(1999) 03 DEL CK 0054

In the Delhi High Court

Case No : Criminal M. (M) No. 2287/93

JVG Finance Ltd. and Others APPELLANT

Vs

DDA and Another RESPONDENT

Date of Decision : 01-03-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Delhi Development Act, 1957 — Section 14, 29(2)

Citation : (1999) 2 AD 661 : (1999) 49 DRJ 178

Hon'ble Judges : J.B. Goel, J

Bench : Single Bench

Advocate : Mr. R.P. Lao, for the Appellant;

Judgement

J.B. Goel, J.—This is a petition u/s 482 of the Code of Criminal Procedure (for short ''the Code'') filed by the petitioner No. 1, the Company, petitioner No. 2 its Chairman-cum-Managing Director and petitioners No. 3 to 6 its Directors, for quashing the complaint filed against them by the respondent Delhi Development Authority (for short ''DDA'') for the offence u/s 14 read with Section 29(2) of the Delhi Development Act (for short ''the Act''). Petitioners have been arraigned as accused Nos. 1, 2, 4, 5, 6, & 7 respectively in the complaint.

2. Briefly, the facts are that property No. B-24, Ansal Chambers-III, Bhikaji Cama Place, New Delhi was inspected by the staff of the DDA on 9.7.1992 when it was noticed that an office was being run in the basement (419 Sq. Ft. area) under the name and style of "M/s. JVG Finance Ltd." and about 8 persons were found working at the time of inspection; The premises falls under Development Zone No. F-5 and the use of the premises for office purposes which is a non-conforming use, and could be used for storage purpose only is in violation of the Master Plan and the Zonal Development Plan and thus an offence u/s 14 punishable u/s 29(2) of the Act has been committed. Showcause notices dated 16.7.1992 had been sent to all the petitioners, copies of which are available on the record of the M.M. A complaint for proceeding u/s 14 read with Section 29(2)

of the Act Along with certain documents has been filed on behalf of the DDA against the petitioners and one P.C. Sood. The petitioners are alleged to be in charge of and responsible to the company for the conduct of its business. The learned M.M. summoned all the seven accused persons. The petitioners did not appear before the learned M.M. and of non-bailable warrants were also issued against them, and without approaching the trial court they have filed this petition for quashing the complaint.

3. No one has appeared on behalf of the respondents at the time of arguments and even thereafter.

4. I have heard learned counsel for the petitioners. He has contended that the complaint does not disclose the ingredients of Section 32 of the Act for holding the petitioners vicariously liable u/s 14 read with Section 29(2) of the Act as all the Directors cannot be prosecuted and only those who are in charge of and responsible for the affairs of the company could be prosecuted. He has relied on Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, ; Sham Sunder and Others Vs. State of Haryana, and Adarsh Marwah and Another Vs. Nehar Ranjan Bhattacharya and Another, .

5. In DMC Vs. Ram Kishan Rohtagi and Ors. (supra) regarding the legal position about the scope of the power to quash the complaint at initial stage it has been laid down in para 10 as under :-

"10. It is, Therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers u/s 482 of the present Code."

6. In this case reliance has inter alias been placed on an earlier decision of the Supreme Court reported as Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, wherein the legal position about the scope of this power has been noticed (in para 2 at page 1950 of AIR) as under:-

"It is well settled by a long catena of decisions of this Court that at the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or de-merits of the case nor can the High Court go into this matter in its revisional jurisdiction which is a very limited one. "

7. After referring to Chandra Deo Singh Vs. Prokash Chandra Bose and Another, and Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker and Another, it has further been laid down as under :-

"It would thus be clear from the two decisions of this Court that the scope of the inquiry u/s 202 of the Code of the Criminal Procedure is extremely limited - limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint - (i) on the materials placed by the complainant before the Court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defense that the accused may have. In fact it is well settled that in proceedings u/s 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not."

8. It is thus clear that at this stage it is not necessary for the Magistrate to delve into the question of the truthfulness, veracity and correctness of the allegations made in the complaint.

