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Court : Kolkata

Decided On : Jun-01-1988

Reported in : [1989]65CompCas237(Cal),93CWN16,1989(19)ECC156

Judge : Padma Khastgir and ;Amal Kumar Chatterjee, JJ.

Acts : Essential Commodities Act, 1955 - Section 10

Appeal No. : Crl. Revision No. 1734 of 1981

Appellant : Madanlal Agarwalla

Respondent : State

Advocate for Def. : Parul Banerjee, Adv.

Advocate for Pet/Ap. : D.P. Choudhury and ;Tapandeb Nandi, Advs.

Judgement :

Khastgir, J.

1. This revisional application has been moved for issuance of rule calling upon the respondents to show cause as to why the order complained of should not be set aside and/or quashed. Mr. Justice P. C. Borooah and A. M. Pal JJ. issued a rule on September 5, 1983. The petitioner, Madanlal Agarwalla, alias Madanlal Agarwal, was aggrieved inasmuch as the complaint has been filed against him in

his capacity as a person in charge of Messrs Prabhudayal Sitaram of 67/47, Strand Road, Calcutta. The nature of the complaint against him was that he, being the person in charge and a partner of Messrs Prabhudayal Sitaram of 67/47, Strand Road, Calcutta, violated the provisions of para 4 of the Pulses, Edible Oilseeds and Edible Oils (Storage Control) Order, 1977, by holding the stock of 1,408 qtls., 23 kgs. of edible oil in excess of the prescribed limit of 800 qtls. for a wholesaler. The petitioner contended that the contravention was made by Prabhudayal Sitaram, a partnership firm, of which the petitioner is one of the partners. Section 10 of the Essential Commodities Act provides in the manner following :

'10. Offences by companies.--(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-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 neglect on the part of, any director, manager, secretary or other officer of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.--For the purposes of this section,--

(a) 'company' means anybody corporate and includes a firm or other association of individuals, and

(6) 'director', in relation to a firm, means a partner in the firm.'

2. From the copy of the complaint annexed to the petition, it Indicates that although the allegations have been made against the petitioner as the person in charge of the partnership firm stated to have violated the provisions of the aforesaid order, but in fact there is no averment in the said complaint and/or charge that the partnership firm has violated the said order. In the case of State of Madras v. C. V, Parekh, : 1971 CriLJ418 , it was held that where, in a violation of the Iron and Steel Control Order, there was sale of pig iron by a godown clerk of the company, although the manager and/or managing director of the company were prosecuted, there was no evidence from which it could be inferred that the manager or the director had any knowledge of sale manoeuvred by the clerk and the other conspirator. There was no evidence that they took part in the negotiation for the sale or in the sale itself. It was held that the manager or the director could not be convicted by application of the provisions of Section 10 as the liability of the persons in charge could arise under that section only when the contravention is by the company itself. In the case of Sheoratan Agarwal v. State of Madhya Pradesh, : [1985]1SCR719 , the learned judges of the Supreme Court held that Section 10 does not state that if the person contravening the order made under the Essential Commodities Act is a company, the prosecution of the directors, officers and servants of the company or other persons is precluded unless the company itself is prosecuted. There is no statutory compulsion that the person in charge or any other officer of the company may not be prosecuted unless he be ranged alongside of the company itself. Section 10 indicates the persons who may be prosecuted where the contravention is made by the company. In fact, the learned judges have enumerated the list of persons who may be prosecuted for contravention of the said order. It does not lay down any condition that the person in charge or an officer of the company may not be separately prosecuted if the company itself is not prosecuted. Each or any of them may be separately prosecuted or along with the company. Section 10 lists the person who may be held guilty and punished when it is a company that contravenes an order made under Section 3 of the Essential Commodities Act. The learned judges were further of the view that, naturally, before the person in charge or an officer of the company is held guilty in that capacity, it must be established that there has been a contravention of the order by the company itself. Under the circumstances, in the

instant case, the complaint filed against the petitioner is irregular and there is no averment that it is the partnership firm which has contravened the provisions of law. As a result, the petitioner was not liable, as a person in charge of a partnership firm, to be prosecuted. Under these circumstances, this court is of the view that in the absence of such averments made in the complaint, it is liable to be quashed, as prayed for by the petitioner. This order, however, will not prevent the authorities concerned from proceeding against the partnership firm and/or the partners if the authorities are so entitled to in accordance with law.

3. The rule is made absolute.

Amal Kumar Chatterjee, J.

4. I agree.

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