
(2018) 05 RAJ CK 0179

In the Rajasthan High Court

Case No : Criminal Revision No. 1569 of 2017

Gurvinder Singh @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 23-05-2018

Acts Referred:

Standards of Weights & Measures (Enforcement) Act, 1985 — Section 19, 22, 39, 39(1), 45(b), 52, 62, 63
Indian Penal Code, 1860 — Section 120, 166, 167
Code of Criminal Procedure, 1973 — Section 200, 202, 203, 397, 401
Essential Commodities Act, 1955 — Section 10
Water (Prevention & Control of Pollution) Act, 1974 — Section 47
Drugs and Cosmetics Act, 1940 — Section 34
Negotiable Instruments Act, 1881 — Section 138

Citation : (2018) 05 RAJ CK 0179

Hon'ble Judges : P.K. LOHRA, J

Bench : Single Bench

Advocate : Gurvinder Singh, O.P. Rathi, Mahesh Bora, Nishant Bora

Final Decision : Dismissed

Judgement

1. Petitioner-complainant, by instant revision petition, has assailed order dated 29th January 2014, passed by Addl. District & Sessions Judge No.3,

Bikaner (for short, â??learned Court belowâ??) upsetting the order taking cognizance against private respondents for offences under Section 39(1) &

45(b) of the Standards of Weights & Measures (Enforcement) Act, 1985 (for short, â??Act of 1985â??), rendered by Judicial Magistrate, 1st Class,

Bikaner (for short, â??learned trial Courtâ??).

2. Succinctly stated, the facts of the case are that Reliance Marketing Pvt. Ltd. (for short, hereinafter referred to as â??Companyâ??), in terms of its

policy, retained Ex. Army Officers as Operator for handling and up-keeping of its petrol pumps all over India.Â The Company, in all, employed

around 1200 Ex. Army Officers throughout Country with the stipulation that

accounting be done by Automatic Tank Gauge (ATG), a non-standardized, non-registered equipment.Â The petitioner being one of the Operators, experienced that measurement of stock in Underground Tanks mostly gave erratic/wrong reading.Â Taking cognizance of discrepancies of the stock-in-hand vis-a-vis shown by ATG, petitioner lodged complaint with the Company officials. In response to the same, as per version of the petitioner, third respondent acknowledged variation in the stock.Â Be that as it may, when no encouraging steps were taken by the Company, petitioner laid a complaint with the Meteorology Department, Government of Rajasthan to ventilate his afflictions.Â Petition further unfurls that Inspector of Meteorology Department carried out inspection and unearthed that at the outlets unverified measuring equipments, i.e. ATG, are installed.Â The concerned Inspector then sent a communication to his superior officers on 18.03.2008 insinuating the Company for violation of Sections 19 & 22 of the Act of 1985.

3. As per version of the petitioner, communication of Inspector, Meteorology Department facilitated follow-up action and accused respondents were served show cause notice on 05.04.2008.Â The notice was then replied by respondents intimating Assistant Controller, Legal Meteorology Department for granting 15 daysâ?? time in this regard.Â Â Petitioner also alleged that after receiving communication dated 07.04.2008 from the Company, Meteorology Department did not take any further action, presumably under the influence of Company and other respondents.Â Â This sort of situation prompted petitioner-complainant to lay criminal complaint against the respondents before learned trial Court. Complaint of the petitioner attributing offence under Section 39 of the Act of 1985 and offence under Sections 120, 166, 167 IPC (Annex.12) was supported by affidavit and other documents.

4. The learned trial Court, on receipt of the complaint, examined complainant on oath under Section 200 Cr.P.C.Â Â Later on, considering the statements of the complainant to be in consonance and conformity with the documents Ex.1 to 8 named in the complaint for offence under Section 39(1) & 45(b) of the Act of 1985, deferred proceedings qua respondents No.9 & 10, public servants, in absence of sanction for prosecution.

