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T. Thomas and ors. Vs. State and ors.

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Court : Delhi

Decided On : Sep-30-1985

Reported in : ILR1986Delhi210

Judge : G.R. Luthra, J.

Acts : Forward Contracts Regulation Act, 1952 - Sections 2

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 65 of 1976

Appellant : T. Thomas and ors.

Respondent : State and ors.

Advocate for Pet/Ap. : B.B. Lal,; Akshay Bipin,; L.M. Sanghvi,;

Judgement :

G.R. Luthra, J.

(1) By means of this judgment, five petitions [Crl. Misc. (Main) 65/76, Crl. Misc. (Main) 210/77, Crl. Misc. (Main) 217177, Crl. Misc. (Main) 255177 .and Crl. Misc. (Main) 257177] are being decided. They arise out of the same criminal proceedings pending in the court of' a Metropolitan Magistrate.

(2) The questions for determination are as under

(A)Is the cognizance of the criminal proceedings by the learned Magistrate against all or any of the accused barred by limitation as provided by section 468 of Code of Criminal Procedure (hereinafter referred to as the Code) ?

(B)Can criminal 'liability be vicariously fastened on the directors of the company or partners of the firm and if so, under what circumstances

(3) For deciding the aforesaid questions it is necessary to know the version of the prosecution which is as under. Shri S. B. Lodha, Junior Research Assistant of the Forward Markets Commission, Bombay constituted under the Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as the Act), sent a confidential information to the Superintendent of Police. Crime and Railways, Delhi to the effect that Shri H. C. Pawa of Mis. Pawa Brokers Pvt. Ltd. had been indulging in illegal forward contracts relating to ground nut oil, mustard seed oil etc. as well as 'Option' in goods (within the meaning of section 2(g) of the Act at his residence located at 407, Greater Kailash, New Delhi, that thus he was committing a cognizable offence punishable under sections 20 and 21 of the Act and that, thereforee, necessary action in accordance with law be taken. That complaint was dated July 16, 1973. On that very day premises of Shri H. C. Pawa, S-407, Greater Kailash-I, New Delhi were searched but nothing incriminating was recovered. Thereafter premises No. 648. Kailash Bhawan. Delhi of M!s. Pawa Brokers Pvt. Ltd. was also searched from where two sauda books (books relating to contract), two files and one rent receipt suspected to contain incriminating entries were recovered. Those documents were sent to Forward Market Commission, Bombay (hereinafter referred to as the Commission) for scrutiny and report. A scrutiny report from Bombay was received which revealed that M/s. Pawa Brokers Pvt. Ltd. Delhi had been instrumental in the following forward contracts effected :

(A)On October 13, 1972 Prakash Chand Arora brought about a transaction for 200 tonnes of maize at Rs. 7801- per tonne. The delivery was to be made on November 7, 1972 by M/s. Tikam Chand Bros. Delhi to M/s. Hindustan Lever Ltd., New Delhi.

(B)On December 21, 1972, Prakash Chand Arora brought about a transaction for maize weighing 50 tonnes at Rs. 880.00 per tonne with a stipulation for delivery to be made on January' 15, 1973. The said transaction was also between M/s. Hindustan Lever Ltd., New Delhi and Mis. Tikam Chand Bros., Delhi.

(C)On January 18, 1973 between the same parties a transaction in respect of 30 tonnes of maize at Rs. 9501- per tonne was brought about by the same person-Prakash Chand Arora. (Prakash Chand was arrested because the aforesaid contract provided for delivery beyond 11 days and thereby were forward contracts within the meaning of section 2(c) of the Act punishable under section 21 of the Act. M/s. Pawa Brokers Pvt. Ltd. and its directors were also liable to be prosecuted and punished under section 21 (a) and (c) of the Act for owning and managing the place for the purpose of entering into forward contracts. Similarly. Hindustan lever Ltd. and its directors and Chairman etc. were liable to be prosecuted and punished under section 20(e) of the Act.

(4) On the above basis, 21 persons were arrayed as accused. Those accused can be divided into three categories. The first category is M/s. Hindustan Lever Ltd., New Delhi and its manager Shri R. S. Talwar, its clerk Shri Kasturi Lal, its chairman, vice chairman, managing director and directors. They are accused No. I to 10 in the list of accused. Accused No. 4 and 6 to 10 brought petition No. 65176 and accused No. I to 3 are respondents No. 13 to 15 in the said petition.

(5) The second category is M/s. Pawa Brokers Pvt. Ltd., 648150, Gandhi Gali, Fatehpuri, Delhi, its directors and Prakash Chand Arora. The directors Sushil Kumar Pawa, S. K. Pawa and Kishan Chand Pawa brought petition No. 210'77. Sri Ram Pawa, who is also a director, brought petition No. 255177.

(6) The third category is M/s. Tikam Chand Bros.. 6063, Khari Baoli, Delhi. Tikarn Chand, one of the partners brought petition No. 217177. There Two other partners Motu Mal and Neenu Mal brought a joint petition No. 257177.

(7) However, Bhagwan Dass, partner of Tikam Chand. Bros. and Mis. Tikam Chand Bros. did not bring any petition. They are respondents in all the petitions. Prakash Chand Arora and M/s. Pawa Brokers Pvt. Ltd. also did not bring any

petition.

