

(1987) 04 P&H CK 0047

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition No. 528 of 1987

J.R. Grover, Director of K.D. Woollen Mills (P.) Ltd.

APPELLANT

Vs

Assistant Director, Enforcement Directorate, Ministry of
Finance, Government of India

RESPONDENT

Date of Decision : 06-04-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Foreign Exchange Regulation Act, 1973 — Section 68

Citation : (1987) 62 CompCas 807 : (1987) 13 ECC 251 : (1987) 31 ELT 682 :
(1987) 1 RCR(Criminal) 641

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : Kuldip Singh and Anil Malhotra, for the Appellant; H.S. Brar, for the Respondent

Judgement

I.S. Tiwana, J.—The petitioner along with three other directors of Messrs K.D. Woollen Mills P. Ltd., as also the company itself is sought to be proceeded against u/s 8(2) and 8(4) of the Foreign Exchange Regulation Act, 1973 (for short, " the Act"), as a result of the complaint (annexure P-1) filed by the Assistant Director, Enforcement Directorate, on September 21, 1985. As a matter of fact, they have been summoned by the Chief Judicial Magistrate, Jullundur, to face the trial, vide his order dated September 23, 1984 (annexure P-4). The primary submission of learned counsel for the petitioner is that the facts, as stated in the impugned complaint, annexure P-I, do not even remotely suggest the commission of any offence by the directors of the company, including the petitioner. It is not disputed before me that the lodging of the complaint or prosecution of the directors of a company under the above-noted Act is regulated by section 68 of the Act, the irrelevant part of which reads as follows:

"68. Offences by companies.--(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was

committed, was in charge of, and was responsible to, the company for the conduct of business of the company as well as the company, shall be deemed to be guilty of the contravention 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 punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention."

2. The precise submission of Mr. Kuldip Singh, learned senior advocate for the petitioner, is that it has nowhere been alleged in the complaint, annexure P-I, that the petitioner or any of the directors was a person in charge and was responsible for the conduct of the affairs of the company. In the absence of such an allegation, according to the learned counsel, neither the complainant can lead any evidence to substantiate the same nor is the complaint itself maintainable. All that has been said in this regard in the complaint, annexure P-I, is contained in paragraph 9 of the same which reads as follows:

" 9. That accused No. 1 is the company and accused Nos. 2 to 5 were its directors and who were managing the affairs of the company."

3. Having heard learned counsel for the parties at some length, I find that in the light of the above-noted contents of paragraph No. 9 of the complaint, neither the petitioner nor the other directors like him can possibly be held liable even vicariously for the offences alleged against them.

4. The material words of the above-noted section, which also occurred in Section 23C of the Foreign Exchange Regulation Act, 1947, since repealed by the present Act, have been the subject-matter of consideration and interpretation by their Lordships of the Supreme Court in *Girdhari Lal Gupta Vs. D.H. Mehta and Another*, wherein they have opined as follows (page 2163):

" It seems to us quite clear that Section 23C(1) is a highly penal section as it makes a person who was in charge and responsible to the company for the conduct of its business vicariously liable for an offence committed by the company. Therefore, in accordance with well-settled principles, this section should be construed strictly.

What then does the expression " a person in charge and responsible for the conduct of the affairs of the company " mean ? It will be noticed that the word " company" includes a firm or other association and the same test must apply to a director-in charge and a partner of a firm in charge of a business. It seems to us that in the context a person " in charge " must mean that the person should be in overall control of the day-to-day business of the company or firm. This inference follows from the wording of Section 23C(2)."

5. A similar view was taken by the Delhi High Court in *Ram Kishan Rohtagi v. Municipal Corporation of Delhi* [1980] 1 FAC 419, while interpreting Section 17(1) of the prevention of the Food Adulteration Act, 1954, which section is concededly

in pari materia with the present section 68, referred to above and this opinion of the High Court has specifically been affirmed by the Supreme Court in *Municipal Corporation of Delhi v. Ram Kishan Rohtagi* AIR 1983 SC 67. It is thus patent that in the light of the allegation contained in paragraph No. 9 of the complaint, the petitioner cannot possibly be accused of the commission of any offence. It appears that the trial court, while passing the impugned order of summoning, failed to take notice of this aspect of the matter.

6. For the reasons recorded above, I allow this petition and quash the impugned complaint (annexure P-1) and the summoning order (annexure P-4) to the extent they relate to the directors of the company.