Payyakkal Devadas Vs. State of Kerala

Payyakkal Devadas Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/1014467

Court : Kerala

Decided On : Jan-31-2013

Judge : Honourable Mr.Justice P.Bhavadasan

Appellant : Payyakkal Devadas

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.BHAVADASAN THURSDAY, THE 31ST DAY OF JANUARY 2013 11TH MAGHA 193 Bail Appl..No. 273 of 2013 () --------------------------------------- CRIME NO. 15/2013 OF KASABA POLICE STATION , KOZHIKODE .... PETITIOENR(S)/ACCUSED : ------------------------------------- PAYYAKKAL DEVADAS, AGED 4 YEARS S/O. KVK NAIR,DIRECTOR K-LINK HEALTHCARE(INDIA)PVT.LTD.,DOOR NO.103/A., 7TH FLOOR,NAVIN'S PRESIDIUM,NELSON MANICKAM ROAD AMINJIKARAI,CHENNAI-600 029. BY ADVS.SRI.K.RAMAKUMAR (SR.) SRI.P.NANDAKUMAR SRI.S.M.PRASANTH RESPONDENT(S)/STATE & COMPLAINANT -- 1. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA,ERENAKULAM-682 031.

2. THE SUPERINTENDENT OF POLICE CRIME BRANCH,CID,ECONOMIC OFFENCE WING III KOZHIKODE-673 001.

3. THE DEPUTY SUPERINTENDENT OF POLICE CRIME BRANCH,CID,ECONOMIC OFFENCE WING III KOZHIKODE-673 001.

4. THE SUB INSPECTOR OF POLICE CUSBA POLICE STATION,KOZHIKODE CITY KOZHIKODE-673 001. BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23-01-2013, THE COURT ON 31.01- 2013 PASSED THE FOLLOWING: tss P. BHAVADASAN, J.

- B.A. No. 273 of 2013 - Dated this the 31st day of January, 2013. ORDER A Cop attached to C.B.C.I.D., Kozhikode, while browsing the Internet, happened to come across the website of K-Link Health Centre (India) Pvt. Ltd., a Company engaged in selling health and ayurvedic products and on a closer scrutiny of the method adopted by the Company for its sales, the Cop felt that the act of the Company was in violation of the relevant provisions of Prize Chits and Money Circulation Schemes (Banning) Act, 1978. After conducting a study of the materials, he recommended registration of the crime and Crime No.15 of 2013 of Kasaba Police Station was registered for the offences punishable under Sections 3, 4, 5 and 6 of Prize Chits and Money Circulation Schemes (Banning) Act, hereinafter referred to as the Act.

2. The petitioner is the Director of K-Link Health Care (India) Pvt. Ltd. Which is a subsidiary of the multi level concern by name M/s. K.Link Sendrian Berhad based at B.A.273/2013. 2 Malasia. It operates in several countries and its operation in India started in December, 2001. The Company in India has its headquarters at Chennai and branches and stockists at various places. The Company has obtained the necessary permission, license and sanction from the authorities concerned for carrying on the business.

3. The Company is a member of the Direct Selling Association and there are more than 1500 multi level marketing companies operating in India and out of them only 15 companies could become the Permanent Members of IDSA. The Company has earned laurels in the field.

4. The petitioner claims that he was questioned on 1.1.2013 and on 7.1.2013 the third respondent conducted a search and seizure and arrested the Manager of the Company and sought details of the Company. Petitioner is able to obtain Annexure A FIR and it is found that the Company has been accused of having functioned and functioning in contravention of the relevant provisions of B.A.273/2013. 3 the Act. It is claimed that the Company is engaged in Direct Selling and is not associated with any questionable means of marketing of products.

5. Learned Senior Counsel appearing for the petitioner contended that the Company has not adopted any Multi Level System or the illegal pyramid system. Distributors appointed buy products from stockists and sell the same. The distributors get the products at reduced price and sell at retail price shown on the packet of the article. The difference is their profit. No fee is being levied for becoming a distributor. The Company is carrying on its functions in accordance with the norms issued by the Government. According to the learned Senior Counsel, the act of registering crime and arresting the Manager is quite contrary to law and the petitioner apprehends arrest and hence this petition.

6. Learned Public Prosecutor contended that apparently the functioning of the Company would appear to B.A.273/2013. 4 be in accordance with law. But a probe into the actual activities will show it is otherwise. From the records, it could be seen that till last year fee of Rs.650/- was being levied from the distributors. Bonus is paid based on achieving of certain targets. In this case also, there is appointment of sub-distributors. The distributors achieve several levels as envisaged by the Company's policy. Final benefit, according to the learned Public Prosecutor, does not depend solely on the basis of turn over, but on several other factors also which would be in contravention of the provisions of the Act.

7. CD was made available for perusal. This court had occasion to consider the issue of Multi Level Marketing System adopted by the various companies in India and pyramid system in B.A.8128 of 2012 in relation to another Company by name Mona Vie India Enterprises Private Limited engaged in similar activities. There, this court considered what is permissible and what is objectionable type of

marketing. The test to be applied to ascertain the B.A.273/2013. 5 true nature of the system was also considered in the said decision. It is therefore unnecessary for this court to tread that path again. Some of the tests which this court found crucial in ascertaining the nature of the activities are: i) Price of the commodity. ii)Whether the Company is following objectionable pyramid scheme. ii) Profit depends upon enrolling distributors and not on sales. iii) Distributor subsequently appointed knows well that his performance cannot place him higher than the distributor at whose instance the subsequent distributor is appointed. iv) The Scheme is such that the person at the top gets maximum benefit and the person at the lower level may be left with nothing. B.A.273/2013. 6 v) Whether the prices of the commodities are within the reach of the common man. vi) Whether the product is worth the price paid for. Various other aspects were also considered in paragraphs 33 to 40 of the said order relating to such activities by Companies.

8. The Company is engaged in sale of Agro, health and Ayurvedic products. The crime was registered suo motu. Investigation revealed that distributors get the additional benefits.

9. The price list is available among the records. The products are exorbitantly priced and are not within the reach of ordinary man. Records show that the quantity discount free of costs will be given to distributors on attaining certain targets. The Chartered Accountant's report available among the records shows that the assessee company explained that in direct marketing system it is B.A.273/2013. 7 normal to give quantity discount which do not form part of the sales turn over. As per the report of the Chartered Accountant, in the audit report of 2010-2011 the value of quantity discount is given as Rs.55,02,652/- which is not related to sales.

10. The following factors emerge from a perusal of the records: i) Commodities are exorbitantly priced. ii) Quantitative discount is given to distribution not on the basis of sales turn over. iii) Distributors appoint sub-distributors under them. iv) Up-line distributors stand to benefit and down-line may not get any benefit. v) The value of the product does not seem to percolate to the consumer.

11. The claim of the Company that it is engaged in direct selling as per the norms given by the Government does not appear to be quite true going by the records made B.A.273/2013. 8 available for scrutiny. At any rate, a probe into the affairs of the Company is absolutely essential before a final conclusion can be reached. Considering the nature of the allegations against the Company and the materials now available, custodial interrogation of the persons in charge of the Company may be necessary. Taking into consideration various aspects, it is felt that this is not a fit case where the extraordinary jurisdiction can be exercised in favour of the petitioner. This application is accordingly dismissed. P. BHAVADASAN, JUDGE sb.