5. Feeling aggrieved by the order of learned trial Court, accused-respondents

preferred two separate revision petitions before learned Court below.Â

The learned Court below, by the order impugned, allowed both the revision petitions and set aside order of cognizance.Â Â Learned trial Court

recorded a definite finding in the impugned order that complainant-petitionerâ??s grievance is concerned with some dispute of accounts and has no

direct nexus with violation of any legal provisions.Â That apart, learned Court below also examined status of the petitioner as an aggrieved person

within the meaning of Section 63 of the Act of 1985 and recorded a definite finding against him for upsetting the impugned order.Â Non-impleadment

of Company as an accused too was found fatal by the learned Court below for setting aside order of cognizance.

6. Mr. Gurvinder Singh, petitioner, submits that learned Court below has seriously erred in upsetting the order of cognizance. Mr. Singh would contend

that learned Court below has misconstrued the complaint while concluding that same is confined to dispute of accounts only.Â Petitioner, while

relying on complaint, his statements under Section 200 Cr.P.C. and the documents in support thereof, contends that prima facie offences are made out

against respondents.Â Petitioner has strenuously urged that learned Court below while reversing the order of cognizance completely overlooked his

statements under Section 200 Cr.P.C. Mr. Singh, humble petitioner, while assailing the finding of learned Court below about his locus standi to

maintain complaint, has urged that said finding is wholly perverse.Â It is argued by the petitioner that learned Court below has seriously erred in

construing Section 63 of the Act of 1985 so as not to treat him an aggrieved person.Â Relying on inspection report of the Inspector, Meteorology

Department (Annex.5), petitioner submits that, on the face of it, prima facie, offences under the Act of 1985 are made out against the respondents.

7. Questioning the order impugned, petitioner would contend that his grievances were against officials of the Company, and therefore, finding of

learned Court below to non-suit him solely for non-impleadment of Company, is not sustainable.Â Â Lastly, petitioner contends that learned Court

below has over-stepped its jurisdiction in setting aside order of cognizance, against which scope of judicial review is very limited.Â In support of his

arguments, learned counsel has placed on following judgments:

(1) Sheoratan Agarwal & Anr. Vs. State of Madhya Pradesh (AIR 1984 SC 1824)

(2) State of Punjab Vs. Kasturi Lal & Ors. (AIR 2004 SC 4087)

(3) U.P. Pollution Control Board Vs. M/s. Modi Distillery & Ors. (AIR 1988 SC 1128)

(4) Raghubans Dubey Vs. State of Bihar (AIR 1967 SC 1167)

(5) State of Madras Vs. C.V. Parekh & Anr. (AIR 1971 SC 447).

8. Per contra, learned Senior Counsel Mr. Mahesh Bora, appearing for accused-respondents, submits that bare perusal of the complaint makes it

abundantly clear that petitioner is a proxy complainant, allegedly espousing cause pertaining to petrol pump of village Charkhada, Tehsil Nokha,

District Bikaner, with which he has no nexus.Â Â Elaborating his submissions in this behalf, learned Senior Counsel has referred to Para 3 & 4 of the

complaint and communication from Inspector, Meteorology Department (Annex.6), which according him refers to same petrol pump. Learned Senior

Counsel has further argued that expression â??aggrieved personâ? envisaged under Section 63 of the Act of 1985 cannot be given expansive

meaning so as to cover general grievance of any individual having no substantial grievance. Learned Senior Counsel, therefore, argued that the learned

Court below has rightly set aside the order of cognizance by not treating the petitioner a person aggrieved within the four corners of Section 63 of the

Act of 1985.

9. Mr. Bora, while laying emphasis on Para 9 of the complaint, submits that alleged afflictions of the petitioner are confined to accounts, which by no

stretch of imagination can expose respondents for penal action within the four corners of Act of 1985 and therefore there is no illegality or impropriety

in the impugned order warranting judicial review in exercise of revisional jurisdiction under Section 401 Cr.P.C. Learned Senior Counsel further

submits that Company has closed its retail outlet at Khasra No.515, village Charkhada, Tehsil Nokha, District Bikaner, which is the edifice of entire

complaint and order Annex.9 being anterior to the complaint itself, even proxy complaint does not bring the petitioner within the ambit of an aggrieved

person.Â Â Learned Senior Counsel has, thus, argued that the order of cognizance by learned trial Court after eight months from the date of order

Annex.9 has been rightly upset by the learned Court below. Learned Senior Counsel has vehemently argued that petrol pumps are purchasing and

getting supply of petrol from retail-outlets of the Company and therefore finding

of the learned Court below that in absence of impleadment of

Company as party to the complaint same is not maintainable, cannot be faulted being in conformity with Section 62 of the Act of 1985.