9. In Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Ors (supra) the relevant averments against accused 4 to 7 were as under :-

"5. that the accused No. 3 is the Manager of accused No. 2 and accused Nos. 4 to 7 are Directors of accused No. 2 and as such they were in charge of and responsible for the conduct of the business of the accused No. 2 at the time of sampling."

10. In that case the petitioners were prosecuted u/s 7/16 of the Prevention of Food Adulteration Act and there was no clear averment that accused Nos. 4 to 7 were in charge of the manufacturing and responsible for the conduct of the business and the words "as such" indicated that the complainant had merely presumed that the Directors of the Company must be guilty because they were holding that particular office and the proceedings were quashed by the High Court. Agreeing with the same the Supreme Court also held that there was neither pleading nor averments from which it could be said that they could be vicariously liable. In the case of Sham Sunder and Ors. Vs. State of Haryana (supra) also it has been found that there was no evidence against appellants 1, 2 and 4 who were partners of the firm that besides appellant No. 3 they were also conducting the business of the firm when the offence was committed.

11. In the case of Adarsh Marwah & Ors. Vs. Nehar Ranjan Bhattacharya & Anr. (supra) it was held that no vicarious liability in criminal law could be imputed unless the partner is shown to be responsible for the business of the partnership firm. The principle is that the prosecution must plead that partner/Director of a firm/company to be prosecuted was in charge of and responsible for the conduct of the business of the company.

12. These cases obviously are based on their own facts. Whether ingredients of an offence have been made out against a person or not will depend upon the facts of each case taking into consideration the complaint/FIR, the documents and evidence placed before the Court.

13. In the present case it has been alleged that the accused persons on 9.7.1992 was found to be in use of the premises (basement) in building No. B-24, Ansal Chamber 3, Bhikaji Cama Place, New Delhi to a non-conforming use by running an office in the basement; The premises falls in Zone F-5 and use of premises for office purposes was against the Master Plan and Zonal Plan and thus in contravention of the provisions of Section 14 and Section 29(2) of the Act. It has not been disputed during arguments that the premises are being used for office purposes.

14. In the complaint the allegations made against the petitioners are that Accused No. 2 to 7 are CMD and Directors of accused No. 1 (company) and in charge of and responsible to accused No. 1 for the conduct of its business at the time the offence was committed.

15. Besides the allegations made in the complaint the prosecution has also placed on record a brochure/pamphlet purported to have been published on behalf of the petitioner No. 1 company. At page 8 of this brochure/pamphlet it has been stated as under :-

"The over-all management of the company vests in the Board of Directors .... "

16. Acquiring and the use of the premises for the purpose of an office of the company is part of the functions and affairs of the company and apparently by or with the consent of its Board of Directors. The Board of Directors being in over-all in charge and management of the affairs/business of the company is prima facie answerable and liable for the misuse of the premises by the company.

17. It is not disputed that petitioner No. 2 is the Chairman-cum-Managing Director and petitioners No. 3 to 6 are Directors of the accused company. As already noticed at this stage it is not desirable to delve into the question of the truthfulness, veracity and correctness of the allegations made in the complaint. These allegations prima facie make out a case against the petitioners for vicarious liability against them u/s 32 of the Act to proceed u/s 14 read with Section 29(2) of the Act. If the petitioners have any defense that could be gone into by the trial court.

18. In this connection reference may be made to K.M. Mathew Vs. State of Kerala and another, where it has been observed as under :-

"8. It is open to the accused to plead before the Magistrate that the process against him ought not to have been issued. The Magistrate may drop the proceedings if he is satisfied on reconsideration of the complaint that there is no offence for which the accused could be tried. It is his judicial discretion. No specific provision is required for the Magistrate to drop the proceedings or rescind the process. The order issuing the process is an interim order and not a judgment. It can be varied or recalled. The fact that the process has already been issued is no bar to drop the proceedings if the complaint on the very face of it does not disclose any offence against the accused."

19. The petitioners in the circumstances were not justified in rushing to this Court u/s 482 of the Code of Criminal Procedure which is an extraordinary power to be exercised sparingly and in the circumstances of this case does not justify invoking the same.

This petition has no merit and the same is accordingly hereby dismissed.

The trial court record be sent back forthwith.

