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Court : Chennai

Decided On : Feb-08-1990

Reported in : 1991CriLJ1385

Judge : Padmini Jesuddurai, J.

Appeal No. : C.M.P. No. 1455 of 1990

Appellant : Mohamad Ibrahim and Another

Respondent : State

Advocate for Pet/Ap. : Mr. K.S. Ramachandran, Adv.

Judgement :

ORDER

1. The accused 2 and 3 against whom and three others, the respondent has filed a charge-sheet under Clauses 7(2) and 7(3) of the Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card system) order, 1982 read with Sections 3 and 7 read with S. 10 of the Essential Commodities Act, 1955 read with Sections 34 and 107 I.P.C. invoke the inherent powers of this court under section 482 Cr.P.C. to quash the above proceedings.

2. Thiru K. S. Ramachandran, learned counsel for the petitioners would urge that there are no materials in the records furnished under Section 173 Cr.P.C. to show that the petitioners have committed the offences and the bald statement in the

charge sheet that the offences could not have been committed without the knowledge and connivance of the petitioners, would not be sufficient to prove the case against the petitioners. The learned counsel would further contend that the petitioners holding the post of President and Secretary respectively in the first accused Society in an honorary capacity, having only overall control over the affairs of the Society and being employed elsewhere the first petitioner as Pharmacist in the Rajaji Government Hospital at Madurai and the second petitioner as Assistant in the court of District Munsif, Madurai could not be proceeded against for any irregularity or any offence committed by the other accused, who are paid employees of the Society. In support of this proposition, the learned counsel placed reliance upon certain decisions of this court, which I shall refer to later.

3. The first accused is the State Government Employees Consumers' Co-operative Stores Limited, Madurai, which is a company under section 10 of the Essential Commodities Act (hereinafter referred to as the 'Act') Accused 2 and 3 present petitioners are the President and Secretary respectively. Accused 4 and 5 are the salesmen. The prosecution case is that on information that large quantities of kerosene supplied to the first accused-society were being sold in black market to others, the Inspector of Police, Civil supplies, C.I.D., Madurai on 12-5-1988 at, about 1 p.m. inspected the first accused society and checked the stock register and other registers of the society. Accused 4 and 5 were present. The stock register showed that on 11-5-1988, 1,000 litres of kerosene had been taken delivery and received in the society and the bill book showed that the same had been distributed to 200 card holders on the same day. Investigation disclosed that on 11-5-1988 1,000 litres of kerosene, shown as having been distributed to card holders on that day, had not in fact been even taken delivery from the kerosene dealer viz. K. Srinivasa Iyengar, Madurai and that even without taking delivery, the bank draft representing the price for the kerosene had been handed over to the kerosene dealer and the 4th accused had received a sum in return and both the accused 4 and 5 had made false entries in the bill book and other registers making it appear as if the entire stock of 1,000 litres had been distributed to 200 card holders on that day itself. The offence had been committed by the first accused society and the accused 2 and 3 being the President and Secretary respectively

and the second accused having overall control over the properties of the first accused society and the third accused, as Secretary, being requested to prepare indent for the requirement of the fair-price stock and check the every day sale of essential articles, had failed to exercise due diligence to prevent the commission of the offence, which could not have been committed without their knowledge and connivance. On these allegations, charge sheet was filed against all the five accused for the above offences.

4. It is not denied that during the relevant period, the second accused was the President of the Society and the third accused was the Secretary. The learned counsel for the petitioners sought to rely upon the decision of a learned judge of this court in Ramamurthy, K. S. v. State by Inspector of Police 1983 LW 62 wherein a charge sheet against ex-officio president of a co-operative society was quashed on the facts of that case, particularly when it was shown that on the relevant date when the offence was committed, the bye laws of that society had been amended making the vice-president responsible for the affairs of the society. The court also felt that the misappropriation related to a paltry sum of Rs. 90/-, which was of a trivial nature.

5. The same learned judge in another decision in Viswanathan v. State Superintendent of Police 1982 LW 70 by a common judgment quashed the prosecutions against the Secretaries and Presidents of cooperative societies, when they were arrayed along with the paid employees for offences under sections 409 read with 34 and 477A, IPC. In the case dealt with in para 4 of the judgment, the President had not even signed the cash book on the relevant dates and none of the witnesses implicated him either directly or indirectly. In the case dealt with in para 7 also, it was found that none of the witnesses either directly or indirectly implicated the President and in the case in para 11, the learned judge felt that it would not be possible for the President to check each and every entry made by the other staff. On the facts of these cases, the proceedings were quashed.

6. These cases would stand on an entirely different footing from the present case, in view of the fact that in the present case, the charge sheet is laid invoking S. 10 of the Act, which introduces a new construction regarding the liability of those who

are in charge of and responsible to the company for the conduct of the business of the company and their liability, therefore, has to be decided, not on the general law but upon the deeming provision contained in S. 10.