10. Learned Senior Counsel has also urged that complaint of the petitioner to competent authority of Meteorology Department, Government of

Rajasthan, stood rejected before order of cognizance on 27th of November, 2008, therefore, it would be unjust to interfere with the impugned order.

Romping in Section 9 & 22 of the Act of 1985, learned Senior Counsel has contended that equipment ATG, being installed in Underground Storage

Tank, is clearly excluded from the rigors of Section 39 of the Act of 1985. In support of his arguments, learned Senior Counsel has placed

reliance on following judgments:

i. State of Haryana Vs. Brij Lal Mittal & Ors. [(1998) 5 SCC 343] ii. Agarwal Agencies Mandi Gulwala Vs. State of Rajasthan [2004 (1) Criminal

Law Reporter (Raj.) 774] iii. SMS Pharmaceuticals Vs. Neeta Bhalla [(2005) 8 SCC 89] iv. Saroj Kumar Poddar Vs. State (NCT of Delhi) & Anr.

[(2007) 3 SCC 693].

11. I have given my anxious considerations to the arguments advanced at Bar, perused the impugned order and scanned materials available on

record. The legal precedents relied upon by the rival parties are also examined by me in the backdrop of factual matrix.

12. The term "cognizance" is not defined under Cr.P.C. Its literal meaning is awareness, realization or knowledge; notice,

perception. Under the criminal law, cognizance takes place at a point when the Magistrate first takes judicial notice of an offence.

Supreme Court in case of Ajit Kumar Palit Vs. State of West Bengal (AIR 1963 SC 765), while construing the word "cognizance" has observed

that it has no esoteric or mystic significance in the criminal law or procedure. It merely means become aware of and when used with reference

to a Court or Judge to take notice of judicially. The word "cognizance" occurring in various sections in the Cr.P.C. is a word of wide

import. It embraces within itself all powers and authority in exercise of jurisdiction and taking of authoritative notice of the allegations made in the

complaint or a police report or any information received that offence has been committed. In the context of sections 200, 202 and 203, the

expression "taking cognizance" has been used in the sense of taking notice of the complaint or the first information report or the information that

offence has been committed on application of judicial mind. In the instant case, learned Court below, while exercising its revisional jurisdiction

under Section 397 Cr.P.C., has upset the order of cognizance by citing three pivotal reasons, which are: (1) Complainant is not an aggrieved person

within the meaning of Section 63 of the Act of 1985, (2) Essentially, grievance of the petitioner is about accounts, and (3) non-impleadment of

Company, which is responsible for supply of petrol to various petrol pumps. The judgment in Raghubans Dubey (supra), relied upon by the petitioner, is

simply dilating on taking cognizance of offence on a police report while making distinction that mere summoning an individual by the Magistrate does

not amount to taking cognizance of an offence. The Court has further clarified that it means cognizance of offence and not offenders. Thus, this

verdict in the context of facts of the instant case renders no assistance to the cause of the petitioner.

13. In order to make judicial scrutiny of finding recorded by the learned Court below to exclude petitioner from the purview of an "aggrieved

person", it would be just and appropriate to examine Section 63 of the Act of 1985. Section 63 of the Act of 1985, reads as under:

63. Cognizance of offences.- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

(a) No court shall take cognizance of an offence punishable under this Act except upon a complaint, in writing, made by--

i. Controller;

ii. Any other officer authorised in this behalf by the Controller by general or special order;

iii. Any person aggrieved; or

iv. A recognised consumer association whether the person aggrieved is a member of such association or not.

Explanation.--For the purposes of this clause "recognised consumer association" means a voluntary consumer association registered under the

Companies Act, 1956 (1 of 1956) or any other law for the time being in force;

(b) No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try any offence punishable under this Act.

