indra Devi Agarwal and ors. Vs. State of West Bengal

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Court : Kolkata

Decided On : Feb-02-2006

Reported in : 2006(2)CHN227

Judge : Arun Kumar Bhattacharya, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482; ;West Bengal Declaration of Stock and Prices of Essential Commodities Order, 1977; ;Essential Commodities Act, 1955 - Sections 3, 7(1), 10 and 10(1); ;Negotiable Instruments Act, 1881 - Section 141; West Bengal Automobile Tyres and Tubes (Dealers' Licensing) Order, 1973; ;Essential Commodities (Amendment) Act, 1981

Appeal No. : C.R.R. No. 1471 of 1996

Appellant : indra Devi Agarwal and ors.

Respondent : State of West Bengal

Advocate for Def. : S.S. Roy, Adv.

Advocate for Pet/Ap. : Joymalya Bagchi; and Anasuya Sinha, Advs.

Disposition : Application allowed

Judgement :

Arun Kumar Bhattacharya, J.

1. In this application under Section 482 Cr.PC three petitioners have prayed for quashing the proceedings of Special Case No. 5/95 arising out of G.R. Case No. 10(11) 94 under Section 7(1)(a)(ii) of Act X of 1955, as amended by the Act XVIII of 1981, for contravention of paragraphs 3 & 8 of the West Bengal Automobile Tyres & Tubes (Dealers' Licensing) Order, 1973 and paragraph 3(2) of the West Bengal Declaration of Stock and Prices of Essential Commodities Order, 1977 pending in the Court of Id. Judge, Special Court under the Essential Commodities Act at Siliguri.

2. The circumstances leading to the above application are that on 01.03.94 at about 4.30 p.m. during visit by Inspector A. Hai of DEB, Siliguri along with other officers of the shop-cum-office of M/s. Layak Udyog, Layak Bhavan, Hill Cart Road, Siliguri he found the firm carrying on business of tyres and tubes, and one Bikash Kar was running the shop. Nineteen pieces of tyres and tubes were found stored which along with documents were seized and the said Bikash was arrested, as he failed to produce license or stock and rate board for dealing in tyres and tubes. After completion of investigation chargesheet was submitted against seven accused persons including the present three female petitioners, on 09.12.94.

3. Before starting the business the working/managing partners of the firm on enquiry from the concerned authority came to learn that no license or permission was required to deal in the goods. The Assistant Secretary, Govt. of W.B., on query, by letter being No. 16247-AT/3M-195/87 dated 22.12.87 to the President of the Calcutta Tyres Dealers Association informed that the West Bengal Tyres and Tubes (Dealers' Licensing) Order, 1973, hereinafter referred to as the said order, is no longer in force which was confirmed by departmental correspondence by different authorities.

4. The petitioners were the sleeping partners and were not in any way involved in the actual running of the business. In view of the above circumstances, having regard to the special features of the case on account of prevailing uncertainty as to the applicability of the Essential Commodities Act, 1955 to the present case and chance of conviction of the petitioners being extremely bleak, continuation of the proceeding will amount to an abuse of the process of the Court.

5. As such, being aggrieved by continuation of the proceeding, the petitioners have come up before this Court.

6. Mr. Bagchi, Id. Counsel for the petitioners, relying upon the cases of Sham Sunder v. State of Haryana, reported in 1989(4) SCC 630; Shrilal Bajaria v. State of West Bengal, reported in 1988 C Cr. LR (Cal.) 230 and Ganpath Lal Gupta v. State of West Bengal, reported in 1987(1) CHN 182, advanced argument contending that his clients are merely sleeping partners of the firm and there is no averment either in the FIR or in the chargesheet that the petitioners were in charge of, and responsible to, the firm for the conduct of the business at the time of alleged contravention of the provisions, and so in absence of such averment the proceeding does not prima facie stand at least against the present three female petitioners. Referring to the three-Judges Bench decision in S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, reported in : 2005 CriLJ4140 and State of Assam v. D.P. Barua, reported in AIR 1969 SC 31, Mr. Bagchi further contended that since the provision of Section 10 of the Essential Commodities Act is almost in same terms as Section 141 of the Negotiable Instruments Act, 1881, and is thus in pan materia, the interpretation of the said three-Judges Bench decision on Section 141 of the NI Act should be followed which stands for the proposition that without the averment being made in the compliant that at the time of commission of the offence the person accused was in charge of, and responsible for, the conduct of the business of the company the requirements of Section 141 of the NI Act cannot be satisfied. Mr. Roy, Id. Counsel for the State, in his usual fairness submitted that in view of the above decision of the Apex Court, it is difficult to brush aside the contention of the Id. Counsel for the petitioners particularly when the requisite averments are absent in the FIR and chargesheet.

