22.07.2006 to 21.07.2011, nevertheless, once the appellant herein ceased to have any association with Elmac with effect from 01.06.2009, he could not have been proceeded against by the complainant as well as the State on the basis of a raid which is said to have taken place on 15.06.2010.

Learned counsel for the appellant submitted that the High Court ought to have taken note of these facts and consequently set aside the order dated 26.09.2013 issued by the Fourth Additional District and Sessions Judge, Gonda, as well as quash the proceedings in Special Case No.9 of 2013 against the appellant herein. In this regard, learned counsel for the appellant strenuously drew our attention to various documents which have been appended to the appeal and by way of additional documents to contend that the impugned order, apart from being cryptic and bereft of any reasoning, is erroneous for the simple reason that it does not refer to any of the materials which have been produced by the appellant herein and hence, the impugned order may be set aside. Also, having regard to the material on record, relief may be granted to the appellant by setting aside the order of the High Court.

10. *Per contra*, learned counsel for the respondent State with reference to his counter-affidavit submitted that it is not clear, as to, whether, the appellant herein had completely

disassociated himself from Elmac on 15.06.2010. The fact that there was a licence issued to the said Company as well as to the appellant for the period from 22.07.2006 to 21.07.2011 to discharge his duties as a Manufacturing Chemist is evident on a perusal of Form 28 [Licence to manufacture for sale or for distribution of drugs specified in Schedules C and C(1) excluding those specified in Schedule X] of the Rules. He contended that the High Court was justified in dismissing the application filed under Section 482, CrPC and there is no merit in this appeal.

11. We have considered the submissions advanced at the bar in light of the documents on record. We find that Form 32 was filed by the appellant herein before the Registrar of Companies indicating clearly that owing to his resignation, he ceased to be associated with the company with effect from 01.06.2009. This clearly establishes the fact that he was no longer a member of the Board of Directors of the Company. Although, a licence may have been issued to Elmac and consequently, the name of the appellant herein was noted in the said licence which was for the period from 22.07.2006 to 21.07.2011, it is inferred that once the appellant ceased to have any association with Elmac, he would not have continued as a Manufacturing Chemist in Elmac. No contrary material has been produced by either the complainant or the respondent-State to contend that the appellant continued his association with Elmac in spite of Form 32 being filed stating that he had ceased to be a Director of the Company with effect from 01.06.2009. The alleged raid of M/s. Jai Medical Stores, took place on 15.06.2010. The investigation has revealed that ultimately the incriminating drugs and medicines were sourced from Elmac. Be that as it may. The fact that the appellant has ceased to have any association with Elmac has been established.

12. In the circumstances, we think that the allegations and the offences alleged as against the appellant herein under Section 18/27 of the Drugs and Cosmetics Act, 1940 read with the Drugs and Cosmetics Rules, 1945 were wholly illegal and contrary to the established facts. Therefore, we set aside the impugned order and allow the application filed by the appellant herein under Section 482 of CrPC.

13. The summoning order dated 26.09.2013 and the proceedings in Special Case No.9 of 2013 stand quashed as against the appellant herein.

14. The appeal is allowed in the aforesaid terms.

Pending application(s), if any, shall stand disposed of.