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**Ramesh Babu and Another Vs. State of Karnataka**

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**SooperKanoon Citation** : sooperkanoon.com/376772

**Court** : Karnataka

**Decided On :** Jan-09-1991

**Reported in** : 1992CriLJ1963

**Judge** : M.M. Mirdhe, J.

**Appeal No.** : Crl. Petn. No. 1631 of 1990

**Appellant** : Ramesh Babu and Another

**Respondent** : State of Karnataka

**Advocate for Def.** : Mr. C.H. Jadhav, Govt. Pleader

**Advocate for Pet/Ap.** : Smt. A. Rama, Adv.

**Judgement** :
ORDER

1. This Criminal Petition is filed u/S. 482, Cr.P.C. by the petitioners praying to quash the proceedings in C.C. No. 1001 of 1988 on the file of the Special Court for Economic Offences, Bangalore.

2. I have heard the learned counsel for the petitioners and the learned Government Pleader fully and perused the records of the case. The petition is admitted.

3. With the consent of the learned counsel for the petitioners and the learned Government Pleader, I have heard this petition on merits today.

4. The Inspector of Drugs appointed u/S. 21 of the Drugs and Cosmetics Act, 1940 has filed a complaint in the Special Court for Economic Offences, Bangalore City, alleging that the petitioners and two other persons have committed the offences punishable u/S. 34 of the Drugs and Cosmetics Act, 1940, for having committed the offence punishable u/S. 18(c), 18A and 22(i)(cca) of the said Act, and for having committed the offence punishable u/Ss. 27(b)(ii), 28 and 22(3) of the said Act. The learned Magistrate passed an order for framing charge against the accused persons in the said case. Hence this revision.

5. The only contention of the petitioners in this case is that A-1 in the said case is a firm and these petitioners are the partners of the said firm. But, they were not incharge of the business of the firm on 28-7-1987 when the offence is said to have taken place. It is also the contention of these petitioners that A-4 was the person in charge of the firm on the date of the offence, S. 34 of the Drugs and Cosmetics Act, 1940, read as follows :-

'34(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.'

This Section is in pari material with S. 10 of the Essential Commodities Act. This Court has interpreted S. 10 in the ruling reported in Kishore Lal v. State of Karnataka ILR 1990 Karnataka 3876. It has been held in the said case as follows :-

'Section 10 makes it clear that a partner cannot be proceeded against simply on the ground that he is the partner of that company. The prosecution must first show that the partner of the firm to be prosecuted was in charge of and was responsible to the company for the conduct of the business of the Company. After the prosecution establishes this fact then the burden shifts on the partner prosecuted to prove that the contravention took place without his knowledge or that he exercised all due diligence to prevent any such contravention.'

The Supreme Court in Sham Sundar v. State of Haryana : 1989 CriLJ2201 has held as follows (paras 9 & 10) (of Cri LJ) :-

'More often it is common that some of the partners of a firm may not even be knowing of what is going on day to day in the firm. There may be partners, better known as sleeping partners who are not required to take part in the business of the firm. There may be ladies and minors who were admitted for the benefit of partnership. They may not know anything about the business of the firm. It would be a travesty of justice to prosecute all partners and ask them to prove under the proviso to sub-section (1) of S. 10 that the offence was committed without their knowledge. The obligation for the accused to prove under the proviso that the offence took place without his knowledge or that he exercised all due diligence to prevent such offence arises only when the prosecution establishes that the requisite condition mentioned in sub-section (1) is established. The requisite condition is that the partner was responsible for carrying on the business and was

during the relevant time in charge of the business. In the absence of any such proof, no partner could be convicted. Thus where the documents produced by the prosecution do not indicate even remotely that all partners were doing the business of the firm and there was no other evidence on record on this aspect, it could not be said that when the offence was committed all the partners were conducting the business of the firm. Therefore they could not be liable for conviction.'

Now, para 4 of the complaint reads as follows :

'That Accused No. 4 was the person in charge of the firm on 20-7-1987, when the offence took place.'

In view of this case of the prosecution itself that it was A-4 who was in charge of the firm on the date of the offence, the petitioners cannot be proceeded against. They could have been proceeded against if they were in charge of and responsible for the conduct of the business of that firm. Nowhere in the complaint, it is stated that these petitioners were in charge of and responsible for the conduct of the business of that firm. On the other hand, there is a specific averment in para 4 that it was A-4 that was in charge of the firm on the date of the offence. In Municipal Corporation of Delhi v. Ram Kishan Rohtagi : 1983 CriLJ159 , it has been held that proceedings against an accused can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In view of the fact that the case of the prosecution itself is to the effect that A-4 was the person in charge of the firm on the date of the offence, the petitioners who are partners of the firm cannot be proceeded against. Hence, I am of the opinion that this is a fit case to exercise powers u/S. 482. Cr.P.C. and quash the proceedings against these petitioners only. Hence, I make the following order :-

6. The petition is allowed. The proceedings in C.C. No. 1001 of 1988 on the file of the Special Court for Economic Offences, Bangalore are quashed only in so far as the petitioners are concerned.

7. Petition allowed.

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