A bare reading of above quoted Section 63 of the Act of 1985 makes it abundantly clear that Court can take cognizance of an offence punishable

under the Act upon a complaint by any person aggrieved.Â The Act of 1985 nowhere defines â??person aggrievedâ??.

14. The expression â??aggrieved personâ? denotes an elastic, and to an extent, an elusive concept.Â It cannot be confined within the bounds of a

rigid, exact and comprehensive definition.Â In Re. SIDEBOTHAM. Ex. Parte SIDEBOTHAM [1874â?"80] All E.R. 588 : (1980) 14 Ch.D. 458,

James LJ, while construing the words â??person aggrievedâ? said,Â â??but the words â??person aggrievedâ?? do not really mean a man who is

disappointed of a benefit which he might have received if some other order had been made. A â??person aggrievedâ?? must be a person who has

suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully

refused him something, or wrongfully affected his title to somethingâ??.

The word â??aggrievedâ? refers to a substantial grievance and not merely illusory.Â Therefore, for treating someone an â??aggrieved personâ?, his

grievance must be substantial and a fanciful suggestion of the grievance is insufficient.Â Â A merely sentimental grievance does not make a person

â??aggrievedâ?.

15. Supreme Court, in case of S.A. Venkataraman Vs. The State (AIR 1958 SC 107), while examining general power of a Court to take cognizance

of an offence vis-a-vis prohibition to the exercise that power by any provision of law, laid emphasis on interest of the party in the prosecution or its

grievance by the commission of offence.Â The Court held:

â??In our opinion, if a general power to take cognizance of an offence is vested in a Court, any prohibition to exercise of that power, by any provision

of law, must be confined to the terms of the prohibition.Â In enacting a law prohibiting the taking of cognizance of an offence by a Court, unless

certain conditions were complied with, the legislature did not purport to condone the offence. It was primarily concerned to see that prosecution for

offences in cases covered by the prohibition shall not commence without complying with the conditions contained therein, such as a previous sanction

of a competent authority in the case of a public servant, and in other cases with the consent of the authority or the party interested in the prosecution

or aggrieved by the offence.â??

16. For testing the alleged afflictions of the petitioner to ascertain his status as a person aggrieved, it would be just and appropriate to examine the

complaint and other allied documents. A bare reading of the complaint (Annex.12) ex-facie transpires nothing pertaining to petitionerâ??s grievances

vis-a-vis Act of 1985. The averments made in paragraphs 3 to 5 of the complaint are confined to inspection of the petrol pump at village Chakarda,

Tehsil Nokha, District Bikaner and follow-up action by Company in this behalf besides inactions on the part of the officials of Meteorology

Department.Â Likewise, paragraph 9 of the complaint simply unfurls past status of the petitioner as an Operator of the Company.Â Therefore, in

substance, there is no whisper in the complaint showing direct or indirect nexus or proximity of the petitioner with the petrol pump situated at village

Chakarda, Tehsil Nokha, District Bikaner.Â From a bare perusal of Inspection Report (Annex.5) dated 15th of March 2008 prepared by Inspector,

Meteorology Department, it is crystal clear that petrol pump at NH 89 on Nokha-Nagaur Road, village Chakarda, Tehsil Nokha, District Bikaner, is

operated by one Col. B.L. Choudhary.Â Inspection Report is also signed by Col. B.L. Choudhary in the capacity of Operator of the petrol

pump.Â Â Thus, complaint (Annex.12) clearly and unequivocally depicts petitioner a proxy complainant or rather a pseudo complainant.Â Â In these

circumstances, even if an expansive meaning is given to the term â??person aggrievedâ??, I am afraid, petitioner cannot be treated as an aggrieved

person within the four corners of Section 63 of the Act of 1985.

17. Switching on to second reason for upsetting the order of cognizance, suffice it to observe that recitals contained in paragraph 9 of the complaint

are clearly portraying some accounting dispute of the petitioner with the Company. Accounting dispute between the petitioner and the Company, even

if genuine, does not furnish him substantial grievance to maintain a complaint against respondents for alleged violation of provisions contained in Act of

1985 as any â??person aggrievedâ?? within the meaning of Section 63 of the Act.

