

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Petn.No.53/2025 with
Crl.M.C.No.83/2025
Crl.Petn.No.54/2025
Crl.M.C.No.84/2025
Crl.Petn.No.56/2025
Crl.M.C.No.88/2025

Date of order: 23.09.2026

1. Shri Deepak Kumar
2. Shri Lalit Kumar
3. Smti. Reeta Devi

.... Petitioners

- versus -

1. The State of Meghalaya through the Inspector, Drug Control Department, Ministry of Health & Family Welfare, Shillong, Meghalaya.
2. Shri Bhalang Kharthangmaw, Inspector of Drugs, South Garo Hills District, Baghmara.

..... Respondents

1. Shri Surinder Pal
2. Shri Ratan Lal Sharma

.... Petitioners

- versus -

The State of Meghalaya through the Inspector, Drug Control Department, Ministry of Health & Family Welfare, Shillong, Meghalaya.

..... Respondent

1. Shri Surinder Pal
2. Shri Ratan Lal Sharma
3. Shri Deepak Kumar

.... Petitioners

- versus -

1. The State of Meghalaya through the Inspector, Drug Control Department, Ministry of Health & Family Welfare, Shillong, Meghalaya.
2. Shri Bhalang Kharthangmaw, Inspector of Drugs, South Garo Hills District, Baghmara.

..... Respondents

Coram:**Hon'ble Mrs. Justice Revati Mohite Dere, Chief Justice****Appearance:**

For the Applicants : Mr. S. Mahapatra, Adv with
Ms. S. Jain, Adv
Mr. S. Marpan, Adv
Ms. L. Myrchiang, Adv

For the Respondents : Mr. N. Syngkon, GA with
Mr. J.N. Rynjah, GA

i) Whether approved for reporting in Law journals etc.: No

ii) Whether approved for publication in press: No

JUDGMENT: (Oral)

Since the issue involved in all the three petitions is identical, all the petitions are being heard together and are being decided by a common judgment.

2. Rule. Rule is made returnable forthwith with the consent of the parties in all the aforesaid petitions and is taken up for final disposal.

3. Heard Mr. S. Mahapatra, learned counsel with Ms. S. Jain, learned counsel appearing for the aforesaid petitioners and Mr. N. Syngkon, learned GA with Mr. J.N. Rynjah, learned GA appearing for the respondent Nos.1 and 2-original complainant in all the aforesaid petitions.

4. The short question involved in the aforesaid petitions is, whether a prosecution can be continued qua the Directors/other employees of a company, without the company being arrayed as an accused?

5. Learned counsel Mr. S. Mahapatra and Ms. S. Jain appearing for the petitioners in the aforesaid petitions submitted that the Magistrate could not have taken cognizance of the two complaints i.e., one being C.R. Case No.04/2025 against the Managing Director, Director, Production In-charge and two Chemists and another being C.R. Case No.08/2024 against Managing Director, Director and Production In-charge made by the respondent No.2, without the company being arrayed as an accused. Learned counsel relied on the judgment of the Apex Court in ***Aneeta Hada & ors v. Godfather Travels and Tours Pvt. Ltd.*** reported in ***AIR 2012 SC 2795*** i.e., the Constitutional Bench judgment which held that without the company being made an accused, the Directors and others cannot be made a party to the criminal proceeding.

6. Learned Government Advocates appearing for the respondent No.2 (original complainant) respectively, in the

aforesaid petitions do not dispute the aforesaid legal position nor do they dispute the fact, that in both the complaints filed by the respondent No.2, the company has not been arrayed as an accused and that the party to the complaints are only the Directors of the Company and its employees i.e. the Chemists.

7. Perused the papers.

8. The Apex Court in the Constitutional Bench judgment in *Aneeta Hada* (supra) has in paragraphs 42 and 43 observed as under:

*“42. We have referred to the aforesaid passages only to highlight that there has to be strict observance of the provisions regard being had to the legislative intendment because it deals with penal provisions and a penalty is not to be imposed affecting the rights of persons whether juristic entities or individuals, unless they are arrayed as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the company. The learned counsel for the respondents have vehemently urged that the use of the term “as well as” in the Section is of immense significance and, in its tentacle, it brings in the company as well as the director and/or other officers who are responsible for the acts of the company and, therefore, a prosecution against the directors or other officers is tenable even if the company is not arraigned as an accused. The words “as well as” have to be understood in the context. In **Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others** MANU /SC/0073/1987: (1987) 1 SCC 424 it has been laid down that the entire statute must be first read as a whole, then*

section by section, clause by clause, phrase by phrase and word by word. The same principle has been reiterated in **Deewan Singh and others v. Rajendra Prasad Ardevi and others** MANU SC/0207/2007: (2007) 10 SCC 528 and **Sarabjit Rick Singh v. Union of India** MANU SC/0041/2008: (2008) 2 SCC 417. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the company” appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.

43. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in **C.V. Parekh** (supra) which is a three-Judge Bench decision. Thus, the view expressed in **Sheoratan Agarwal** (supra) does not correctly lay down the law and, accordingly, is hereby overruled. The decision in **Anil Hada** (supra) is overruled with the qualifier as stated in paragraph 37. The decision in **Modi Distilleries** (supra) has to be treated to be restricted to its own facts as has been explained by us hereinabove.”

9. Admittedly, in the two complaints filed by the respondent No.2 in the Court of the learned Chief Judicial Magistrate, South Garo Hills District, Baghmara, which is the subject matter of the

aforesaid petitions, the company has not been arrayed as an accused and the persons who have been arrayed as accused are the Directors of the Company and two Chemists. The complaints allege offences punishable under Sections 18(a)(i), 17(b) read with Rule 96 (1)(i)(b) and Violation of Schedule P read with rule 96 (1)(vii) of the Drugs and Cosmetic Act, 1940 and Rules 1945, punishable under Section 27(d) of the Drugs and Cosmetic Act, 1940. In this context, Section 34 of the said Act is relevant and as such, the same is reproduced hereinunder:

“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 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.

(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.

Explanation.—For the purposes 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.”

10. The said provision in principle is similar to Section 141 of the NI Act, 1881. Both, the provisions are *pari materia* in so far as the principle of vicarious liability is concerned. Thus, the judgment in *Aneeta Hada* (supra) will squarely apply to a prosecution under the Drugs and Cosmetic Act, 1940.

11. In view of what is stated aforesaid, the learned Magistrate could not have taken cognizance of the two complaints filed by the respondent No.2 qua the petitioners, without the company being arrayed as an accused.

12. In view of the aforesaid legal position, the petitions deserve to be allowed. Accordingly, the orders issuing process passed by the learned Chief Judicial Magistrate, South Garo Hills District, Baghmara in the two complaints, being C.R. Case No.04 of 2025 and C.R. Case No.08 of 2024 and consequently, the proceedings pending before the learned Chief Judicial Magistrate, South Garo Hills District, Baghmara, are quashed and set aside.

13. The petitions are allowed and Rule is made absolute on the aforesaid terms.

14. In view of the order passed in the petitions, nothing survives for consideration in the aforesaid Miscellaneous Applications. The same are accordingly disposed of.

15. All parties to act on the authenticated copy of this order.

(Revati Mohite Dere)
Chief Justice

Meghalaya
23.09.2026
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