

Vidya Wati and Others Vs. State

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Court : Delhi

Decided On : Aug-10-1988

Reported in : [1990]69CompCas813(Delhi); 1989CriLJ1047; 1988(3)Crimes623; 36(1988)DLT125; 1988(37)ELT341(Del)

Judge : H.C. Goel, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 173, 397, 399 and 401; Foreign Exchange Regulation Act, 1947 - Sections 23; [Essential Commodities Act, 1955](#) - Sections 3, 7, 10 and 10(1); [Prevention of Food Adulteration Act, 1954](#) - Sections 17(1); Drugs and Cosmetic Act, 1940 - Sections 34; Delhi Cement (Licensing and Control) Order, 1982

Appeal No. : Criminal Revision No. 165 of 1987

Appellant : Vidya Wati and Others

Respondent : State

Judgement :

H.C. Goel, J.

1. This is a revision petition under sections 397, 399/401 of the Code of Criminal Procedure for setting aside the charge framed against the three petitioners by Shri P. S. Sharma, Additional Sessions Judge, Delhi, by his order dated May 25, 1987,

for the offence punishable under section 7 of the [Essential Commodities Act, 1955](#) (for short 'the Act'). The police of police station, Civil Lines, Delhi, had filed the challan against seven accused namely, Pinky Builders, a partnership firm, the three petitioners who are the partners of that firm, one Gian Singh, driver of the truck, Surender Singh and Girraj Shukla, two alleged salesmen of the said firm. The prosecution case stated in brief is that on July 11, 1983, at about 3.50 p.m., one truck bearing No. DEL-7232 which was being driven by Gian Singh, accused, was intercepted by the officers of the Food and Supplies Department of the Delhi Administration and accused Girraj Shukla was sitting by the side of the driver. 100 bags of levy cement were being carried in the truck. The Food and Supplies officials also found one sales register and some cash memo books in the possession of Surendra Singh at that time who stated that he was the manager of the firm. It transpired that 100 bags of levy cement were being transported to the premises of one Cine Sales (Mfg.) Pvt, Ltd., 11, Court Road, Civil Lines, Delhi, to whom the same had been sold. The truck along with 100 bags of levy cement, the stock register and the cash memo books were seized. On search of the business premises of the firm on the next day, 14 bags of levy cement were found short and 14 bags of non-levy cement were found in excess in stock at the premises. It was also found that the firm had maintained duplicate sales register and cash memo books of non-levy cement.

2. The case of the prosecution as per the charge-sheet filed under section 173, Criminal Procedure Case, is that the firm, Pinky Builders, had committed the offence in question for the alleged violations and the three petitioners being the partners of the firm should also be deemed to have committed the offence by virtue of section 10(1) of the Act. It is not the case of the prosecution that these persons committed the violations in question personally and individually.

3. Mr. P. S. Sharma, Additional Sessions Judge, Delhi, by his impugned order charged the five accused persons, i.e., the three petitioners, Surinder Singh and Girraj Shukla, the two salesmen of the company, under section 7 of the [Essential Commodities Act, 1955](#). A common charge was framed against all the five accused persons for their having committed the following violations and irregularities :

(i) They sold 100 bags of levy cement to Cine Sales (Mfg.) Pvt. Ltd., 11, Court Road, Civil Lines, Delhi, at the rate of non-levy cement.

(ii) There was a shortage of 14 bags of levy cement and an excess of 14 bags of non-levy cement with the company; and

(iii) The accused had maintained duplicate sales registers and cash memo books of non-levy cement, each one of which allegedly amounted to contravention of the provisions of the Delhi Cement (Licensing and Control) Order, 1982, as punishable under section 7 of the Act.

4. Section 10(1) of the Act reads as below :

'10(1). If the person contravening an order made under section 3 is a company, every person who, at the time the contravention 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 contravention 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 any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.'

5. It is obvious that for bringing the case of a person within the mischief of section 10(1) of the Act, two things must be satisfied, viz., (i) the offence in the first Instance must have been committed by the company which includes a partnership-firm and for that, the company must be first charged as such; and (ii) the person, besides the company, who is sought to be made liable by virtue of section 10(1), must be in charge of and responsible to the company for the conduct of its business. In the present case, neither of the two conditions appears to have been satisfied for charging the three petitioners under section 7 of the Act. The learned Additional Sessions Judge, in his order directing the framing of the charge, did not say that the firm was prima facie guilty of the offence punishable under section 7 of the Act and no charge was framed against the firm as such, in

this order, the three petitioners have been merely described as being the @ partners and the other two accused as being the salesmen of Pinky Builders at the relevant time. In the charge-sheet as framed by the learned Additional Sessions Judge also, the company, i.e., the firm, Pinky Builders, has not been charged. The company, i.e., the firm, Pinky Builders, itself not having been charged for the offence in question and no reference to section 10(1) having been made in the order of charge or in the charge-sheet there could be no question of the present petitioners being charged for the offence under section 7 read with section 10(1) of the Act. The Supreme Court in the case *State of Madras v. C. V. Parekh*, : 1971 CriLJ418 , held that in a case in which contravention of the order made under section 3 of the Act is done by an employee of a company and not by the company itself, conviction cannot be fastened on the manager or the managing director of the company by applying section 10 as liability of persons in charge of the company can arise under section 10 only when contravention is by the company itself. In view of my above discussion, the charge as against the present petitioners is liable to be quashed on this short ground.

