

(1986) 07 P&H CK 0089

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 884-M of 1986

Bihari Lal Rattan Chand Printing Mills and others

APPELLANT

Vs

Punjab State

RESPONDENT

Date of Decision : 30-07-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1986) 07 P&H CK 0089

Hon'ble Judges : M.M. Punchhi, J

Bench : Single Bench

Advocate : M.S. Ratta, for the Appellant; H.L. Sibal and Mr. S.C. Sibal, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Punchhi, J.—These six petitions (Crl. M Nos. 884-M, 1356-M, 1418-M, 1786-M, 1788-M, and 3131-M of 1986) which have been placed before me as a bunch require dismissal in limine in view of dismissal of similar cases viz. Cr. M. No. 1266-M of 1986 on 8-5-1986 by S.S. Dewan J. and Cr. M. No. 5687-M of 1985 on 1-3-1986 by K.P.S, Sandhu J. However, since learned Counsel for the Petitioners has argued the matter at considerable length, a few lines in support of the dismissal would not be out of order.

2. The Petitioners in five cases are partners in firms and in the sixth one (Cr. M. No. 3131-M of 1986), the Petitioner is a Director of a public limited company. Some of the partners have been described as managing partners and others as bare partners. The Punjab State Board for the Prevention and Control of Water Pollution established under the Water (Prevention and Control of Pollution) Act, 1974 has instituted complaints against the Petitioners in each case for offence u/s 44 of the said Act for contravening provisions of Section 25 or Section 26 thereof, as the case may be. The Petitioners, on their being summoned in the respective complaints to stand trial, have approached this Court u/s 482 of the Code of Criminal Procedure claiming that only persons who at the time of the

commission of the offence were incharge and were responsible to the company/firm for the conduct of the business of the company/firm, if categorised in the complaint, should stand trial and not those who are merely Directors or Partners in the firm. Reliance has been placed on *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, , where the Supreme Court in a prosecution under the Prevention of Food Adulteration Act, distinguishing the roles of the two sets of people, set aside the order of the High Court in which proceedings against the Manager of the Company were set aside, taking the view that it could not be reasonably argued that no case had been made out against the Manager because from the very nature of the duties, he must be in the knowledge of the affairs of the Company. That principle has been sought to be imported in the present prosecutions. I find this not possible.

3. Section 47 of the Water (Prevention and Control of Pollution) Act is reproduced below:-

47. Offences by companies.-(1) Where an offence under this Act 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 Sub-section 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 due 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 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.

Explanation. -For the 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.

4. A bare reading of the section makes it manifest that besides persons who at the time the offence was committed were incharge and were responsible to the Company for the conduct of the business of the Company, the Company as well is to be deemed to be guilty of the offence and be liable to be proceeded against and punished accordingly. The person conceived of in the section not only include people who constitute the Company but others as well. And in the constitution of

the Company, which word confinedly includes the firm, all partners of the firm are deemingly guilty of the offences and liable to be proceeded against and punished accordingly. It significantly does not hold them liable straightaway but starts with the presumption in their being arraigned as accused. The safety valve is provided in the proviso.

Any of these persons can take shelter thereunder to say that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence. Yet at any stage, on the contrary, if consent or connivance or any neglect is attributed to any Director, Manager etc., then again the deeming provision comes into operation and they can be held liable to be proceeded against and punished accordingly. This section, as it appears to me, is comprehensive enough to bring in and take out people dependent on the facts and circumstances of each case. But to say that to being with no Director of a Company or Partner of a Firm can be tried for the offence committed by the Company apparently does not appeal to me. In all these complaints, when the direction of the Board was not obeyed to obtain consent conceived of under Sections 25 and 26 of the said Act, requisite notices were sent to all concerned inclusive of the Petitioners to do the needful as required under the law. It is only on the failure thereof that these complaints have been filed,

5. Besides the above plea, it was also argued that in the absence of a form prescribed and other particulars as may be prescribed under Sub-section (2) of Section 25 of the Act, this section was unworkable and further in some cases peculiar to the Petitioners, Section 25 as such was not attracted. Even the applicability of Section 26 was challenged in some cases. All these are matters of details which the respective Petitioners have to raise before the learned Magistrate trying these cases.

6. The Act has a social obligation to fulfil. Procrastination to fulfil the duties, duties enjoined thereunder have impact on the society at large. Keeping the social goal in view, I do not think these to be cases in which the prosecution should be stultified at the initial stages by entering into a controversy, as raised by the Petitioners. Presently, only the bare allegations in the respective complaints are enough to proceed against the Petitioners.

7. Dismissed in limine.