7. The learned counsel for the petitioners would also place reliance upon another decision of a learned judge of this court in Karuppannan, M. v. State by Inspector of Police 1988 LW 485 wherein a charge sheet filed against the President for similar offences was quashed particularly because the learned judge found that charge sheet showed that the President was holding that post only from 30-6-1984 to 30-11-1984 and the occurrence had taken place on 1-7-1986. The contention of the prosecution that the salesman who actually committed the offences had been appointed by the President and the President would, therefore, be vicariously liable, was repelled by the learned judge.

8. In the instant case, the charge sheet having been filed invoking S. 10 of the Act, the decision of the Supreme Court in Delhi Municipality v. Purshotam Dass : 1983 CriLJ172 dealing with a similar situation would be more appropriate. That was a prosecution, no doubt, under the provisions of the Food Adulteration Act wherein the case was instituted on a complaint, unlike the present one, which is on a police report. However, the fact that S. 10 of the Act was invoked would be a common feature in both the cases, which would make the principles laid down by the Supreme Court in the above decision applicable to this case also. Therein the Supreme Court set aside the order of the High Court quashing the prosecution against accused 7 and 12 there who were shown in the complaint, as in charge of and responsible for the conduct of business of the society. The Supreme Court observed that the complaint clearly that at the relevant time, the above accused were in charge of and responsible for the conduct of its business and the High Court had failed to consider that the above allegations were quite clear and acceptable and sufficient for taking cognizance of the offence against the accused and further details would have to be given in the shape of evidence during trial.

9. S. 10 of the Act is as follows :-

'(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 such 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.

(2) Notwithstanding anything contained in sub-s. (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'.

10. S. 10 of the Act seeks to make liable, persons in charge of and responsible for the affairs of the company, when the offence is committed by the company and the company is also arrayed as an accused. Under sub-s. (2) of S. 10 of the Act, prosecution will have to prove 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, who are shown to have been in charge of and responsible to for the conduct of the business of the company. Once the prosecution establishes this ingredient, the burden then shifts to the accused to show that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention. A reading of these provisions would clearly show, that even when the accused is shown to be in charge of or responsible to the conduct of the affairs of the company, and the offence 'is attributable to any neglect on the part of' that person he is deemed to be guilty of that offence. S. 10 is a deeming provision. The actual consent or connivance need not be established and it is enough if the prosecution proves that the offence is attributable to any neglect on the part of the accused. S. 10 does not refer to any degree of negligence or gross negligence or criminal negligence as distinct from dereliction of duty. It merely refers to 'any neglect' on the part of those in charge of or responsible to the company. Direct evidence of this neglect, would

be rare. Like any other fact, it could be established by circumstantial evidence also.

11. Trial has not commenced and at this stage, we have only to peruse the records under section 173, Cr.P.C. and the allegations made in the charge-sheet. If these attract S. 10(2) of the Act, it would be premature for us to go further into the matter and weigh the materials or the incriminating circumstances to decide, whether the petitioners could be guilty or not. The fact that the posts of the accused-petitioners are honorary or that the petitioners are employed elsewhere, are considerations totally irrelevant to S. 10.

12. It is not denied that at the relevant period, the second accused-first petitioner, as the President and the third accused-second petitioner as the Secretary, were in charge of and responsible to the first accused-society for the conduct of the affairs of the Society. Records under section 173 show that on 3-5-1988, 1,000 litres of kerosene were shown as having been taken delivery and distributed to card holders on the same day; on 5-5-1988 another quantity of 1,000 litres of kerosene were taken delivery and shown as distributed to card holders on the same day; on 9-5-1988 another quantity of 1,000 litres of kerosene have been taken delivery and shown as distributed to card holders the next day; on 11-5-1988 another quantity of 1,000 litres of kerosene shown as taken delivery and shown as distributed to 200 card holders on the same day. It is in this back ground that the police made the inspection and detected the crime. It is not necessary that all the accused against whom charge sheet is filed, should be present at the time when the surprise inspection is made. S. 10 of the Act does not lay down any such contingency.

13. Prima facie, there is material, to show that if accused 4 and 5 without even taking delivery of 1,000 litres of kerosene, made an illegal gain by falsifying the accounts as if kerosene was distributed to card holders, the offence was directly attributable to some neglect on the part of the accused 2 and 3. That is all that S. 10 requires. The contention of the learned counsel that no witness while examined under Section 161 Cr.P.C. has spoken to about any neglect or consent or connivance of the petitioners would not exonerate the petitioners, since like any

fact, that could also be inferred from circumstances. That the offence was committed without their knowledge and in spite of exercise of due diligence by the petitioners has to be established by the petitioners, only during trial. The contention of the learned counsel for the petitioners that immediately after the detection of the offence, accused 4 and 5 were placed under suspension by the first petitioner-President, would only be a self-saving action on the part of the President. It would be unjust and against law to stifle the prosecution on these considerations.

14. Hence, this petition is dismissed.

15. Petition dismissed.

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