

(2006) 07 DEL CK 0152

In the Delhi High Court

Case No : Criminal Rev. 58 of 1994

D.A.M. Prabhu and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 12-07-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 190, 319
Essential Commodities Act, 1955 — Section 10, 3, 7

Citation : (2006) 131 DLT 397 : (2006) 90 DRJ 435

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : D.C. Mathur and Ajay Burman, for the Appellant; Richa Kapur, for the Respondent

Final Decision : Disposed Off

Judgement

This Judgment has been overruled by : State (Govt. of NCT of Delhi) Vs. D.A.M. Prabhu and Another, AIR 2009 SC 1891 : (2009) 152 CompCas 431 : (2009) CriLJ 1747 : (2009) 14 JT 73 : (2009) 2 SCALE 492 : (2009) 3 SCC 264 : (2009) 3 SCR 165 : (2009) AIRSCW 3930 : (2009) AIRSCW 1480 : (2009) 4 Supreme 209 : (2009) 1 Supreme 796

Badar Durrez Ahmed, J.—By way of this revision petition, the petitioners, namely, D.A.M. Prabhu and Vijay Kumar Malhotra, have impugned the order dated 11.02.1994 passed by the Special Judge under the Essential Commodities Act, 1955. The brief facts are that on 23.01.1988, a complaint was lodged by the Enforcement Inspector with the Station House Officer of Police Station Moti Nagar, New Delhi alleging that Swatantar Bharat Mills had, by declaring and stamping wrong fibre compositions for the cloth, contravened the provisions of the Textile Commissioner's notification dated 23.11.1981 and clause 17 of the Textile (Control) Order, 1986 rendering themselves liable for penal action for violation of the order made u/s 3 of the Essential Commodities Act, 1955 punishable u/s 7 thereof. On 11.02.1988, an FIR was registered on the basis of

the said complaint. On 06.05.1988, the chargesheet was filed in court, but there was only one accused, namely, A.K. Rohatgi, who was shown in Column No.4 for the offence, inter alia, u/s 7 of the said Act. On that date, the court passed the following order:

New challan filed today. It be checked and registered. Accused person be summoned for 09.06.1988.

2. Thereafter, the accused [A.K. Rohatgi] appeared and was released on bail. On 04.12.1990, a supplementary challan was filed and the court passed the following order:

Supplementary challan filed today. It be checked and registered. Accused be summoned for 18.12.1990 as main case is already fixed for 18.12.1990.

3. In the supplementary chargesheet, the said A.K. Rohatgi was again shown in Column No.4. However, in Column No.2, the present petitioner Along with R.C. Kesar and Lala Bansidhar were shown in Column No.2. It appears that, on 18.02.1991, the petitioner No.2 herein (V.K. Malhotra) appeared in court and on 22.02.1991, the court passed the following order:

V.K. Malhotra mentioned in Column No.2 is not required for the time being. He is being discharged. Only the accused persons mentioned in Column No.3/4 of the challan u/s 173, CrPC was to be summoned and not those mentioned in Column No.2 of that report.

4. On 24.04.1991, the earlier charge-sheet and the supplementary chargesheet were consolidated and the court observed that summons were issued to some of the accused and that the predecessor court by order dated 22.02.1991 had mentioned that these persons may not be summoned for the time being. Thereafter, the court directed that the matter should come up for arguments on 04.06.1991 on the question of whether the persons named in Column No.2 be summoned as accused. It is thereafter that the impugned order has been passed on 11.02.1994. In the impugned order, it is recorded as under:

It appears that in the supplementary challan, four accused were placed in Column No.2 and have not been summoned so far, probably on the presumption that they have not been sent up for trial by the police. However, a perusal of the final report in the supplementary challan would show that the police has specifically mentioned that there was a violation of Clause 17 of the Textile Control Order, 1986 by Swatantra Bharat Mills which is a company by virtue of Section 10 of the Essential Commodities Act, and the Managing Director, General Manager, Executive Director (Textile) and Supervisors, Folding Division are liable and should be summoned.

Accordingly, the court came to the view that the present petitioners Along with other two mentioned in Column No.2, namely, R.C. Kesar and Lala Bansidhar be also summoned.

