
(2004) 08 CHH CK 0002
In the Chhattisgarh High Court
Case No : Misc. Cr. Case No. 495 of 2003

K.B. Dadiseth and Another	Vs	APPELLANT
J.P. Memorial Centre and Others		RESPONDENT

Date of Decision : 06-08-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Drugs and Cosmetics Act, 1940 — Section 17C, 27A(1), 34

Citation : (2005) 1 CGLJ 77 : (2004) 4 MPHT 21

Hon'ble Judges : L.C. Bhadoo, J

Bench : Division Bench

Advocate : Surendra Singh and Kishore Bhaduri, for the Appellant; Alok Bakshi, for the Respondent No. 1 and J.D. Bajpayee, Government Advocate for the Respondent No. 2, for the Respondent

Judgement

L.C. Bhadoo, J.—The petitioners namely, K.B. Dadiseth and H. Manwani, who are accused in Criminal Complaint Case No. 199/2002 for the commission of the offence u/s 17C read with Section 27A of the Drugs and Cosmetics Act, 1940, before the Court of Chief Judicial Magistrate, Dantewada have moved this petition u/s 482 of the Cr.PC being aggrieved by the order dated 15-5-2002 passed by the learned Chief Judicial Magistrate, whereby the learned Chief Judicial Magistrate took cognizance of the offence u/s 17C read with Section 27A(1) of the Drugs and Cosmetics Act, 1940 against the petitioners as well as respondent Nos. 3 to 5 on a complaint filed by respondent No. 1 herein.

2. Brief facts leading to filing of this petition are that respondent No. 1 herein, who is the Secretary of J.P. Memorial Centre (Recognized Consumer Association) Kirandul, went to the Wholesale Consumer Co-operative Store Ltd., Kirondul on 27-4-1999 where respondent No. 3 herein was selling the consumable items including cosmetics items at the store and respondent No. 4 herein, P.K. Mistry, was the Manager of the said store. The complainant on the said date, i.e., 27-4-99 at about 5 p.m. went to the Consumer Co-operative Store Ltd., and purchased bathing bars (Lifebuoy Plus) through receipt No. 44654 and paid Rs.

35.20/- paise. Thereafter, the complainant on 28-4-99 after sealing the said bathing bars sent the same for examination and analysis to the Government Analysis Drugs Examination Laboratory, Bhopal. Vide letter dated 25-9-99 the Drugs Examination Laboratory, Bhopal sent its report that the bathing bars were found disbranded which is punishable u/s 17C of the Drugs and Cosmetics Act, 1940. Thereafter, a notice was sent by the complainant to respondent No. 3 seeking information from him, reminders were also sent, but no reply was sent by respondent No. 3. Thereafter, he filed a complaint for the commission of the offence u/s 17C read with Section 27A(1) of the Act against the petitioners and respondent Nos. 3 to 5 herein in the Court of Chief Judicial Magistrate. The learned Chief Judicial Magistrate after recording the evidence of respondent No. 1 herein took cognizance of the offence against the petitioners and respondent Nos. 3 to 5, which is challenged in this petition.

3. I have heard Shri Surendra Singh, Senior Advocate with Shri Kishore Bhaduri, Advocate for the petitioners, Shri Alok Bakshi, Advocate for respondent No. 1 and Shri J.D. Bajpayee, Govt. Advocate for the State/respondent No. 2.

4. Learned Senior Advocate for the petitioners argued that applicant No. 1 is the Chairman of M/s Hindustan Lever Limited and applicant No. 2 is the Director (Personal Products) of M/s. Hindustan Lever Limited. They have been arrayed as accused persons only on account of their official capacity as Chairman and Director respectively. Para 2 of the complaint simply says that the accused Nos. 4 and 5 are manufacturers of the bathing bars beyond that there has not been any whisper about the nature of work the petitioners are discharging in the said Company. He further argued that Section 34 of the Drugs and Cosmetics Act, 1940 envisaged that if any offence is committed by a company in that case 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, shall be deemed to be guilty of the offence under the Act. Therefore, no such allegations are in the complaint against the petitioners that they were, in any way, responsible for the conduct of the business of the company or they were in-charge of product "Lifebuoy" (bathing bar). No offence was committed by the petitioners, therefore, order impugned is liable to be quashed. He further argued that even on the date of offence, i.e., 27-4-99 the bathing bar was not included in the list of Cosmetics, therefore, proceedings against the petitioners be quashed, as the same being illegal and contrary to the provision of Section 34 of the Drugs and Cosmetics Act, 1940.

5. On other hand, Mr. Bajpayee argued that the petitioners have moved this petition u/s 482 of the Cr.PC, they ought to have moved a revision before the Competent Court against the impugned order as the powers vested in this Court u/s 482 of the Cr.PC are inherent powers and they can be exercised only in rarest of rare cases. Therefore, the petition be dismissed.

