K. Sunitha Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-27-2000

Reported in : 2001CriLJ2727; 2000WLC(Raj)UC596

Judge : S.C. Mital, J.

Acts : Prevention of Food Adulteration Act, 1954 - Sections 7, 16, 17 and 17(2); Code of Criminal Procedure (CrPC) - Sections 482

Appeal No. : Criminal Misc. Petition No. 924 of 1998

Appellant : K. Sunitha

Respondent : State of Rajasthan

Advocate for Def. : D.D. Kalla, P.P.

Advocate for Pet/Ap. : Virendra Agarwal and; Ravi Bhansali, Advs.

Disposition : Petition allowed

Judgement :
ORDER

S.C. Mital, J.

1. This petition under Section 482 Cr.P.C. is preferred to call for the record of the Criminal Case No. 367/93 State of Rajasthan v. Manoj Kumar and others pending

in the Court of learned Chief Judicial Magistrate, Jaisalmer and to quash the said proceedings.

2. The brief facts leading to this petition are that respondent Food Inspector. S.L. Santoshi, Primary Health Centre, Degana filed a complaint on 23-2-93 under Section 7 read with 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred as 'P.F.A. Act') against Manoj Kumar, M/s. Hari Om Partners, Bhanwar Lal, Chhagan Lal, Shri Krishna Distributors in the Court of Chief Judicial Magistrate, Jaisalmer with the allegation that the sample of mustard oil (Real Gold Brand) taken on 29-4-92 from one sealed tin was found adulterated as it did not confirm to the prescribed standards. Shri Manoj Kumar is the vendor and other accused persons are said to be distributors. The trial was in progress and on 31-12-97 after five years, learned Chief Judicial Magistrate took cognizance for the offence against ITC Agrotech Ltd., Jaipur on an application filed by the distributor alleging that the oil was manufactured by the said company. The learned trial Court directed to summon the company through its Managing Director and Chairman. The Assistant Commercial Taxation Officer, Circle III Jaipur submitted information and the list of Directors of ITC company on 23-1-98 with the copy of memorandum of association and the articles of association and by order dated 29-1-98, the learned Chief Judicial Magistrate took cognizance against all the seven persons given in the list of Directors and directed to summon them by bailable warrants in the sum of Rs. 5,000/-. The petitioner K. Sunitha is one of the persons in the list and this petition has been now filed to quash the proceedings against her.

3. I have heard the learned counsel for the petitioner and the learned Public Prosecutor. The main thrust of the arguments on behalf of the petitioner is that cognizance could not be taken against the petitioner because she was not nominated under Sub-section (2) of Section 17 of the P.F.A. Act to be incharge of and responsible to the company for the conduct of the business and if she was not nominated then also it has to be shown that she was in-charge of and was responsible to the company for the conduct of the business of the company. The learned trial Court has not at all considered the provisions under Section 17 P.F.A. Act in regard to the offences by companies. In support of this contention, reliance

is placed on 1983 (1) Supreme Court Cases 1 : (1983 Cri LJ 159) (Municipal Corporation of Delhi v. Ram Kishan Rohtagi, 1995 (2) W.L.C. (Raj) 64 : 1995 AIHC 5562 : (Devi Chand v. The State of Rajasthan) and 1998 (3) J.T. 584 : (1998 Cri LJ 3287) (State of Haryana v. Brij Lal Mittal).

4. It will be advantageous to reproduce here Section 17 of the P.F.A. Act :-

17. Offences by companies--(1) Where an offence under this Act has been committed by a company-

(a)(i), the person, if any, who has been nominated under Sub-section (2) to be in-charge of and responsible to, the company for the conduct of the business of the company (hereinafter in this section referred to as the person responsible), or

(ii). where no person has been so nominated, 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; and

(b). the company,

shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

(2). Any company may, by order in writing, authorise any of its directors or managers (such manager being employed mainly in a managerial or supervisory capacity) to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this Act and may give notice to the Local (Health) Authority, in such form and in such manner as may be prescribed, that it has nominated such director or manager as the person responsible, along with the written consent of such director or manager for being so nominated.

5. It is crystal clear from the above provision that if an offence has been committed by a company that person will be deemed to be guilty of the offence and liable to be proceeded against and punished, who has been nominated to be in-charge of and responsible to the conduct of the business of the company and if no person

has been nominated, even then every person, who was in-charge of and responsible for the conduct of the business of the company. The nomination can be made in writing under Sub-section (2) of Section 17 P.F.A. Act and notice may be given to the local authority in the prescribed manner about such nomination along with written consent of the director/manager. Hence if the prosecution deems the petitioner to be guilty of the offence and liable to be tried and punished, it should show by placing requisite material on record that the petitioner was nominated as in charge and responsible for the conduct of the business of the accused company or even otherwise without nomination the petitioner was in-charge of and responsible for the conduct of the business of the company. I entirely agree with the learned counsel for the petitioner that the prosecution has not produced any documentary evidence or otherwise or even has not made any averment that the petitioner was liable to be proceeded against and punished being in-charge of and responsible for the conduct of the business of the company. There is no averment also that she was nominated by the company in the prescribed manner with a notice to the Local (Health) Authority as envisaged under Sub-section (2) of Section 17 of the P.F.A. Act. No presumption can be drawn merely on the basis of the list of directors filed by Assistant Commercial Taxation Officer that the petitioner was either nominated or de facto in-charge of and responsible to the company for the conduct of the business. The learned trial Court has not considered the aspect of the matter and the provisions contained in Section 17 of the P.F.A. Act. The contention raised on behalf of the petitioner finds support on all fours from the cases referred above. In view of the above discussion, the impugned order suffers from serious illegality and has resulted in the abuse of the process of the Court. In the above circumstances, the impugned order deserves to be set aside in the interest of justice also.

6. In the result the petition is hereby allowed. The order of taking cognizance dated 29-1-98 is hereby quashed. However, I hasten to add and make it clear that this order will not operate as bar in taking cognizance if the prosecution applies for taking action against the officers of the company on complying the provisions under Section 17 of the P.F.A. Act in accordance with law.