5. Three issues arise for consideration in this revision petition. The first issue raised by Mr Mathur, the learned senior advocate, who appears on behalf of the petitioners is that cognizance of an offence cannot be taken twice. This has been settled by the Supreme Court in the case of *Jamuna Singh & Ors v Bhadaai Shah* AIR 1964 SC 1541. He made this submission with regard to the two orders passed on 06.05.1988 and 4.12.1990. He submitted that both these orders indicate that cognizance was taken of the same offence and that is not permissible under law. The next submission of Mr Mathur is that once it was indicated by the court that the petitioners were not required and one of the accused had even been discharged, it would not be open to the successor court to summon the petitioners by virtue of the impugned order. The third submission of Mr Mathur is that the present petitioners have been roped in by virtue of the deeming provision of Section 10 of the Essential Commodities Act, 1955 which relates to offence by companies. He submitted that the petitioners have been summoned under the impression that Swatantra Bharat Mills was a company and the present petitioner No.1 was the Executive Director of the Textile Division and that the petitioner No.2 was the Supervisor of the Folding Division. He submitted that there is a fundamental flaw and that is that Swatantra Bharat Mills is not a body corporate nor is it a firm nor is it an association of persons and, Therefore, it does not fall within the meaning of the word "company" as used in Section 10 of the Essential commodities Act, 1955. In point of fact, Mr Mathur has referred to an order passed by a learned Single Judge of this Court in CP 5/99 dated 16.4.1999 where it has been categorically stated that Swatantra Bharat Mills is a unit of DCM Limited. Therefore, it is his case that the present petitioners could not, in any event, have been summoned.

6. The learned Counsel appearing for the State referred to the decision of the Supreme court in the case of *Swil Ltd v State of Delhi and Another* : (2001) 6 SCC 670 wherein it was held as under:

There is no bar u/s 190 CrPC that once the process is issued against some accused, on the next date, the Magistrate cannot issue process to some other person against whom there is some material on record, but his name is not included as accused in the charge sheet.

She also submitted that cognizance was only taken once and not twice as suggested by the learned Counsel for the petitioner. She contended that cognizance was taken on 06.05.1988 and the subsequent order dated 4.12.1990 is merely an order whereby the accused have been summoned after the filing of the supplementary challan. She submitted that there is no bar u/s 190 Cr.P.C. for summoning different accused at different stages once cognizance is taken. She made this submission on the strength of the observation of the Supreme Court in the case of *Swil Ltd* (supra). She also submitted that the Swatantra Bharat Mills fell within the meaning of company as used in Section 10 of the Essential Commodities Act, 1955. Reading the Explanation to the said Section, she submitted that company means any body corporate and includes a firm or other

association of individuals. She submitted that even though Swatantra Bharat Mills was not a company in the sense that it was not a registered company, it was admittedly a unit of DCM Limited and, Therefore, fell within the expression association of individuals.

7. Considering the arguments advanced by the counsel for the parties as well as the orders passed by the court below and the decisions of the Supreme Court referred to above, in my view cognizance of the offence was taken twice, once on 06.05.1988 and again on 04.12.1990. In view of the Supreme Court decision in *Jamuna Singh & Ors (supra)*, this is not permissible. Moreover, in my view, the crucial point is the fact that Swatantra Bharat Mills is not a company under the meaning ascribed to it to the word company in Section 10 of the Essential Commodities Act, 1955. It is admittedly not a body corporate nor is it a firm. It is suggested by the learned Counsel for the State that it is an association of individuals. I am unable to agree with this view because the expression association of individuals has a meaning which has reference to individuals getting together for the purposes of conducting business in their own right but doing so jointly without any formal incorporation or partnership agreement. In the present case, Swatantra Bharat Mills is nothing but a unit of the body corporate known as DCM Limited. By itself, it is not an association of individuals. The petitioners are the Executive Directors and the Supervisors of the said unit. Accordingly, they cannot be roped in by employing the deeming provision of Section 10 of the Essential Commodities Act, 1955. This fact was completely overlooked by the court below while passing the impugned order.

8. The learned Counsel for the State is, of course, correct in submitting that once cognizance is taken, the accused can be summoned at different stages as indicated by the Supreme Court in *Swil Limited (supra)* but that is not in issue in this matter any more in view of the clear finding that Swatantra Bharat Mills is not a company falling under the meaning ascribed to the word company u/s 10 of the Essential Commodities Act, 1955. Accordingly, the impugned order summoning the petitioners is set aside. It will, however, be open to the trial court to invoke the provisions of Section 319 Cr.P.C. during the course of trial, if it so feels, to summon any accused including the present petitioners.

This revision petition stands disposed of.