
(2012) 08 DEL CK 0324

In the Delhi High Court

Case No : Criminal M.C. 312 of 2012 and Criminal M.A. 1125 of 2012

Janak Raj

APPELLANT

Vs

State NCT of Delhi and Others

RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Delhi Police Act, 1978 — Section 111, 112, 28

Citation : (2012) 6 ILR Delhi 158 : (2012) 3 JCC 2215

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Ganesh Kumar, for the Appellant; Jasbir Kaur, APP for State SI Gyan Prakash, PS Connaught Place, for the Respondent

Final Decision : Disposed Off

Judgement

Manmohan. J,

1. Present petition has been filed u/s 482 Cr. P.C. seeking quashing of DD No. 57B dated 7Th January, 2011 u/s 28/112 of Delhi Police Act, 1978 (for short "Act"). The relevant facts of the present case are that the petitioner whose prosecution is sought to be initiated under Sections 28/112 of the Act was working only as a manager of Indian Coffee House, Mohan Singh Palace Branch, Connaught Place, New Delhi. It is pertinent to mention that Indian Coffee House, Mohan Singh Palace Branch, Connaught Place is run under the aegis of Indian Coffee Workers Cooperative Society having its Head Office at 38, Bungalow Road, Delhi-07.

2. The allegation against the petitioner is that on 7th January, 2011 he failed to produce a licence for running an eating house and accordingly, a Kalandara under Sections 28 and 112 of the Act was lodged against him.

3. Learned counsel for the petitioner states that the police officials have registered the aforesaid case against the petitioner despite knowing that the

petitioner was working only in the capacity of a manager and it was well established law that ordinarily a servant or agent or in-charge of a place of the public entertainment could not be prosecuted u/s 112 of the Act.

4. This Court in S.A.S Pahwa Vs. State, 2000(3) CCC HC 323 has held as under:-

8. In relation to offence u/s 112, it is contended that a servant or agent is not supposed to obtain a licence in ordinary course, and it does not appear plausible to say that a servant or an agent would fall within the term "whoever" notwithstanding the fact that the term "whoever" is much wider than the terms "owner" or "proprietor". The term "whoever" in Sub-section (1) of Section 112 has to be read in proper perspective. This Court would not assume that the legislature could be indulging in legislative absurdity by asking a servant or agent to obtain licence for his master or the employer or principal, for servant or agent shall always in obtaining a licence for lack of authority to do so from his employer or principal and fulfilling other requirements for grant of licence.....

5. In Avnish Sharma Vs. State, CrI.M.C. 1034/2005 decided on 24TH January, 2008 another learned Single Judge of this Court has held as under:

4. The principal contention of the Petitioner is that the prosecution under Sections 28/112 of the DP Act can be maintained only against the owner/license holder in respect of the premises in question and not an employee of such owner. Reliance has been placed in the judgment of this Court in S.A.S. Pahwa v. State 88 (2000) DLT 194 where under the similar circumstances the proceedings were quashed.

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6. This Court in S.A.S. Pahwa held as under: (DLT, Pg.198). In relation to offence u/s 112, it is contended that a servant or agent is not supposed to obtain a licence in ordinary course, and it does not appear plausible to say that a servant or an agent would fall within the term whoever notwithstanding the fact that the term whoever is much wider than the terms owner or proprietor. The term whoever in Sub-section (1) of Section 112 has to be read in proper perspective. This Court would not assume that the legislature could be indulging in legislative absurdity by asking a servant or agent to obtain licence for his master or the employer or principal, for servant or agent shall always fail in obtaining a licence for lack of authority to do so from his employer or principal and fulfilling other requirements for grant of licence. Moreover, if Section 111 is read in this context with Section 112 as well as with the provisions of Section 17 of the Prevention of Food Adulteration Act along with similar other provisions coupled with absence of any provision excepting Section 111 in Delhi Police Act, make it evident that even a servant or agent in charge and responsible for doing business in a place of public entertainment, could not be prosecuted for offence u/s 112 of the Act ordinarily.

6. Having heard the parties and having perused the paper book it transpires that

the petitioner was only a manager and he was neither owner nor proprietor of the premises in question. Consequently, keeping in view the aforesaid law, DD No. 57B dated 7TH November, 2011 under Sections 28 and 112 of the Act as well as any other proceedings arising there from against the petitioner are quashed. Accordingly, the petition and applications are disposed of.

Order dasti.