(8) I have heard the learned counsel for the parties. Section 468 of the Code reads as under :

'468.Bar to taking cognizance after lapse of the period of limitation-(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in subsection (2), after the expiry of the period of limitation.

(2)The period of limitation shall be-

(A)Six months, if the offence is punishable with fine only ;

(B)One year. if the offence is punishable with imprisonment for a term not exceeding one year;

(C)three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3)For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.'

(9) For the purpose of finding out the period of limitation, it is necessary to know as to what are the charge sheet against different accused. According to the prosecution, the parties to the forwarding contract i.e. Messrs. Hindustan Lever Ltd. on the one hand and M/s. Tikarn Chand Bros. on the other hand, had committed offence punishable under section 20(e) of the Act. That prescribes maximum punishment of one year or a fine of not less than Rs. 1000.00 or both. thereforee, the period of limitation in respect of the aforesaid contracting parties, the directors of Messrs. Hindustan Lever Ltd. and partners of M/s. Tikam Chand Bros. is one year. Section 469 of the Code is the one which mentions about the commencement of the period of limitation. The period of limitation starts from the date of the offence or where the commission of the offence was not known to the

person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to a police officer, whichever is earlier. In the present case, the offence in respect of these forwarding contracts was not known to any one because the particulars of the same were contained in the documents recovered from the search conducted on 16th July 1973. thereforee, the starting point of limitation would be 1.6th July 197? when the particulars of the offence came to the notice of the police as well as the Commission. Computing the period of limitation of one year from that date i.e. 16th July 1973, the period of one year expired on July 16, 1974. The report under section 173. as is clear from the trial court file was put in on 20th December 1975. thereforee, clearly the cognizance of the offence as against Messrs. Hindustan Lever Ltd.. its directors. M/s. Tikarn Chand Bros. and partners of that firm is barred,

(10) Now the case of M/s. Pawa Brokers Pvt. Ltd. and its directors is taken up. According to the prosecution, they had committed offences punishable under section 21 (a) (c) and (e) of the Act. Section 21 provides maximum punishment of two years. Thereafter, the period of limitation is three years -according to section 468 of the Code, Computing that period of three years from 16th July 1973, report under section 173 of the Code could be filed up to July 15, 1976. As already mentioned, the report was filed and cognizance was taken by the magistrate on 20th December 1975. Hence the prosecution as against M/s. Pawa Brokers Pvt. Ltd. and its directors was within limitation.

(11) SUB-SECTION (3) of Section 468 of the Code (reproduced already) has no application in the present case because the said sub-section did not exist in the original Code and was added by means of an amendment which came into force on 18th December 1978 which was much after the commission of the alleged offence as well as the filing by the police of the report under section 173 of the Code. thereforee, the effect of subsection (3) in this case is not being considered, at all.

(12) Now it is to be seen if the directors of Messrs. Hindustan Lever Ltd. and Messrs. Pawa Brokers Pvt. Ltd. and the partners of M/s. Tikarn Chand Bros. can

be fastened with vicarious liability. In this respect relevant provision of the Act is Section 22 which reads as under :

'22.(1) Where an offence 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 subsection 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 the 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 gross negligence 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.

ExplanationN.-FORthe 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.'

(13) The aforesaid section has the same language as section 17 of the Prevention of Food Adulteration Act before it was amended in respect of which it is laid down in Municipal Corporation of Delhi v. Ram Kishan Rohtagi and others, : 1983 CriLJ159 and Municipal Corporation of Delhi v. S. K. Jain and others, 1984 (2) Fac 289 that unless and until it is alleged and proved that any director or partner of a firm was, at the time of commission of alleged offence, in charge of and was responsible to the company or the firm (as the case may be) for the conduct of the business of the company or the firm, such director or par teller cannot be held to be guilty of the offence committed by the company. In Air 1988 Sc 67 it is further

laid down that the proceedings against an accused can be quashed by the High Court at initial stages if on the face of the complaint or preliminary evidence, no offence is constituted. In the present case, there is no allegation in the report under section 173 of the Code. at all, that any of the directors of M/s. Hindustan Lever Ltd., Messrs. Pawa Brokers Pvt. Ltd. and partners of M/s. Tikarn Chand Bros. who are accused, were in charge of or were responsible to the company for the conduct of the business of the respective companies. The allegations only is that Prakash Chand Arora was responsible for bringing .about the transactions.

(14) Under these circumstances the proceedings against all the accused (including. the petitioners of different petitions) except Prakash Chand Arora and M/s. Pawa Brokers Pvt. Ltd.. are liable to be quashed.

(15) I, thereforee, accept all the petitions, quash the proceedings against all the petitioners, respondents 13 to 15 in the petition Crl. Misc. (Main) 65176 and the remaining accused except Prakash Chand Arora and M/s. Pawa Brokers Pvt. Ltd.

(16) A copy of this order be sent to the learned magistrate concerned along with file with the direction that the proceedings against all the accused except Prakash Chand Arora son of Jai Ram, resident of 2390 Shadipur and M/s. Pawa Brokers, 648150, Gandhi Gali, Fatehpuri, Delhi are quashed and that hence proceedings only against two accused i.e. Prakash Chand Arora and M/s. Pawa Brokers Pvt. Ltd. be taken in accordance with law.

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