

# Co's directors liable for fungus-laden drugs: SC

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NEW DELHI

DIRECTORS of pharmaceutical companies are liable for criminal prosecution in the event of the company being found responsible for manufacturing defective drugs as it would seriously affect public health, the Supreme Court has ruled.

A Bench of justices V S Sirpurkar and Cyriac Joseph passed the ruling in a judgement while dismissing the appeal filed by directors of a Gujarat-based drug company challenging their prosecution for supply of fungus-loaded drugs.

The apex court rejected the argument that they cannot be prosecuted as the complaint lodged against them by the state government contained "bare statements" and no direct allegations against their involvement.

"This was the case of the manufacture of the drug for human consumption and, after it was tested in laboratory, was found to be defective since there was a growth of fungus, which is a very serious matter related to



public health.

"Under the peculiar circumstances of this case and realising the seriousness of the allegations, we would not take a technical view based on pleadings in the complaint," Justice Sirpurkar writing the judgement observed.

The apex court passed the judgement while dismissing the appeal filed by Dinesh B Patel and certain other directors of Denis Chem Lab against whom the Gujarat government launched criminal prosecution under Section 34(2) of the Drugs & Cosmetics Act, 1940.

The accused had moved the apex court after the high court dismissed their plea for quashing of the criminal cases and held

that the directors are responsible for the affairs of the company and, therefore, when a drug manufactured by the company was found to be defective, all the directors could be prosecuted.

The apex court rejected the argument of the accused that just as under the Negotiable Instruments Act (cheque bounce cases) the specific role of the directors should be established before launching the prosecution against them, similar view should be taken in their case too.

"We cannot agree. Firstly, the language of Section 34(2) of the Act substantially differs from the language of Section 141 of the Negotiable Instruments Act.

"Secondly, here we are dealing with the offence which has the direct impact on the public health. We, therefore, would choose not to interfere with the order of the high court. It will be open for the directors to show to the trial court that they had nothing to do with the manufacture process and, therefore, they should not be held liable under Section 34 (2) of the Act," the apex court said while dismissing the appeal.

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