(2015) 09 JH CK 0110

In the Jharkhand High Court

Case No : Criminal M.P. No. 934 of 2009

Kishore Biyani APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 29-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Prevention of Food Adulteration Act, 1954 — Section 16(1)(a)(i), 17, 2(ix)(k)

Citation : (2015) 4 JLJR 278

Hon'ble Judges : Ravi Nath Verma, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, Senior Advocate, Harshvardhan Jha, Abhishek Sinha and Yugandhara Jha, for the Appellant; Amaresh Kumar, Add. P.P., Advocates for the Respondent

Final Decision : Allowed

Judgement

Ravi Nath Verma, J—Invoking the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, the petitioner has prayed for quashing of the order dated 14.05.2008 passed by the Chief Judicial Magistrate, Ranchi in Complaint Case No. C-IV/43 of 2008 whereby the cognizance of offence under Sections 16(1)(a)(i) & (ii) of the Prevention of Food Adulteration Act, 1954 (in short "the P.F.A. Act") has been taken and has also prayed for quashing of the entire criminal proceeding so far as it relates to him.

2. Before I state the prosecution case, the background of the case is necessary to be discussed to appreciate the issue involved in this case. The petitioner, who is the Managing Director of Pantaloon Retail (India) Ltd. with its registered office at Jogeshwari, Mumbai, has his permanent posting at Mumbai but he has to travel all over the country particularly to the big cities where most of the controlling centers of the Retail Stores of the company are located. The company has hierarchy of officials looking after the various aspects managerial, financial, Supervisory, Quality, Standard and Safety etc. and all purchases for the company

are made by the Purchase Department, both from local and outside sources and it is the exclusive liability of the Quality Control Officers to maintain and ensure the best quality of each and every item. The petitioner, being the Managing Director of the company, is concerned with the policy matters and has no concern with the day-to-day purchase and sale of thousands of articles and goods being sold in nearly 500 Retails stores of the company. One such Retail Outlet namely "Big Bazar" was opened at Ranchi on 28th March, 2008.

3. Now in the above background, let the prosecution case be examined. At the instance of the Civil Surgeon-cum-Chief Medical Officer, Ranchi, the prosecution report was sent to the Court of Chief Judicial Magistrate whereafter, the aforesaid case was lodged with the allegation that one K.P. Singh, Food Inspector, Ranchi, visited the "Big Bazar" on 01.04.2008 barely on the 5th day of opening of the store along with his staff and physically examined hundreds of food items displayed on the racks as well as from those items, which were yet to be displayed for sale and took samples of ''Chana Sattu'' 500 gr. x 3 packaging dated 18th March, 2000, Chana Besan 500 gr. x 3, Chana Dal 500 gr. x 3 and Toor (Arhar) Dal 500 gr. x 3 of the same dates and Pure Cow Ghee from the store. The samples were sent to the Public Analyst of State Food and Drug Laboratory, Namkom, Ranchi for its analysis. The Public Analyst submitted his report dated 05.05.2008 showing the sample of Chana Besan as the ''misbranded'' within the meaning of Section 2(ix)(k) of the P.F.A. Act, 1954 by virtue of violation of Rule 32(b) and (e) of the Prevention of Food Adulteration Rules, 1955 (in short "the Rules, 1955") holding that the sample does not bear batch number/lot number and details of the ingredients used as required under the Rules, 1955. On the basis of the said report of the Public Analyst, the Civil Surgeon-cum-Chief Medical Officer forwarded the prosecution report-cum-complaint to the Chief Judicial Magistrate, Ranchi

4. The Chief Judicial Magistrate, Ranchi being satisfied with the prima facie case under Section 16(1)(a)(i) and (ii) of the P.F.A. Act, took cognizance of the offence under the aforesaid sections. Thereafter, summons were issued against the present petitioner and one Nitin Singhania, Assistant Manager of "Big Bazar" at Ranchi.