Taking into considerations all these aspects, the impugned order to the extent it has zeroed status of the petitioner as any person aggrieved on these

counts cannot be faulted.Â The finding of the learned Court below in this behalf is, therefore, neither infirm, nor improper.

18. The third reason spelt out in the order impugned, to reverse cognizance order of the learned trial Court, is non-impleadment of the Company as an accused in the complaint.Â Â In order to examine correctness, legality or propriety of this finding, yet again it has become imperative for the Court to scrutinize complaint (Annex.12) and other documents annexed in support thereof. The complaint right from its first paragraph makes a reference about Company and alleged insinuations against it in succeeding paragraphs to highlight violation of the provisions of the Act of 1985.Â Paragraph 12 of the complaint contains specific allegation that Company has not obtained verification and stamping of STG from the Controller but for conspicuously silent about consent or connivance of the respondents in this behalf.

19. At this juncture, it would be apposite to refer Section 62 of the Act of 1985, which reads as under:

62. Offences by companies.-1.Â If the person committing an offence under this Act is 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 subsection shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

2.Â Notwithstanding anything contained in subsection (1), where any 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 anybody corporate and includes a firm or other association of individuals; and

b. ""director"", in relation to a firm, means a partner in the firm.

A cumulative reading of above quoted Section 62 of the Act of 1985 makes it abundantly clear that every person in-charge of and responsible for conduct of business of the company at the time offence was committed, as well as the company, shall be liable to be proceeded against and punished accordingly.

20. The judgments relied upon by the petitioner, in case of Sheoratan Agarwal and Kasturi Lal (supra), are based on interpretation of Section 10 of the

Essential Commodities Act, 1955, but the text of Section 10 aforesaid, quoted in these judgments, do not contain the words "as well as the

company", therefore, clearly distinguishable. Likewise, judgment of Supreme Court in C.V. Parekh (Supra), which is relied upon in subsequent

judgment of Sheoratan Agarwal (supra), is also based on construing Section 10 of the Essential Commodities Act, 1955, without finding mention of the

words "as well as the company", too, thus, cannot render any assistance to the cause of the petitioner. The judgment of Supreme Court in

M/s. Modi Distillery (supra) is based on interpretation of Section 47 of the Water (Prevention & Control of Pollution) Act, 1974, which is *pari*

materia to Section 62 of the Act of 1985, therefore, its *ratio decidendi* requires due consideration in the backdrop of facts of the instant case. While

concurring with the *ratio decidendi* of the verdict of Supreme Court, in my considered view, the complaint (Annex.2) being bereft of any specific

allegation against the respondents that alleged offences are committed by the Company with the consent or connivance of the respondents, or are

attributable to any neglect on their part, the impugned order cannot be categorized as infirm on this count.

21. My aforesaid view is also fortified by a judgment of Supreme Court in Brij Lal Mittal & Ors. (supra), wherein, while construing Section 34 of the

Drugs and Cosmetics Act, 1940, Court declined to fasten vicarious liability for an offence committed under the Act by the company on its Director in

absence of *prima facie* allegations against them that they were in charge of the company and also responsible to the company for conduct of its

business. The Court held:

"It is thus seen that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises if at the

material time he was in-charge of and was also responsible to the company for

the conduct of its business. Simply because a person is a director of the company it does not necessarily mean that he fulfils both the above requirements so as to make him liable. Conversely, without being a director a person can be in-charge of and responsible to the company for the conduct of its business. From the complaint in question we, however, find that except a bald statement that the respondents were directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were in-charge of the company and also responsible to the company for the conduct of its business.â??

Same view is reiterated by Supreme Court in Neeta Bhalla and Saroj Kumar Poddar (supra) in respect of offence under Section 138 of the Negotiable

Instruments Act, 1881.Â

22. On an overall analysis of the facts of the case, and in the context of elucidation of the law governing the province of the Courtâ??s power to take cognizance of an offence, duly circumscribed by any provision of law, unhesitatingly, in my opinion, no illegality or impropriety is forthcoming from the impugned order warranting interference in exercise of revisional jurisdiction. Resultantly, the instant revision petition fails and the same is hereby dismissed.