
(2004) 03 MAD CK 0179

In the Madras High Court

Case No : Crl R.C. No's. 1710 and 1712 of 2003 and Criminal M.P. No's. 11121 and 11126 of 2003

Fidelity Industries Ltd.

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 04-03-2004

Acts Referred:

Income Tax Act, 1961 — Section 276B, 278B

Penal Code, 1860 (IPC) — Section 11, 120B, 409, 420, 467

Prevention of Corruption Act, 1988 — Section 12, 13(1), 13(2)

Prevention of Food Adulteration Act, 1954 — Section 16, 7

Citation : (2006) 129 CompCas 561 : (2006) 1 CTC 374 : (2004) 2 LW(Cri) 604

Hon'ble Judges : S. Ashok Kumar, J

Bench : Single Bench

Advocate : Arvind P. Datar, for R. Venkata Varadhan, for the Appellant;
Ranganathan, for the Respondent

Final Decision : Dismissed

Judgement

S. Ashok Kumar, J.—These revisions have been filed against the order of the Principal Special Judge for CBI cases, Chennai, made in Crl. M. P. No. 90 of 2003 in C. C. No. 12 of 2003 and Crl. M. P. No. 84 of 2003 in C.C. No. 2 of 2003.

2. The brief facts of the case are as follows : The petitioner herein is the fourth and first accused respectively in the prosecution filed by the respondent who has filed charge sheets for the offences punishable u/s 120B read with Sections 420 and 409 of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and under Sections 7 and 12 of the Prevention of Corruption Act, 1988 in one case and u/s 120B read with Sections 409, 420, 467 and 468 and 471 of the Indian Penal Code and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act in the other case against the petitioner-company and others. The prosecution case is that the other accused have entered into a criminal conspiracy during the years 1998 to 2000 to cheat Punjab and Sind Bank, Mount Road Branch, Chennai, in the matter of

recommending, sanctioning and release of cash credit and letters of credit facilities in favour of the petitioner-company by committing criminal breach of trust, by abusing the official position of A1 as public servant and by forging documents and using the same as genuine and in pursuance of the aforesaid criminal conspiracy, the other accused have made false declaration about securities, forged various documents, viz., account opening forms, delivery chalang, invoices, etc., and used the same as genuine and further A1 in C. C. No. 2 of 2003 had facilitated opening of 26 LCs in the name of the petitioner-company in the said bank and thereby dishonestly siphoned off funds of the bank which caused a wrongful loss to the bank to the tune of Rs. 429.42 lakhs as on October 1, 2000 and corresponding wrongful gain to the other accused. The entire loan has been availed of by the petitioner-company represented by its directors.

3. The petitioner-company filed the above Crl. M. P. Nos. 90 and 84 of 2003 before the Principal Special Judge for CBI cases, on the ground that the petitioner-company in these revisions being a company duly incorporated as per the Companies Act, has been also charged u/s 420 of the Indian Penal Code which is punishable with imprisonment compulsorily and further the said offence requires mens rea and therefore the A4 company cannot be prosecuted for the offence u/s 420 of the Indian Penal Code. The learned Special Judge for CBI cases dismissed the said discharge petitions. Aggrieved over the same, these revisions have been filed.