5. Mr. Anil Kumar Sinha learned senior counsel appearing for the petitioner while assailing the order taking cognizance of offence as bad in law and against the settled principles, seriously contended that the allegations made in the complaint even if taken at their face value as true together with the report of the Public Analyst, no offence is made out against this petitioner.

Secondly, in view of the specific bar created under Section 17 of the P.F.A. Act, when no specific allegation of any act or involvement or role played by the petitioner is alleged in the complaint petition, the very initiation of proceeding is not sustainable and is bad in law.

Thirdly, when the company has not been arrayed as a party and no summon has been issued, the entire proceeding is vitiated in view of the mandates given by the Supreme Court in cases GHCL Employees Stock Option Trust Vs. India Infoline Ltd., (2013) 4 AD 186 : AIR 2013 SC 1433 : (2013) 114 CLA 245 : (2013) 177 CompCas 527 : (2013) CriLJ 2044 : (2013) 2 Crimes 233 : (2013) 2 JCC 1347 : (2013) 4 JT 567 : (2013) 2 RCR(Criminal) 519 : (2013) 4 SCALE 598 : (2013) 4 SCC 505 : (2013) AIRSCW 1906 : (2013) 3 Supreme 151 , Aneeta Hada Vs. Godfather Travels and Tours Pvt. Ltd., AIR 2012 SC 2795 : (2012) 2 BC 638 : (2012) 108 CLA 480 : (2012) 172 CompCas 76 : (2012) 2 CompLJ 433 : (2012) CriLJ 2525 : (2012) 5 CTC 101 : (2012) 2 JCC 113 : (2012) 2 RCR(Criminal) 854 : (2012) 4 SCALE 644 : (2012) 5 SCC 661 : (2012) 113 SCL 564 : (2012) AIRSCW 2693 : (2012) 3 Supreme 416 , S.K. Alagh Vs. State of U.P. and Others, AIR 2008 SC 1731 : (2008) 4 BC 622 : (2008) 142 CompCas 228 : (2008) CriLJ 2256 : (2008) 2 JT 540 : (2008) 2 SCALE 523 : (2008) 5 SCC 662 : (2008) AIRSCW 2389 : (2008) 2 Supreme 152 and State of Haryana Vs. Brij Lal Mittal and Others, AIR 1998 SC 2327 : (1998) CriLJ 3287 : (1998) 2 Crimes 295 : (1998) 3 JT 584 : (1998) 3 SCALE 383 : (1998) 5 SCC 343 : (1998) 3 SCR 104 : (1998) AIRSCW 2240 : (1998) 4 Supreme 364 .

Fourthly, it was urged that since the item seized was a ''single ingredient food'', in view of sub-rule (b)(2) of Rule 32 of Rules, 1955, the mandatory requirement of printing of all the ingredients of food item was not necessary as in ''Chana Besan'' the only ingredient is "Chana". Lastly, it was submitted that the procedure and mandates prescribed in the amended sub-section (1) of Section 202 of the Code of Criminal Procedure has not been followed by the court below before taking cognizance of offence against the petitioner, who was residing beyond the territorial jurisdiction of the Court, though the provision makes it obligatory upon the Court/Magistrate to enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit for finding out whether or not there was sufficient ground for proceeding. In support of his contention, learned counsel has put reliance on the principles laid down in the cases Udai Shankar Awasthi Vs. State of U.P. and Another, (2013) 1 AD 537 : (2013) 1 Crimes 231 : (2013) 1 JCC 711 : (2013) 1 JT 539 : (2013) 2 RCR(Criminal) 503 : (2013) 1 SCALE 212 : (2013) 2 SCC 435 and Vijay Dhanuka Etc. Vs. Najima Mamtaj Etc., (2014) AIRSCW 2095 : (2014) CriLJ 2295 : (2014) 4 SCALE 413 on the amended sub-Section 1 of Section 202 of the Code. As such, allowing the criminal proceeding to continue against him would tantamount to abuse of the process of the Code. Hence, the order taking cognizance and the entire criminal proceeding, as it relates to the petitioner, are fit to be quashed.