6. Apart from the above flaw in the case of the prosecution regarding the charging of the three petitioners, no case was made out by the prosecution for prima facie holding the petitioners liable for the offence by invoking the provisions of section 10(1) of the Act.

7. Now, so far as the legal position is concerned, under section 10(1), a director of a company, which includes a partner of a partnership firm, has to be deemed to be guilty of the contravention if it is proved that that person at the time of the contravention was in charge of and was responsible to the company for the conduct of the business of the company. It has to be alleged and proved by placing material on the record that the person sought to be made liable was in charge of and responsible to the company for the conduct of its business at the relevant time. The words 'in charge of and responsible to the company for the conduct of the business of the company' have been interpreted by the Supreme Court, as also by some High Courts, including this court, in a number of cases. In *Girdhari Lal Gupta v. D. N. Mehta, Collector of Customs* : [1971]3SCR748 , the Supreme Court held that the words 'in charge of' must mean 'in overall control of

the day-to-day business of the company or the firm'. In *Stage of Karnataka v. Pratap Chand* [1981] 1 FAC 374, the Supreme Court relied on its decision in *Girdhari Lal Gupta's case* : [1971]3SCR748 and observed that a partner who was not in overall control of the day-to-day business of the firm could not be proceeded against merely because he had a right to participate in the business of the partnership firm under the terms of the partnership deed. Both these cases no doubt involved consideration of the provisions of the other two Acts. In the case of (*Girdhari Lal Gupta* : [1971]3SCR748 , the provisions of section 23(e) of the Foreign Exchange Regulation Act, 1947, and in the other case of *Pratap Chand* [1981] 1 FAC 374, the provisions of section 34 of the Drugs and Cosmetics Act, 1940, were under consideration. However, these provisions are in pari materia with section 10 of the Essential Commodities Act.

8. The same view has been consistently taken by this court in a number of cases. e.g., *Municipal Corporation of Delhi v. Kishan Lal* [1975] 1 FAG 292; *Smt. Suman Kanodia v. Union of India* [1977) 1 FAG 161 and the cases referred to therein. These were the cases under the [Prevention of Food Adulteration Act, 1954](#). The provisions of section 17(1) of the Prevention of Food Adulteration Act are also in pari materia with section 10 of the Act. Then in the case of *Ram Niwas v. State* (1982) 2 FAC 301, which was a case under section 7 read with section 10 of the same Act, *Leila Seth J.* took the same view and I am in complete agreement with this view.

9. Now, coming to the factual aspect of the case, Ms. Wasu was unable to refer me to any material on the record from which It may be inferred that the three petitioners or any of them was in overall control of the day-to-day business of the firm. The prosecution for making the petitioners vicariously liable by invoking section 10 has simply relied on the fact that the petitioners were partners of Pinky Builders to which firm the 100 bags of cement belonged and whose premises were searched and in whose books of account certain irregularities were allegedly detected. The prosecution has placed a copy of the supplementary partnership deed of the firm, Pinky Builders, on the record of the trial court. There is nothing in this deed to show whether all the three petitioners or any of 'them was entrusted with the control of the day-to-day business of the firm. There is only, one material

clause in this deed which may be said to have some bearing on the question under consideration. This clause states that the bank account shall be operated by all the parties individually for and on behalf of the firm as a partner. This is a usual clause in a partnership deed embodying the right of the partners to operate the bank account of the partnership firm. This clause obviously cannot be construed to mean that all the partners of the firm are given the control of running the day-to-day business of the firm and they all become in charge of the day-to-day business of the firm. The question as to whether a particular person, including a partner of a firm, is in charge of and responsible to the firm for the conduct of its business at the relevant time has to be alleged by the prosecution and then proved by placing relevant material in that regard on the record. In the present case, there is no such allegation even in the charge-sheet under section 173, Criminal Procedure Code, nor has any material been produced, nor referred to or relied upon by the prosecution on the record. That being so, the learned Additional Sessions Judge was in error in charging the three petitioners by impliedly invoking the aid of section 10 of the Act, although not so stated in the order directing the charge to be framed or in the charge-sheet as such. I, accordingly, accept the petition, quash the charge as framed against the three petitioners and discharge them in the case.