6. Mr. Alok Bakshi, Counsel for respondent No. 1, argued that respondent No. 1 after receiving the analysis report from the Laboratory, sent various notices to

the Hindustan Lever Limited and also to respondent Nos. 3 to 5 to disclose the names of persons who were in-charge of the products bathing bars" in the company, but since no response was received by him, therefore, this complaint was filed.

7. Before adverting to the arguments of the respective Counsel, it would be profitable to reproduce Section 34 of the Act:--

"34. Where an offence under this Act has been committed by 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."

8. A bare perusal of the above provision of Section 34 of the Act, 1940 shows that only those officers can be prosecuted for the offences committed by the company who were in-charge of and were responsible for the conduct of the business of the company. Unless and until that is brought on record, no officer of a company can be held guilty of the offence under the Drugs and Cosmetics Act, 1940. In this regard, I am fortified in my view by the judgment of Hon"ble Apex Court in the matter of State of Haryana Vs. Brij Lal Mittal and Others, the Hon"ble Apex Court while interpreting Section 34A(1) of the Drugs and Cosmetics Act (23 of 1940) held 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 incharge 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 fulfills 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. Merely based on bald statement that the respondents were directors of the manufactures, 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."

Similarly in the matter of Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, , while interpreting Section 34(1) of the Act the Hon"ble Apex Court held that:--

"So far as the Directors are concerned, there is not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant that there is any act committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable."

9. In this connection, while interpreting the similar provision of Food Adulteration Act similar view has been taken by the Hon"ble Apex Court in the matters of Nalin Thakur and Ors. v. State of Maharashtra, reported in 2004 (1) FAC 68 and K.P.G. Nair v. M/s. Jindal Menthol India Ltd., reported in 2001 All MR 1206 and by

the Bombay High Court in the matter of Keki Bomi Dadiseth and Ors. v. The State of Maharashtra, reported in 2002 (1) FAC 294.

10. Therefore, in the light of the above law on the point, if we look into the complaint filed by respondent No. 1 before the Chief Judicial Magistrate against the petitioners, Para 2 of the complaint is relevant, in which it has been simply mentioned that the accused Nos. 4 and 5 (the petitioners herein) are manufacturers of the cosmetic items. There is no whisper or iota of allegation against the petitioners that they were in-charge of and were responsible to the company for the conduct of its business. Therefore, based on this allegation of the complainant the petitioners can not be held vicariously responsible for disbranding the items manufactured by the Hindustan Lever Limited Company. There is no evidence to show that these two accused persons (the petitioners herein) were, in any way, in-charge or were responsible for the production of these bathing bars. Therefore, impugned order passed by the Trial Court taking cognizance against these two persons simply because they are the Chairman and Director of the company can not be sustained being perverse and contrary to Section 34 of the Act, 1940.

11. As far as the point raised by the learned Senior Advocate that on the relevant date the bathing bar was not included in the cosmetics items since on this point there is no sufficient material before this Court at this stage, therefore, it would not be proper to express any opinion as the petition of the petitioners is being allowed on the other grounds.

12. Now, coming to the argument of the learned Govt. Advocate that the petitioners ought to have filed a revision against the impugned order before Competent Court, I am of the opinion that the arguments of the learned Govt. Advocate is without any basis and this Court is competent to invoke the inherent jurisdiction as envisaged in Section 482 of the Cr.PC, of course, on the ground when the Court reaches to the conclusion that the impugned order amounts to abuse of the process of the Court and in order to secure ends of justice, it is necessary to invoke the jurisdiction. In this connection, I am fortified in my view by the judgment of Hon'ble Apex Court in the matter of M/s. Pepsi Foods Ltd. and Anr. Vs. Special Judicial Magistrate and Ors., reported in 1998 Supreme Court 128 in which the Apex Court has held that:--

"It may not, however, be lost sight of that provisions exist in the Code of revision and appeal but sometime for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the Subordinate Courts. No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused can not approach the High Court u/s 482 of the Code or Art. 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial."

13. Similarly, in the matter of G. Sagar Suri and Another Vs. State of U.P. and Others, in Para 8 relying on the above decisions, the Hon"ble Apex Court held that:--

"Jurisdiction u/s 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law."

The Apex Court held that the High Court can exercise its jurisdiction u/s 482 of the Code even if the application is pending before the Chief Judicial Magistrate for discharge of the accused persons.

14. Therefore, I am of the opinion that the impugned order taking cognizance of the offence punishable u/s 17C read with Section 27A(1) of the Drugs and Cosmetics Act, 1940 against the petitioners passed by the Chief Judicial Magistrate is perverse and contrary, to law. If this order is allowed to exist, then same would be abuse of the process of the Court and failure of the justice, therefore, same can not be sustained.

15. In the result, the petition is allowed. The order dated 15-5-2002 is quashed as against the petitioners herein.