4. Learned counsel for the revision petitioner would contend that the company being a juristic person cannot have a mind to be charged with an offence which requires mens rea, and therefore, the revision petitioner-company should be discharged from the offence u/s 420 of the Indian Penal Code. According to learned counsel for the petitioner imprisonment of 7 years is prescribed as punishment and the company cannot be imprisoned as a matter of punishment for the offence u/s 420 of the Indian Penal Code. For the offence u/s 420 of the Indian Penal Code, the punishment shall be imprisonment which may extend up to 7 years and also fine. It is true that a company cannot be imprisoned. u/s 11 of the Indian Penal Code, "a person" has been defined which includes any company, or association or body of persons whether incorporated or not. Therefore, Section 11 of the Indian Penal Code, a company can be treated as a person. In the decision reported in M.V. Javali Vs. Mahajan Borewell and Co. and Others, , the Supreme Court has held that if mandatory sentence of imprisonment and fine is provided, the mandatory sentence cannot be imposed on a company but fine alone will be the only punishment. The said case was based on the offence committed under the Income Tax Act. However, the principles enunciated therein are applicable to the facts of this case. The principles indicated in the said decision by the apex court have to be necessarily followed in the case of the petitioner in these cases also. The Supreme Court in the decision reported in The Assistant Commissioner, Assessment-II, Bangalore and Others Vs. Velliappa Textiles Ltd. and Others, has held as follows (page 576

of 263 ITR):

62. Within few months of the decision in *New York Central Hudson River Railroad Co. v. United States* 53 L. Ed 613, a similar controversy came up for consideration before the U.S. Supreme Court in *United States v. Union Supply Co.* 54 L Ed. 87 : 215 U. S. 50. Section 6 of the relevant statute required wholesale dealers in particular commodities to keep certain books and to keep certain returns and further provided any person who wilfully violates any of the provisions of this section shall, for each offence, be fined not less than fifty dollars and not exceeding five hundred dollars and imprisoned not less than thirty days nor more than six months". The district court quashed the indictment on the ground that the section was not applicable to corporations. In a writ of error, Justice Holmes, who spoke for the court, pointed out that "if the defendant escapes, it does so on the single ground that, as it cannot suffer both parts of the imprisonment, it need not suffer one". The judgment under challenge was reversed with the following observation:

It seems to us that a reasonable interpretation to the words used does not lead to such a result. If we compare Section 5, the application of one of the penalties rather than of both is made to depend, not on the character of the defendant, but on the discretion of the judge; yet, there, corporations are mentioned in terms, (see *Hawke v. E. Hulton and Co.* [1909] 2 KB 93). And, if we free our minds from the notion that criminal statutes must be construed by some artificial and conventional rule, the natural inference, when a statute prescribes two independent penalties, is that it means to inflict them so far as it can, and that, if one of them is impossible, it does not mean, on that account, to let the defendant escape.

63. This question has also been examined by some of the High Courts. In *Municipal Corporation of Delhi v. J.B. Bottling Co.* [1975] CrL LJ 1148 , a Full Bench of the Delhi High Court held that the conviction of a company u/s 16 of the Prevention of Food Adulteration Act and award of fine only would be perfectly valid even though it cannot be sentenced to imprisonment which was the mandatory requirement of law. Similar view was taken by a Full Bench of the Allahabad High Court in *Oswal Vanaspati and Allied Industries v. State of U.P.* [1992] 75 Comp Cas 770 : [1993] 1 Comp LJ 172 and it was held that a company cannot enjoy immunity from prosecution on the ground that mandatory punishment of imprisonment cannot be awarded to it. In both these cases it was held that the company can be prosecuted and if found guilty a sentence of fine alone can be awarded. In *Manian Transports and others Vs. S. Krishna Moorthy, Income Tax Officer*, it was held by a learned single judge of the Madras High Court that a company or firm can be prosecuted under Sections 276C and 277 of the Act and if convicted a sentence of fine alone could be awarded. I am of the opinion that the view taken in these cases is the legally correct view.

