

(2011) 08 DEL CK 0150

In the Delhi High Court

Case No : Criminal M.C. 2142 of 2011 and Criminal M.A. No. 7772 of 2011

Kishore Aggarwal and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 23-08-2011

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 141
Prevention of Food Adulteration Act, 1954 — Section 16, 17(1), 17(2)

Citation : (2011) 7 AD 506 : (2011) 185 DLT 684 : (2012) 1 RCR(Civil) 690

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Aasha Tiwari, for the Appellant; Rajdipa Behura, APP, for the Respondent

Judgement

Suresh Kait, J.

Crl. M.C. 2142/2011

1. Learned Counsel for applicants submits that the complaint against the Petitioners made by the Food Inspector, was filed on 18.05.2011 u/s 16 of the PFA Act, 1954. Vide communication dated 26.10.2010, the Food Inspector, Seelampur, Delhi has asked M/s Iceberg Foods Limited, whether company has nominated any person in charge on behalf of the company, if so, a self attested photocopy of Form-VII be annexed with reply.

2. In response to the aforesaid communication dated 26.10.2010, the authorized signatory of the company Mr. Sharma responded to the Food Inspector Sh. Shyam Lal Passi and informed that nominated person is Mr. Deepak Maan, working as quality control manager. The copy of the PFA nomination and board resolution was also annexed with this communication.

3. Learned Counsel for Petitioners submits that Section 17(2) of the PFA Act provides that:

(2) If the Chairperson is unable to attend a meeting of the Food Authority, any other member nominated by the Chairperson in this behalf and, in the absence of such nomination of where there is no Chairperson, any Member chosen by the Members present from amongst themselves, shall preside at the meeting.

4. On perusal of this Section it is clear that, if the company has nominated the director or the manager as the person responsible alongwith the written consent of such director or the manager, being so nominated then the other directors would not be prosecuted in these proceedings.

5. Learned Counsel for Petitioners has referred the case of this Court in V.K. Tiwari v. State through Food Inspector (PFA) 2007 (2) JCC 938 wherein in para No. 3 of the said judgment, it has been observed that:

3. In the complaint, the complainant had mentioned that Mr. V.K. Paliwal, in charge quality control of Parag Dairy was the PFA nominee of Parat Dairy, so he was being made an accused the Petitioner was made an accused because of his being General Manager and member secretary at the time of sampling. The contention of the Petitioner is that once the company had nominated a person u/s 17(2) of the Act to be the incharge and responsible for the conduct of the business of the company, the general manager of the company cannot be prosecuted. The Petitioner relied upon R. Banerjee and Ors. V. H. D. Dubey Ors. 1992 (1) FAC 128. The Respondent, on the other hand, has taken the stand that the nomination was not a valid nomination as the nomination was not accepted and signed by Chief Medical Officer and despite repeated requests, requisite resolution of the company, appointing Mr. Paliwal as nominee, has not been filed.

6. For nomination, the resolution of the company is required and that has to be filed before the Food Inspector concerned. In para No. 3 of V. K. Tiwari (supra) has observed that once the company has nominated a person u/s 17(2) of the Act; to be the incharge and responsible for the conduct of the business of the company, the general manager of the company cannot be prosecuted.

7. Further, learned Counsel for Petitioners submits that as per Section 17(1)(a)(i) of the Act, the person who has been nominated under Sub-Section 2, to be the incharge and responsible for the conduct of the business of the company. Further submits, Sub-section (ii) where no person has been so nominated, other person at the time of offence so committed, was in charge and so responsible, for the conduct of the business of the company.

8. In view of the above discussion, the Id. APP for the State submits that as per the information received by the Food Inspector, M/s Iceberg Foods Ltd. is a company having three Directors namely Mr. Kishore Aggarwal, Smt. Neelam Aggarwal and Mr. Kushal Aggarwal. Food Inspector vide letter dated 16.12.2010 and 12.01.2011 to the company and also letter dated 20.01.2011 addressed to all the three Directors, for confirmation of the information received from the Registrar of Companies, with directions to reply with, the name/residence of Director/s in-charge and responsible for the business of the company. Further

stated, if no reply is received it will be presumed that all the aforesaid Directors are in-charge and responsible for the said sales unit of the company.

9. Ld. APP further submits that no reply was received either from the company or any of the three Directors, as such, therefore, all the abovesaid three Directors were made accused.

10. Ld. APP further submits that as per Form 20B, all three Directors are mentioned above stand as Directors of the company, therefore, the Respondent had no option but to implead all the Directors of the company.