6. Refuting the aforesaid submissions, the learned counsel representing the State contended that the petitioner being the Managing Director was responsible for day-to-day affairs of the company and since there was violation of rule and ''misbranding'' of items, the court below has rightly taken the cognizance of offence and issued summons.

7. I have carefully considered the submissions of the learned counsels and also

the decisions relied upon by the learned senior counsel appearing for the petitioner. It is well settled that judicial process is not an instrument of needless harassment and the court should be circumspect and judicious in exercising the discretion and should take all the relevant facts and circumstances into consideration before issuing process or taking cognizance of the offence. Obviously, summoning of an accused in a criminal case is a serious matter. The order taking cognizance and summoning of accused by the court must reflect that the court has applied his judicial mind to the facts of the case and law applicable thereto.

8. So far as the complaint petition is concerned, there is no specific allegation or even whisper that petitioner being the Managing Director of the company was responsible for day-to-day affairs of the company.

9. Before I enter into the veils of submissions of the counsels and the judgments relied on by the learned senior counsel for the petitioner, a reference of sub-rule (b)(2) of Rule 32 of the Rules, 1955 is necessary for the proper adjudication of the issue involved in this case, which reads as follows:-

Sub-rule (b) of Rule 32. - Labelling of Prepackaged Foods - Every package of food shall carry the following information on the label-

(1) The name of the Food - The name of the food shall include trade name or description of food contained in the package.

(2) List of Ingredients. - Except for single ingredient foods, a list of ingredients shall be declared on the label in the following manner:-

(i) the list of ingredients shall contain an appropriate title, such as the term "ingredients";

(ii) the name of ingredients and their weight or volume used in the product at the time of its manufacture shall be listed in descending order;

(iii) where an ingredient itself is the product of two or more ingredients, such a compound ingredient shall be declared in the list of ingredients, and shall be accompanied by a list, in brackets, of its ingredients in descending order of weight or volume, as cases may be:

Provided that where a compound ingredient, other than the food additives, which constitutes less than five per cent of the food, the list of ingredients of such compound ingredient, need not to be declared.

(iv) ....

(v) ....

(vi) ...."

10. Apparently, from bare perusal of the above provision, it appears that sub-rule (b)(2) of the Rule 32 is applicable in those packaged foods only where the

ingredient is more than one. For ''single ingredient food'', like "Chana Besan" where the ''Chana'' is the single ingredient, it was not necessary to declare the list of ingredient as prescribed in the above Rule. In the instant case, the sample of ''Chana Besan'' was collected and on the basis of the report of Public Analyst, allegation of ''misbranding'' has been made, as the list of ingredients were not specifically mentioned on the packets. Since it was a single ingredient food product of ''Chana'', there was no need to mention ingredients in terms of the sub-rule (b)(2) of Rule 32.

11. In the instant case, summon has been issued against this petitioner in his individual capacity being the Managing Director of the company but neither the company has been made party nor summons has been issued against the company. The learned Magistrate while taking cognizance has not assigned any reason or ground for recording his satisfaction about the prima facie case against this petitioner or any role played by him in the capacity of Managing Director of the company, which is sine qua non for initiating criminal action against a person. Here, I feel it necessary to refer Section 17 of the P.F.A. Act, which reads as follows:

"Section 17. Offences by companies. - (1) Where an offence under this Act has been committed by a company-

(a)(i) the person, if any, who has been nominated under sub-section (2) to be in charge of, and responsible to, the company for the conduct of the business of the company (hereafter in this section referred to as the person responsible), or

(ii) where no person has been so nominated, 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; and

(b) the company,

shall be deemed to be guilty of the offence 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 any punishment provided in this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

(2) Any company may, by order in writing, authorise any of its directors or managers (such manager being employed mainly in a managerial or supervisory capacity) to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this Act and may give notice to the Local (Health) Authority, in such form and in such manner as may be prescribed, that it has nominated such director or manager as the person responsible, along with the written consent of such director or manager for being so nominated.

