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## STATE OF KARNATAKA

v,

PRATAP CHAND &amp; ORS.

March 11, 1981

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[ O. CHINNAPPA REDDY AND BAHARUL ISLAM, JJ. ]

*Drugs and Cosmetics Act 1940—Section 18A—Scope of—Information furnished under section 18A alleged to be fictitious—Report of Inspector not proved—Inspector not examined—Validity of report.*

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*Section 34—“person incharge”—Meaning of—Tests to be applied.*

All the three respondents (respondents nos. 1 and 2 partners and respondent No. 3, the firm) were prosecuted for the alleged contravention of section 18A, Drugs and Cosmetics Act, 1940 in that when asked by the Drugs Inspector to disclose the name, address and other particulars of the person from whom a certain drug was acquired by them, they gave a fictitious address and that, therefore, they were liable to be convicted under section 18(a) (ii) read with section 18(c) of the Act.

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The Metropolitan Magistrate convicted respondent no. 1 (the partner incharge of the business of the firm) and respondent no. 3 (the firm) but acquitted respondent no. 2 on the ground that it was respondent no. 1 who was incharge of the firm and sentenced them variously.

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The High Court summarily dismissed the State's appeal against the acquittal of respondent no. 2 and of all the respondents under section 18A.

Dismissing the appeal,

HELD: Violation of the provisions of section 18A remained unestablished and the defence version remained rebutted. [202E]

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The Assistant Commissioner, Food and Drug Administration Bombay, North Circle, deposed that the particulars given by the respondents as to the person from whom the drugs were purported to have been acquired were verified by an Inspector, who in his report stated that the name and address given by the respondents were fictitious; but the Inspector has not been examined nor was his report proved. The defence version, therefore, remained rebutted. [202 D-E]

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The second respondent was not liable to be convicted merely because he had the right to participate in the business of the firm under the terms of the partnership deed. The term “person incharge” referred to in section 34 must mean that the person should be in overall control of the day to day business of the firm. A person may be a party to the policy being followed by a firm and yet not be incharge of its business or a person may be incharge of a business but not in overall charge or may be incharge or only some part of the business. In short, a partner of a firm is liable to be convicted for an offence if he was in

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charge of and was responsible to the firm 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 neglect on the part of the partner concerned. [204A-B]

*G.L. Gupta v. D.N. Mehta* [1971] 3 S.C.R. 748 applied.

In the instant case respondent no. 2 was not in overall control of the business. It was respondent no. 1, who was in that position. [204 C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 91 of 1976.

Appeal by Special Leave from the Judgment and Order dated 29.7.1975 of the Karnataka High Court in Criminal Appeal No. 364 of 1975.

*N. Nettar* for the Appellant.

*A.K. Sen, S.K. Bisaria and V.P. Gupta* for the Respondents.

The Judgment of the Court was delivered by

BAHARUL ISLAM, J. This appeal by special leave has been preferred by the State of Karnataka.

2. The three respondents being the partners of the firm, M/s. Mafatal and Co., and the firm itself were charged for offences under Sections 18(c), 18(a) (ii) and 18A of the Drugs and Cosmetics Act, 1940 read with Section 27(a) (ii), 27(a) (i) and Section 28 of the Drugs Control Act, (hereinafter, the Act). The defence was a plea of "Not Guilty". The Chief Metropolitan Magistrate found respondents 1 and 3, that is, one of the partners and the firm, guilty under Section 18(a) (ii) and Section 18(c) of the Drugs and Cosmetics Act and sentenced respondent No. 1 to suffer rigorous imprisonment for one year under section 18(a) (ii) and to pay a fine of Rs. 500. in default, to suffer simple imprisonment for one month, and sentenced respondents 1 and 3 to pay a fine of Rs. 1,000 each, under section 18(c), in default, to suffer simple imprisonment for three months. The respondent No. 2 was acquitted of these two offences as the Magistrate found that it was respondent no. 1 and not respondent no. 2 who was in charge of the business of the firm. All the respondents were acquitted of the offence under section 18A.

3. The appellant preferred an appeal before the High Court of Karnataka from the order of acquittal of respondent No. 2 of the

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offence under Section 18(a) (ii) and 18(c) and of all the respondents under section 18A of the Act. The High Court summarily dismissed the appeal.

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4. Section 18A of the Act requires that every person who has acquired drug or cosmetic, if required, shall disclose to the inspector the name, address and other particulars of the persons from whom the drug or cosmetic was acquired.

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The respondents pleaded that they did disclose to the Drugs Inspector, the name, address and other particulars of the person from whom the drugs were acquired, by section 18A of the Act and in support of their defence they rely on Exhibit P. 20, a letter dated 17.7.1971 addressed to the Drugs Controller. The learned Chief Metropolitan Magistrate has found that Exhibit P.20 contained the name, address and other particulars of the person from whom the drugs were claimed to have been acquired as M/s. Mangilal Jayantilal & Company, 65 Princess Street, Second Floor, Bombay, which name and address, according to the prosecution, were fictitious. P.W.3, the Assistant Commissioner, Food and Drug Administration, Bombay North Circle, has deposed that he got it verified by his Inspector who submitted a report that the above name and address were fictitious. But the Inspector has not been examined, nor his report proved. Obviously, therefore, the defence version remained un rebutted and violation of section 18A remained unestablished.

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5. Regarding the acquittal of the 2nd respondent of the offence under section 18 (a) (ii) and section 18(c), the learned counsel for the State of Karnataka submitted that under section 34 of the Drugs and Cosmetics Act the firm, as well as its partners were liable to be convicted. Section 34 may be extracted here :—

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“S. 34. (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 :

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Provided that nothing contained in the sub-section shall render any such 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.

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(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

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Explanation.—For the purpose of this section—

(a) “company” means a body corporate, and includes a firm or other association of individuals ;and

(b) “director” in relation to a firm means a partner in the firm.”

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It is seen that the partner of a firm is also liable to be convicted for an offence committed by the firm if he was in charge of, and was responsible to, the firm for the conduct of the business of the firm or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of the partner concerned. In the present case the second respondent was sought to be made liable on the ground that he alongwith the first respondent was in charge of the conduct of the business of the firm. Section 23-C of the Foreign Exchange Regulation Act 1947 which was identically the same as section 34 of the Drugs and Cosmetics Act came up for interpretation in *G. L. Gupta v. D. N. Mehta*<sup>(1)</sup> it was observed as follows :

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“What then does the expression “a person in-charge and responsible for the conduct of the affairs of a company mean”? It will be noticed that the word ‘company’ includes a firm or other association and the same test must apply to a director in-charge and a partner of a firm in-charge of a business. It seems to us that in the context a person ‘in-charge’ must mean that the person should be in over all control of the day to day

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(1) [1971] 3 S.C.R. 748.

- A** business of the company or firm. This inference follows from the wording of S. 23C(2). It mentions director, who may be a party to the policy being followed by a company and yet not be in-charge of the business of the company. Further it mentions manager, who usually is in charge of the business but not in over-all-charge. Similarly the other officers may
- B** be in charge of only some part of business."

- C** The evidence in the present case shows that it was respondent No. 1 and not respondent No. 2 who was in over all control of the day to day business of the firm. The second respondent is not liable to be convicted merely because he had the right to participate in the business of the firm under the terms of the Partnership Deed.

6. This appeal has no merit and is dismissed.

P.B.R.

*Appeals dismissed.*