11. Further it is stated and fairly conceded that if the Petitioners have nomination u/s 17(2) of the Act to be in-charge and responsible for the conduct of business of the company, then the Petitioner has a case.

12. The Ld. counsel for the Petitioners refers to a letter dated 26.10.2010 which is at page 53 of the paper book. It is stated that the Food Inspector (PFA) wrote a letter dated 26.10.2010 to the company asking, whether, the company has nominated any person in-charge and if so, self-attested photocopy of Form-VIII be enclosed with the reply. In response to the aforesaid letter the authorized signatory of the company, namely, Syam Lal Pasi informed the Food Inspector regarding nomination of Mr. Deepak Mann, who, was working as Quality Control Manager and the nomination and Resolution of Board, was also annexed with the publication dated 12.11.2010.

13. The Ld. APP for the State has raised the issue that all the person, who were involved in day-to-day activities of the company, they all are responsible for the same.

14. While discussing the case of Municipal Corporation of Delhi v. Ram Kishan Rohatgi and Ors. 182 (2) FAC 355 has referred para 14 as under:

Reliance has been placed on the words "as such" in order to argue that because the complaint does not attribute any criminal responsibility to accused Nos. 4 to 7 except that they were incharge of and responsible for the conduct of the business of the company. It is true that there is no clear averment of the fact that the Directors were really incharge of the manufacture and responsible for the conduct of business but the words "as such" indicate that the complainant has merely presumed that the Directors of the company must be guilty because they are holding a particular office. This argument found favour with High Court which quashed the proceedings against the Directors as also against the Manager, Respondent No. 1.

15. Ld. counsel for the Petitioner has categorically submitted that the law settled in Shyam Sunder Bhartia and Ors. v. State through Food Inspector, Govt. of NCT of Delhi 2009 (1) FAC 362, as has observed in para 3 as under:

3. It is submitted by learned Counsel for the seven Petitioners [who are arrayed as Respondents 2,3,5,6,8,7 and 9 respectively in the Complaint] that the only

averment in respect of them is that they are directors of Domino's Pizza India Limited [Respondent No. 10 in the complaint] and "as such" are "incharge of and responsible for day to day conduct of the business of the company." It is clarified that Ajay Kaul (Respondent No. 4 in the Complaint) is the whole time Director of the company looking after its day-to-day conduct of business. Ajay Kaul and Domino's Pizza India Limited have not joined the present Petitioners in seeking the quashing of the complaint. It is submitted that the Petitioners are not incharge and responsible for day to day conduct of the business of the company and ought not to be arrayed as accused in the complaint. Reliance is placed on the judgment of the Supreme Court in Municipal Corporation of Delhi Vs. Ram Kishan Rohatgi and Others, where it was held that the use of words "as such" in the complaint to rope in persons who are Directors of the company was inadequate for the criminal court to proceed to summon them. Reliance is also placed upon the judgments of the Supreme Court in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, as well as in N.K. Wahi v. Shekhar Singh 2007 (1) JCC (NI) 112 to contend that the mere averment in the complaint to the above effect would not sufficient to attract liability in the context of Section 17(1)(a)(ii) of PFA Act which contains words similar to those occurring in Section 141 of the Negotiable Instruments Act, 1881 in the context of which the above decisions were rendered.

16. Further relied on the case of MCD v. Ram Kishan Rohatgi and Ors. (Supra), wherein, it was held that use of words the words "as such" indicate that the complainant has merely presumed that the Directors of the company must be guilty because they are holding a particular office. This argument found favour with High Court which quashed the proceedings against the Directors as also against the Manager, Respondent No. 1. Further reliance is also placed on the judgment of the Supreme Court in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, as well as in N.K. Wahi v. Shekhar Singh JCC (NI) 112 to contend the mere averment in the complaint to the above effect would not sufficient to attract liability in the context of Section 17(1)(a)(ii) of PFA Act which contains words similar to those occurring in Section 141 of the Negotiable Instruments Act, 1881 in the context of which the above decisions were rendered.

17. On the issue, in the instant petition, the law is settled as discussed above. The Petitioner company had already notified as required u/s 17(2) of the Act. Therefore, the Petitioners were wrongly impleaded as accused.

18. Keeping the above discussion in view CrI.M.C. 2142/2011 is allowed qua these Petitioners only.

19. No order as to costs.

CrI. M. A. No. 7772/2011 (stay)

Since the main petition is disposed of, this application becomes infructuous.

Dismissed as infructuous.