Explanation. - Where a company has different establishments or branches or different units in any establishment or branch, different persons may be nominated under this sub-section in relation to different establishments or branches or units and the person nominated in relation to any establishment, branch or unit shall be deemed to be the person responsible in respect of such establishment, branch or unit.

(3) The person nominated under sub-section (2) shall, until-

(i) further notice cancelling such nomination is received from the company by the Local (Health) Authority; or

(ii) he ceases to be a director or, as the case may be, manager of the company; or

(iii) he makes a request in writing to the Local (Health) Authority, under intimation to the company, to cancel the nomination [which request shall be complied with by the Local (Health) Authority],

whichever is the earliest, continue to be the person responsible:

Provided that where such person ceases to be a director or, as the case may be, manager of the company, he shall intimate the fact of such cesser to the Local (Health) Authority:

Provided further that where such person makes a request under clause (iii), the Local(Health) Authority shall not cancel such nomination with effect from a date earlier than the date on which the request is made.

(4) Notwithstanding anything contained in the foregoing sub-sections, where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company [not being a person nominated under sub-section (2)] such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

12. The very provision and the explanation makes it clear that when the company can be prosecuted, only then the persons mentioned in the categories could be vicariously liable for the offence unless his or their specific role played is not mentioned in the complaint petition. In the case Aneeta Hada (supra) relied by the learned senior counsel, the Hon''ble Supreme Court considering almost a similar situation, held in paragraph 58 as follows:

"58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicated."

13. The learned senior counsel has relied on several judgments on the same point, so it is not necessary to quote various passages from those judgments. In view of the ratio decided in the above judgment, it is amply clear that for maintaining prosecution as envisaged in Section 17 of the P.F.A. Act, arraigning of a company as an accused is mandatory. The other person in hierarchy like the petitioner can only be brought in the net on the principle of vicarious liability as the same has been stipulated in the above provision itself.

14. So far as non-compliance of the amended sub-section (1) of Section 202 CrPC is concerned, learned senior counsel has relied on the judgment of the Hon''ble Supreme Court delivered in the case Udai Shankar Awasthi (supra) where the Hon''ble Supreme Court in paragraph-40 has held as follows:

"40. The Magistrate had issued summons without meeting the mandatory requirement of Section 202 CrPC, though the appellants were outside his territorial jurisdiction. The provisions of Section 202 CrPC were amended vide the Amendment Act, 2005, making it mandatory to postpone the issue of process where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned. The same was found necessary in order to protect innocent persons from being harassed by unscrupulous persons and making it obligatory upon the Magistrate to enquire into the case himself, or to direct investigation to be made by a police officer, or by such other person as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused before issuing summons in such cases."

15. Apparently, the company Pantaloon Retail (India) Ltd. has not been arrayed as an accused; secondly the court below while taking cognizance of the offence and issuing summon has not followed the mandates of amended sub-section (1) of Section 202 of the Code of Criminal Procedure or recorded his satisfaction about the prima facie case against the petitioner and the fact that the sample collected of Chana Besan having a single ingredient foods does not come within the ambit of sub-rule (b)(2) of Rule 32, in my opinion, the petitioner could not have been held liable for the offence under Section 16(1)(a)(i) & (ii) of the P.F.A. Act. Accordingly, the order taking cognizance as well as the continuance of the criminal proceeding against the petitioner, being absolutely uncalled for, deserves to be quashed.

16. In the result, the entire criminal proceeding of the court below including the order taking cognizance of the offence, which relates to the petitioner dated 14.05.2008 passed by learned Chief Judicial Magistrate, Ranchi in Complaint Case No. C-IV-43/2008 are, hereby, quashed.

17. This Criminal Miscellaneous Petition is, accordingly, allowed.