64. Proof of mens rea or guilty mind is not absolutely essential in every case. In *Pyarali K. Tejani Vs. Mahadeo Ramchandra Dange and Others*, , a Constitution

Bench held that in food offences strict liability is the rule. In *Sarjoo Prasad Vs. The State of Uttar Pradesh*, and *Shah Ashu Jaiwant Vs. State of Maharashtra*, it was clearly held that mens rea in the ordinary or usual sense of term is not required for proof of offence u/s 7 of the Prevention of Food Adulteration Act and it is enough if the articles sold or distributed contravene any provision of the Act or the Rules. The same principle applies for offences u/s 7 of the Essential Commodities Act, namely, mens rea or knowledge are not essential ingredients, (see *State of Madhya Pradesh Vs. Narayan Singh and Others*,). In *Radhey Shyam Khemka and Another Vs. State of Bihar*, it has been held that there is a basic difference between offences under the Penal Code and acts and omissions which have been made punishable under difference Acts and statutes. It has been further held that for framing charges in respect of those acts and omissions, in many cases, mens rea is not an essential ingredient ; the concerned statute imposes a duty on those who are in charge of the management, to follow the statutory provisions and once there is a breach or contravention, such persons become liable for punishment.

65. In *M.V. Javali Vs. Mahajan Borewell and Co. and Others*, this court, after examining the question of maintainability of prosecution against a company and the nature of sentence to be imposed on it and the individuals liable for the offence, held as under (headnote of [1997] 8 SCC):

From a plain reading of Section 276B of the Income Tax Act, it is manifest that if an offence under the Act is committed by a company the persons who are liable to be proceeded against and punished are: (i) the company (which includes a firm); (ii) 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 ; and (iii) any director (who in relation to a firm means a partner), manager, secretary or other officer of the company with whose consent or connivance or because of neglect attributable to whom, the offence has been committed. The words "as well as the company" appearing in the section also make it unmistakably clear that the company alone can be prosecuted and punished even if the persons mentioned in categories (ii) and (iii), who are for all intents and purposes vicariously liable for the offence, are not arraigned, for it is the company which is primarily guilty of the offence.

Even though in view of Section 278B, a company can be prosecuted and punished for an offence committed u/s 276B (besides other offences under the Act), the sentence of imprisonment which has got to be imposed thereunder cannot be imposed, it being a juristic person. This apparent anomalous situation can be resolved only by a proper interpretation of section. Keeping in view the recommendations contained in paragraphs 8.1 and 8.3 of the 47th Report of Law Commission of India and principles of interpretation, the only harmonious construction that can be given to Section 276B is that the mandatory sentence of imprisonment and fine is to be imposed where it can be imposed, namely, on persons coming under categories (ii) and (iii) above, but where it cannot be

imposed, namely, on a company, fine will be the only punishment.

66. Courts would be shirking their responsibility of imparting justice by holding that prosecution of a company is unsustainable merely on the ground that being a juristic person it cannot be sent to jail to undergo the sentence. Companies are growing in size and have huge resources and finances at their command. In the course of their business activity they may sometimes commit breach of the law of the land or endanger others' lives. More than four thousand people lost their lives and thousands others suffered permanent impairment in Bhopal on account of gross criminal act of a multinational corporation. It will be wholly wrong to allow a company to go scot free without even being prosecuted in the event of commission of a crime only on the ground that it cannot be made to suffer part of the mandatory punishment.

5. Thus, it is clear that the Supreme Court has held that even in a case where criminal mens rea is involved and punishment of imprisonment is mandatory, still a company can be prosecuted and on conviction, the company can be fined. Further, it is pertinent to note that when an offence is committed by a company whether the company is a natural person or a juristic person need not be gone into, in view of the fact that a company is also a person as defined u/s 11 of the Indian Penal Code, and they are liable for punishment except imprisonment. Therefore, in such circumstances, the contention of learned counsel appearing for the petitioner herein that the petitioner-company in these revisions cannot be prosecuted for an offence of cheating the bank u/s 420 of the Indian Penal Code involving mens rea, is not sustainable. If the case ends in conviction, the petitioner in these revisions cannot be imprisoned, but fine can be imposed on them.

6. In the above circumstances, I do not find any reason to interfere with the orders of the learned Additional Special Judge for CBI cases, Chennai, impugned in these revisions. Hence, both these revisions are liable to be dismissed and accordingly they are dismissed. Consequently, connected Crl. M. Ps. are closed.