

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No. 122 of 2024

Present Before:

Justice Zafar Ahmed Rajput

Justice Tasneem Sultana

Applicant : Kamran Izhar Qureshi s/o Izhar-ul-Haq
Qureshi through Mr. Taimoor Aslam Khan,
Advocate.

Respondents : The State through Zakir Hussain Samoo,
No.1&2. Provincial Inspector of Drugs District Korangi
and SHO P.S. Eidgah Karachi-South, through
Mr. Khaleeq Ahmed, Deputy Attorney General
and Mr. Abrar Ali Khichi, Addl. Prosecutor
General, Sindh along with Zakir Hussain Samo
Ex-PDI and Inspector-Zahid Shah.

Date of hearing : 16.04.2025
Date of Order : 16.04.2025

ORDER

ZAFAR AHMED RAJPUT, J. Through instant CrI. Revision Application, applicant Kamran Izhar Qureshi has impugned the order, dated 06.01.2024, whereby the Drug Court of Sindh at Karachi, rejected his application under Section 265-K, Cr. P.C. in Case No.27 of 2022, arising out of Crime No.169/2021, registered at P.S. Eidgah, Karachi-South, under Sections 23(1)(a)(vii), 23(1)(a)(x), 23(1)(b), 23(1)(c), punishable under section 27(1)(a), 27(2)(b), 27(4), r/w section 34 of the Drugs Act, 1976 (the “**Act**”).

2. Learned counsel for the applicant contends that earlier an F.I.R. bearing Crime No.5/2018 was registered under sections 23 and 27 of the Act at Police Station FIA, Anti-Corruption Circle, Islamabad against the applicant, wherein he was acquitted of the charge by the Drug Court, Islamabad vide order, dated 08.06.2023, observing that he was not director, partner owner/proprietor of M/s.

Everest Pharmaceuticals; that the present F.I.R. has been lodged against the applicant in continuity of said F.I.R. on the basis of same allegations; that the Trial Court in the instant case while ignoring the aforementioned facts of the case placed before it, rejected the application of the applicant observing that the question of involving of the applicant requires proper evolution of evidence which is yet to be recorded; that the prosecution failed to bring on record any evidence establishing that the applicant is in any manner connected with the proprietorship of said pharmaceutical company. He while placing on record a letter dated 19.11.2024 issued by the Deputy Director (Legal Affairs) Drug Regulatory Authority of Pakistan ("DRAP"), states that even the Central Licensing Board of DRAP in its 285th and 286th meetings exonerated the applicant.

3. On the other hand, learned DAG and APG concede to the fact that the applicant was acquitted of the charge by the Drug Court Islamabad in earlier F.I.R. lodged against him and the Central Licensing Board of DRAP has already exonerated him from the charge in its 285th and 286th meetings as per letter dated 19.11.2024.

4. Heard and record perused.

5. It appears from the perusal of the record that the State through Zakir Hussain Samo lodged the aforesaid F.I.R., alleging therein that M/s. Everest Pharmaceuticals with Choudary Muhammad Usman as owner, present applicant/accused Kamran Izhar & Noor Muhammad as partners and Mian Ishtiaq as Quality Control In-charge is a private limited company based at Islamabad but involved in the manufacturing of un-registered Drug product without license.

On 06.03.2018 the Provincial Quality Control Board after receiving directions from DRAP Authorities, directed the Provincial Inspector of Drugs to seize all stocks available in the market being manufactured and supplied by M/s Everest Pharmaceuticals Pvt. (Ltd) Islamabad, consequently the complainant; namely, Zakir Hussain Samo, PID conducted inspection of main medicine store of services hospital, Karachi and seized the stock of un-registered Drug product namely Chill Batch No.057, Tab Meca Batch No.059 both manufactured by M/s. Everest Pharmaceuticals. The PQCB issued show cause notice to M/s. Everest Pharmaceuticals on 16.07.2018 but no reply was received and thereafter Quality Control Board allowed the PID (complainant) to lodge F.I.R. against owner/ production In-charge namely Choudary Muhammad Usman, two partners namely Kamran Izhar & Noor Muhammad and Quality Control Incharge namely Mian Ishtiaq Ahmed. After completing investigation, the complaint was filed which was admitted and case was registered vide order dated 11.11.2022.

