

(2011) 09 CHH CK 0039
In the Chhattisgarh High Court
Case No : Writ Petition No. 41 of 2004

Iqbal Abdul Khaliq Ahmed and others	APPELLANT
Vs	
State of Chhattisgarh	RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 141, 319
Prevention of Food Adulteration Act, 1954 — Section 16, 17(1), 17(2), 20, 20(A)

Citation : (2012) 1 MPHT 23

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hon"ble Mr. T.P. Sharma, J.—By this petition under Article 226/227 of the Constitution of India, the petitioners have challenged the legality and propriety of the order dated 6-8-2002 passed by the Chief Judicial Magistrate, Kawardha in Criminal Case No. 15/2003, whereby after dismissing the application for proceeding against the petitioners u/s 319 of the Cr.PC for commission of offence punishable u/s 7/16 of the Prevention of Food Adulteration Act, 1954(for short "the Act"), again allowed the application filed u/s 20 of the Act and directed to implead the petitioners, i.e.. Board of Director as an accused.

2. Brief facts necessary for disposal of this petition are that the petitioners are members of Board of Director of M/s Recon Oil Industries Limited. Vide order dated 31-8-95, the aforesaid company has appointed Mr. Sreepathi, Commercial Manager of the Company as nominee u/s 17 (2) of the Act as nominee for conduct of the business of the Company and intimated the same to local health authorities including the Joint Director, Food & Drugs, Rajnandgaon. As per complaint, on 29-10-93 samples of oil manufactured by the company have been taken from Ramanuj and Atturam, which were subsequently found adulterated. After obtaining permission to file complaint against the aforesaid accused and

nominee Mr. Sreepathi, the Food Inspector has filed complaint before the Additional Chief Judicial Magistrate, Kawardha. During the course of trial, the Food Inspector has filed one application for impleading the aforesaid petitioners as an accused u/s 319 of the Cr.PC, which was dismissed by the Court vide order dated 1-11-99. Thereafter on the basis of statement of Mr. Sreepathi alleged nominee, application u/s 20 of the Act and the Court has proceeded against the present Board of Directors by impleading them as an accused.

3. I have heard learned Counsel for the parties, perused the order impugned and other documents filed on behalf of the petitioners.

4. Learned Counsel for the petitioners submitted that Mr. Sreepathi was duly appointed as nominee of the company. The complainant has not made any allegation against the petitioners relating to their involvement in day-to-day affairs or commission of the offence, therefore, the Court below was not competent to implead the petitioners as an accused for proceeding against nominee. The Court below is required to see prima facie whether on the date of filing of the complaint Mr. Sreepathi has nominated as nominee and such order was in existence.

5. Learned Counsel placed reliance in the matter of S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, in which the Supreme Court has held that in case of prosecution against Board of Director, the complainant is required to aver that at the time the offence was committed the person accused was in charge of, and responsible for the conduct of business of the company. Without this averment being made in the complaint, the requirements of Section 141 cannot be said to be satisfied. Learned Counsel further placed reliance in the matter of Everest Advertising Pvt. Ltd. Vs. State, Govt. of NCT of Delhi and Others, in which the Supreme Court has held that in order to prosecute the Chairman and Board of Director of the company the complainant is required to make averment relating to act attributed to the Chairman and Board of Director. Learned Counsel also placed reliance in the matter of Pepsico India Holdings Pvt. Ltd. Vs. Food Inspector and Another, , in which the Supreme Court has held that in a complaint against a company and its Directors, the complainant has to indicate in the complaint itself as to whether the Directors concerned were either in charge of or responsible to the Company for its day-to-day management, or whether they were responsible to the Company for the conduct of its business. A mere bald statement that a person was a Director of the Company against which certain allegations had been made is not sufficient to make such Director liable in the absence of any specific allegations regarding his role in the management of the Company.

6. On the other hand, learned Panel Lawyer for the State/respondent opposed the petition and submitted that at the time of commission of offence Mr. Sreepathi was not appointed as nominee and Board of Directors have not intimated to local authorities that who was nominee. He has specifically state before the Court that at the time of commission of the offence he was not

nominee and Company or Board of Directors have not intimated the name of other nominee to local authorities, Food & Drugs, therefore, only option would be left to the Court to implead the Board of Directors as an accused and by order impugned the Court below has not committed any illegality.

7. Section 17 (1)(a)(ii) and (b) of the Act reads as under:--

(1) (a) (ii) where no person has been so nominated, 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; and

(b) 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 and that he exercised all due diligence to prevent the commission of such offence.

8. In case of offence by the company, the person responsible to the Company for the conduct of business of the Company and if the Company has nominated the person, then the person so nominated shall be deemed to be guilty of the offence and shall be deemed to be guilty of the offence. As per Section 17 (1) (a) (ii) of the Act, even 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 would be an accused and shall be deemed to be guilty.

9. Provisions are unambiguous and as per the aforesaid provisions and category of the persons shown in the aforesaid provisions at the time of offence shall be deemed to be guilty of the offence. In these circumstances, nominee whose authorization was in existence at the time of commission of the offence would be responsible for commission of such offence.

10. As per nomination/authorization, Mr. Sreepathi has nominated on 31-8-1995. He has specifically deposed that at the time of commission of the offence he was not nominee of the company and company has not intimated the local authorities relating to nominee or other person nominated at the time of commission of the offence. The alleged oil was manufactured by the company, therefore, the company was also accused.

11. In the absence of any authority, nomination of Mr. Sreepathi, his specific denial, complainant has filed the application for impleading the petitioners, i.e., Board of Director as an accused under Sections 20 and 20-A of the Act, in which it has been specifically pleaded that at the instance of the Company, his nominee has been impleaded as an accused, who has denied the fact that at the time of commission of the offence he was nominee, inter alia, he has specifically denied the factum of nominee, therefore, the complainant has filed the aforesaid

application against the Board of Directors.

12. As held by the Supreme Court in the matters of S.M.S. Pharmaceuticals Ltd., Everest Advertising (P) Ltd and Pepsico India Holdings Private Limited (supra), bald statement is not sufficient for accusation of the Board of Director and the complainant was required to make specific allegation against the member or Board of Director or any person as required u/s 17 of the Act.

13. In the application, the complainant has not made any such allegation except the fact that the petitioners are Directors of the Company. Directors of the Company cannot be impleaded as an accused u/s 17 of the Act unless it is specifically pleaded that they were responsible to the company and conduct of business of the company.

14. At the time of commission of the offence in the absence of such allegation by impleading the petitioners as an accused, the Court below has committed illegality.

15. Consequently, the writ petition is allowed. Order impugned dated 6-8-2002 is hereby quashed. However, it is made clear that the complainant is at liberty to file comprehensive application u/s 17 read with Sections 20 and 20-A of the Act against the person responsible to the company for the conduct of business of the company at the time of commission of the offence. No order as to costs.