7. Quashing of proceeding to prevent abuse of the process of the Court or otherwise to secure the ends of justice may be done where: (1) it appears that there is a legal bar against the institution or continuance of criminal proceeding in respect of the offence alleged e.g. absence of requisite sanction, or (2) the allegations in the FIR or the complaint even if they are taken at their face value and accepted in their entirety do not constitute the offence alleged, or (3) the allegations made against the accused person do constitute an offence alleged but

there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. That apart, the power to quash a criminal proceeding by this Court can be exercised very sparingly and with circumspection and that too in the rarest of the rare cases. In this connection, reference may be made to the cases of R.P. Kapur v. State of Punjab, reported in : 1960 CriLJ1239 ; State of Haryana v. Bhajan Lal, reported in : 1992 CriLJ527 and M. Narayandas v. State of Karnataka, reported in 2004 SCC (Cri) 118.

8. To start with, neither Mr. Bagchi nor Mr. Roy could produce any notification showing rescinding of the said Order, 1973.

9. Nevertheless, Sub-section (1) of Section 10 of the Essential Commodities Act, 1955 provides that if a 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 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. Sub-section (2) which starts with a non-obstante clause provides that 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 are also deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. The Explanation provides that 'For the purpose of this section, 'company' includes a firm and 'Director' in relation to a firm means a partner in the firm'. In other words, the person who was entrusted with the business of the firm and was responsible to the firm for the conduct of the business can alone be prosecuted for the offence complained of. Though the essential characteristics of a firm is that each partner is a representative of other partners and each is an agent as well as a principal, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability nor does it make all the partners liable for the offence whether they do business or not, as was observed in the case of Sham Sunder (supra). It was further observed in that case that more often it is common that

some of the partners of a firm may not even be knowing of what is going on day to day in the firm. There may be partners, better known as sleeping partners who are not required to take part in the business of the firm. There may be ladies and minors who were admitted for the benefit of partnership. They may not know anything about the business of the firm. It would be a travesty of justice to prosecute all persons and ask them to prove under the proviso to Sub-section (1) that the offence was committed without their knowledge. It is significant to note that the obligation for the accused to prove under the proviso that the offence took place without his knowledge or that he exercised all due diligence to prevent such offence arises only when the prosecution establishes that the requisite condition mentioned in Sub-section (1) that the partner was responsible for carrying on the business and was during the relevant time in charge of the business is established and in the absence of any such proof, no partner could be convicted. Furthermore, as observed in the three-Judges Bench decision in Neeta Bhalla (supra), it is necessary to specifically aver in a complaint under Section 141 that the time the offence was committed, the person accused was in charge of, and responsible for, the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint the requirement of Section 141 cannot be said to be specified. Merely being a Director of a company is not sufficient to make the person liable under Section 141 of the Act. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of, and responsible for, the conduct of the business of a company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases. Section 10 of the Essential Commodities Act is almost in the same term as Section 141 of the NI Act and so it being in pad materia with the said Section 141, the above interpretation may be followed in this case. In this connection, the case of D.P. Barua (supra) may be relied on. As the petitioners are said to be sleeping partners only of the firm and, there is no averment in the complaint or in the chargesheet that they were in charge of, and responsible to, the firm for the conduct of business at the relevant time or that the offence was committed with their consent or connivance, they cannot be roped with the alleged offence. It was held in the case of Municipal

Corporation of Delhi v. R.K. Rothagi, reported in AIR 1983 SC 67, that proceedings against an accused in the initial stage can be quashed only if on the basis of the complaint and the papers accompanying the same no offence is constituted. In other words, the test is that taking the allegation in the complaint as they are, without adding or substracting anything, if no offence is made out then the Court will be justified in quashing the proceeding in the exercise of its power under Section 482. In the case on hand, since no case against the present petitioners has been made out ex facie, the proceeding against them deserves to be quashed.

10. In the light of the above discussion, the present application be allowed.

11. The impugned proceeding being Special Case No. 5/95 pending in the Court of Id. Judge, Special Court under the E.C. Court at Siliguri be quashed against the petitioners only.

12. Let a copy of this order along with the L.C.R. be sent down at once to the Id. Court below with a direction to dispose of the proceeding against the balance accused persons as expeditiously as possible preferably within a period of six months from the date of receipt of the record.

13. Urgent xerox certified copy of the order, if applied for, be supplied to the parties as expeditiously as possible, preferably within the next week.