Seth Purty and Anr. Vs. State of Jharkhand and Anr.

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Court : Jharkhand

Decided On : Sep-11-2015

Appellant : Seth Purty and Anr.

Respondent : State of Jharkhand and Anr.

Advocate for Pet/Ap. : Mr. Das

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr.M.P. No. 355 of 2008 1. Seth Purty Son of Late Salaman Purty, General Manager (Incharge), Hindusthan Copper Limited, Indian Copper Complex, PO & PS Ghatshila, District- East Singhbhum 2. Akhilesh Kumar Sharma Son of Late R.J.Sharma, Senior Manager (H.R.), Hindusthan Copper Limited, Indian Copper Complex, PO & PS Ghatshila, District- East Singhbhum Petitioner(s) -V e r s u s- 1. The State of Jharkhand 2. Prasun Kumar Gupt, Inspector (Weights & Measures), Govt. of Jharkhand, PO & PS Ghatshila, District- East Singhbhum ... Opposite Parties CORAM: - HONBLE MR. JUSTICE RAVI NATH VERMA For the Petitioner(s) : - M/s Amit Kumar Das & Chandrajeet Mukherjee, Advocates For the State : - Mr. Alok Lal, Addl. P.P. 11/11.09.2015 The petitioners have challenged the legality of the order dated 10.12.2007 passed by the learned Additional Chief Judicial Magistrate, Ghatshila in C/2 Case No. 19 of 2007 whereby and whereunder, cognizance of offence under Sections 45, 47 and 48 of the Weight and Measurement Act, 1985, has been taken against the petitioners, the name of the Act seems to have been incorrectly recorded in place of Standard Weights and Measures (Enforcement)

Act, 1985 and also prayed for quashing of the entire criminal proceeding in connection with the above case.

2. The prosecution case, as it appears from the prosecution report submitted by the Inspector, Weights and Measurement, Ghatshila, in short, is that the above case was instituted with the allegation that the weighing machine of Hindustan Copper Limited, which was verified on 15.09.2003 was valid till 30.09.2004 but, thereafter, the petitioners had never placed the weighing machine for its verification even after direction given through letter dated 23.04.2007. The learned court below being satisfied with the prosecution report took cognizance of the offence as indicated above.

3. Learned counsel Mr. Das appearing for the petitioners submitted that in the light of the ratio decided in the case Aneeta Hada Vs. Godfather Travels and Tours Private Limited; (2012) 5 SCC661 the Hindustan Copper Limited being in possession, custody and control over the weights and measures was a necessary party and non-inclusion of the company vitiates the entire proceeding and the order taking cognizance is also bad in law. It was also submitted that the petitioners, who are the incharge General Manager and Senior Manager in the said Company M/s. Hindusthan Copper Limited, Indian Copper Complex, Ghatshila, were not under the obligation to produce the weights and measures for its verification and without there being 2 any allegation that such appliances or apparatus were in possession or under custody or control of the petitioners, notices have been issued against the petitioners and that in view of Section 62 of the Standard Weights and Measures (Enforcement) Act, 198, the Company should have also been made accused. It was also submitted that the Honble Supreme Court in a recent Judgment passed in Criminal Appeal No. 1584 of 2007; Sharad Kumar Sanghi Vs. Sangeeta Rani has affirmed the ratio decided in Aneeta Hada (supra) holding that when a company has not been arrayed as a party, no proceeding can be initiated against the Managing Director even where vicarious liability is fastened on certain statutes.

4. Refuting the above submissions, learned counsel representing the State contended that the petitioners being in-charge General Manager and Senior

Manager were responsible to produce the weighing machine for its verification and non-production of the machines by them is a clear violation of the provisions of the said Act and the court below has rightly taken cognizance of the offence against the petitioners.

5. Before I enter into the veils of submissions of the counsels, a reference of Section 24 and Section 62 of the said Act is necessary for the proper adjudication of the issue involved in this case. The above two sections read as follows:- Section

24. Verification and stamping of weights or measures.-

(1) Every person having any weight or measure in his possession, custody or control in circumstances indicating that such weight or measure is being, or is intended or likely to be, used by him in any transaction or for industrial production or for protection, shall, before putting such weight or measure into such use, have such weight or measure verified at such place and during such hours as the Controller may, by general or special order, specify in this behalf (hereinafter referred to as the specified place of specified time), on payment of such fees as may be prescribed.

(2) Every weight or measure referred to in sub-section

(1) shall be re- verified at such periodical intervals as may be prescribed. Explanation.- For the removal of doubts it is hereby declared that no periodical re-verification shall be necessary in relation to any weight or measure which is used exclusively for domestic purposes.

(3) Every inspector shall, for the purpose of verification of any weight or measure, attend the specified place (within the local limits of his jurisdiction) at the specified time and verify every weight or measure which is brought to him at such place and within such time and shall, if he is satisfied that such weight or measure conforms to the standards established by or under the Standards Act, put his stamp thereon: Provided that where any weight or measure is such that it cannot, or should not, be moved from its location, the inspector shall take such steps for the verification of such weight or measure at the place of its location as may be prescribed.

(4) Where any verification has been made under sub-section (3), the Inspector shall grant to the person referred to in sub-section

(1) a certificate in the prescribed form indicating therein the particulars of the weight or measure verified and stamped by him. 3

(5) Where the Controller is of opinion that by reason of the size or nature of any weight or measure, it is not desirable or practicable to put a stamp thereon, he may, by an order in writing, direct that instead of putting a stamp on such weight or measure, a certificate may be issued to the effect that such weight or measure conforms to the standards established by or under the Standards Act and every weight or measure so certified shall be deemed to have been duly verified and stamped under this Act on the date on which such certificate was issued.

(6) Every certificate referred to in sub-section

(5) shall be in such form as may be prescribed and shall contain such details as to enable a clear identification of the weight or measure to which it relates. Section

62. Offences by companies.-

(1) If the person committing an offence under this Act is 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 person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any 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 be 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 any 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.

6. From bare perusal of the above two provisions and specially sub-section (1) of Section 62, it is amply clear that the company can be prosecuted, only then the persons mentioned in the other categories could also be held to be vicariously liable for the offence. The Honble Supreme Court after considering almost a similar situation in the case Aneeta Hada (supra) has held in paragraph 58 as follows:

58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words as well as the company appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicated. 7. Apparently in the instant case, notices were issued to the petitioners, who at the relevant point of time, were posted as incharge General Manager and Senior Manager and there is no specific allegation in the prosecution report that these petitioners were responsible or were having possession, custody or 4 control of the weighing machine rather from bare reading of Section 24, it is clear that the possession of the said weighing machine, custody and control can be said to be of the company but the said company M/s. Hindusthan Copper Limited was not impleaded as an accused. Hence, in the light of the ratio decided in Aneeta Hada (supra), I am constrained to hold that the petitioners in absence of any specific allegation of being incharge or responsible to have possession, control or custody of the weighing machine, cannot be prosecuted.

8. In view of the above discussion, the entire criminal proceeding of the court below including the order taking cognizance are, hereby, quashed.

9. Accordingly, this application is allowed. (R. N. Verma, J.) Ritesh