



NO VICARIOUS LIABILITY WITHOUT PROOF OF RESPONSIBILITY OVER COMPANY AFFAIRS

The High Court of Himachal Pradesh (**HC**) in *M/s VADSP Pharmaceutical* case¹ while quashing a complaint registered under the Drugs and Cosmetics Act, 1940 (**DCA**) against the partners of a drug manufacturing company, ruled that the complainant needs to aver in the complaint that the person sought to be vicariously liable is not only in charge but is also responsible to the Company for its affairs.

Brief Facts.

- Complaint was filed before Trial Court against VADSP Pharmaceuticals (**VADSP**) and its three partners for the commission of offences punishable under certain provisions of the DCA.²
- Sample of Lycopat, a nutritional supplement manufactured by VADSP, was sent for test and analysis. It was found to be not of standard quality and notice was served on VADSP.
- Central Drugs Testing Laboratory, Kolkata issued a report declaring that the sample was not of standard quality.
- The Trial Court found sufficient reasons to summon the accused.
- Aggrieved by the complaint and summoning order, VADSP approached the HC for quashing of the complaint.

Question of Law.

Whether partners are vicariously liable for the offences committed by VADSP?

HC's Judgment & Reasoning.

The HC:

- Opined that VADSP is primarily liable for the commission of an offence punishable under the DCA.³
- Opined also that vicarious liability has been fastened upon a person who, at the time the offence was committed, was in-charge of and responsible to the company for the conduct of its business.
- Noted as follows:

“Thus, the complainant needs to aver in the complaint that the person sought to be vicariously liable is not only in charge but also responsible to the Company for its affairs. In the present case, the complainant asserted in para 12 of the complaint:

“That, after completing all the investigation and correspondence under the Act, the complainant has found that accused Nos. 1 to 3, being the manufacturing firm which have manufactured the drug in question which have been declared as not of standard quality, hence are liable for punishment for the offences committed under the Act.”

¹ *VADSP Pharmaceuticals and Others vs. Union of India*. 2025 SCC OnLine HP 1815.

² Sections 16, 18(a)(i), 18(a)(vi), read with Section 27(d) of the DCA and the Rules.

³ Section 34 of the Drugs and Cosmetics Act, 1940.

23. Thus, the averments are silent regarding the accused Nos. 2 and 3 being in charge of accused No.1 and also responsible for its affairs. These averments do not satisfy the requirement laid down by the Hon'ble Supreme Court in the above-cited judgment.”

- Referred to *Siby Thomas* case,⁴ where it has been observed that the primary responsibility to make the averment, that the accused is in-charge of and responsible for the company for its affairs lies upon the complainant in the absence of which the accused cannot be held liable.
- Held that the proceedings against the partners were not maintainable and were liable to be quashed. However, VADSP, the firm which had manufactured the drugs, was primarily liable for the manufacturing of the substandard drugs. Therefore, proceedings could not be quashed against it.

The compliant against the partners was quashed, whereas it was continued *qua* VADSP.

This *Counselence Connect* contains information in a nutshell on a recent change in law.

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⁴ *Siby Thomas v. Somany Ceramics Ltd.* (2024) 1 SCC 348.