7. Prima facie, the allegation against the applicant is that he is the partner of M/s. Everest pharmaceuticals. Earlier the Drug Court, Islamabad in Complaint No.06/DC/2018, under Section 30 of the Act acquitted the applicant under section 265-K, Cr. P.C. by observing as under: -

“21. It was the duty of prosecution to prove that the applicant/accused has any relation with the M/s. Everest Pharmaceuticals in capacity of Director, Proprietor or Partner. The PW-1 during the cross examination stated that it is correct that as per challan/report u/s 173, Cr. P.C the applicant/accused was placed in column No. ii. She further stated that as per report u/s 173, Cr. P.C the FIA post investigation has

concluded that applicant/accused is not owner of firm M/s. Everest Pharmaceuticals. I am not aware that the FIA had left the fate of applicant/accused to be decided by the competent Court. She further stated that M/s. Everest Pharmaceuticals is a private limited company. A private limited company is registered with Securities Exchange Commission of Pakistan. I have seen the documents appended with the challan by the FIA submitted before this Court, as per record of SECP i.e. memorandum of association and article of association dated 16.03.2009, the name of applicant/accused Dr. Kamran Izhar Qureshi does not reflect as a Director of M/s Everest Pharmaceuticals however it does the name of Hassan Ahmed and the same documents further showed Hassan Ahmed as an owner of 25000 shares of M/s Everest Pharmaceuticals. No share and share holding stands reflects in the name of applicant/accused. Similarly, the name of applicant/accused has not reflected in any of form-A filed with the SECP in any capacity whatsoever. She also stated that FIA called for record of M/s Everest Pharmaceuticals firm from office of Chief Commissioner Directorate of Industries and Labors/ Registrar of Firms. It is correct that the name of applicant/ accused is not reflected as a partner in form No.1 dated 12.08.2004 certified on 10.05.2018, however, the name of Sajjad Munir and Hassaan Ahmed are duly reflected as partners. As per CDA record vide letter dated 09.05.2018 has been confirmed that plot is not in the ownership of applicant/accused and CDA has also confirmed that on 17.07.2017 the plot where M/s Everest Pharmaceuticals is situated was transferred from the name of previous owner Raja Muhammad Zahoor in the name of new owner Ch. Muhammad Usman.

26. In view of the statements of main witnesses of the prosecution and the material/evidence available on record, it is evident that applicant/accused Dr. Kamran Izhar Qureshi is not Director, partner and owner/ proprietor of M/s Everest Pharmaceuticals in any manner whatsoever. Nothing is available on record to show that the said applicant/accused Dr. Kamran Izhar Qureshi has derived any monetary benefits from the M/s Everest Pharmaceuticals being Director, Partner and Owner/ Proprietor. After the registration of FIR 05/2018 the investigating officer during the process of investigation found

that applicant/accused is not owner of M/s Everest Pharmaceuticals and placed him in column No. ii. Nothing is available on record showing any sort of involvement of a said applicant/accused Dr. Kamran Izhar Qureshi in internal as well as external affairs of M/s Everest Pharmaceuticals. According to the judgment of superior Court it has been held single circumstances creating reasonable doubt in prudent mind about the guilt of the accused make him entitled to its benefit, not as a matter of grace and concession but as a matter of right. Any doubt arising in prosecution case is to be resolved in the favour of accused. Reliance is placed on 2022 SCMR 1532.

27. Therefore, the applicant/accused could not be prosecuted under DRAP Act 2012 or Drug Act 1976 and could not be penalized as per evidence available on record because he has not violated any provisions of above said acts abid. The other aspect of this case is that the charge was framed against M/s Everest Pharmaceuticals as an institution (Manufacturing Unit/Factory) but prosecution has failed to establish the status of applicant/accused and his specific role in the affairs of business of M/s Everest, Pharmaceuticals. The accused can only be vicariously liable and sentenced if prosecution established the active role played in the commission of crime and achieve wrongful object, by him along with others co-accused. Prosecution failed to substantiate the charge against the applicant/accused by producing any cogent and convincing evidence and there is no probability of the accused being convicted of any offence.”

8. It is an admitted position, the no appeal has been preferred by the prosecution against the said order of Drug Court, Islamabad. It is also an admitted position that Central Licensing Board of DRAP in its 285th and 286th meetings exonerated the applicant.

9. We are; therefore, of the view that since nothing is available with prosecution to establish *prima facie* that the applicant/accused is a director, partner owner/proprietor of M/s. Everest Pharmaceuticals in any manner whatsoever, the charge against him

is groundless and there is no probability of his being convicted of any offence. Hence, this Crl. Revision Application is allowed by setting aside the impugned order, dated 06.01.2024, passed in Case No.27 of 2022 by the Drug Court of Sindh at Karachi and acquitting the applicant under section 265-K, Cr. P.C.

JUDGE

JUDGE

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