

(2000) 03 DEL CK 0063
In the Delhi High Court
Case No : Criminal M. (M) 4624/98

L.P. Mittal

APPELLANT

Vs

State of N.C.T. Delhi and Others

RESPONDENT

Date of Decision : 09-03-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Essential Commodities Act, 1955 — Section 7

Citation : (2000) 3 AD 910 : (2000) 100 CompCas 737 : (2000) CriLJ 2557 :
(2000) 84 DLT 575

Hon'ble Judges : Kripa Shankar Gupta, J

Bench : Single Bench

Advocate : Sh. Mukul Rohtagi, Sh. S.K. Mittal and Sh. T.N. Saxena, for the Appellant; Ms. Mukta Gupta, for the Respondent

Judgement

K.S. Gupta, J.—This petition u/s 482 Cr.P.C. seeks the quashing of charge dated 14th October, 1998 framed against the petitioner for an offence punishable u/s 7 of Essential Commodities Act, 1955 (for short "the Act") by a Metropolitan Magistrate.

2. Complaint wherein the impugned charge came to be framed, was filed by the Textile Commissioner inter alia alleging that on receipt of a complaint in writing dated 16th March, 1982 from Consumer Education & Research Centre, Ahmedabad that M/s. Birla Cotton Spinning & Weaving Mills Ltd. Delhi had stamped the blend composition with an incorrect and wrong percentage on their blended cloth (suiting), the samples of sorts of cloth i.e. Black Sea, Dynamic and Republic manufactured by the said Mills were collected from M/s. Bhadani Textile, 351, New Cloth Market, Ahmedabad and were taken into possession vide a panchnama dated 18th September, 1982. Rakesh K. Jain, trustee of said M/s. Bhadani Textile had directly purchased the sorts of cloth from M/s. Birla Cotton Spinning & Weaving Mills Ltd. Vide bill Nos. ETS-262 dated 26th March, 1981 and TS-1998 dated 28th January 1981. Said samples were sent to I.G.S. Lab. Bombay for testing Along with covering letter No. ROA/Cont/Misc/82/1363 dated

30th September 1982. Test results received from the Laboratory Along with letter No. IGSL/3700/TT/TC-6890 dated 8th November 1982 did not tally with the manufacturer's markings on the clothes as under:-

-----												Reg. Description				
Stamped by the Blend percentage No. manufacturer/prod-												ICS Lab.report ucer				
blend percentage -----												Polyester Viscose				
Poly-		Cotton		Reg.		ester		Colluloss								
-----												41. Black Sea 67				
33	42.1	5.5	52.4	42.	Dynamic	48	52	33.7	5.1	58.2	43.	Republic	67	33	28.2	10.4
61.4	-----															

3. M/s. Birla Cotton Spinning & Weaving Mills Ltd., is the manufacturer and producer within the meaning of clauses 3(d) and (h) of the Cotton Textile (Control) Order, 1948. On receipt of the said test report a show cause notice was issued on 24th December 1982 to it but it failed to furnish any satisfactory reply thereto. It is further stated that said M/s. Birla Cotton Spinning & Weaving Mills Ltd. is alleged to have been taken over by M/s. Texmaco Ltd as disclosed by the said company through the letter dated 12th February, 1983 (Annexure 2). L.P. Mittal (petitioner) was the Executive President of the said Mills at the time the samples were lifted and sent to I.G.S. Lab, Bombay and responsible for the conduct of its business. Both the said accused have thus contravened the provisions of sub para 5 of para iv of the Textile Commissioner's Notification No. CER/3/69 dated, 19th September 1969 and thus committed offence u/s 3 of the Act. It was prayed that both of them may be summoned, tried and punished u/s 7 read with section 3 of the Act and clause 22 of the Cotton Textile (Control) Order and sub para 5 of para IV of the Textile Commissioner's Notification No.CER/3/69 issued thereunder.

4. On the said complaint M/s. Birla Textile (Prop.Texmaco Ltd.) and the petitioner were summoned for 28th August 1984 to face trial u/s 7 of the Act by the order dated 19th May 1984 by a Metropolitan Magistrate. This order also notices that R.K. Babbar who filed the complaint, is an Assistant Director in the Regional office under whose jurisdiction the Mills falls and the Textile Commissioner delegated its power to file complaint(s) in favor of Assistant Director vide Notification No. CLBI/5/65/A dated 4th March 1966 and the complaint being made by a public servant, acting in the discharge of his official duties, said Sh. Babbar need not be examined at that stage.

5. After petitioner and D.N. Kohli having put in appearance on behalf of Texmaco Ltd, by the order dated 3rd October 1986 a prima facie case was found to have been made out against both of them for the offence for which the complaint was filed by the Metropolitan Magistrate and 7th November 1986 was fixed for framing of charge against them. Feeling aggrieved, CrI. Revision No.29/92 was filed against the said order dated 3rd October 1986 which came to be dismissed by and Additional Sessions Judge by the Order dated 7th July, 1995. As is manifest from the copy of Order dated 7th July, 1995 placed on record one of the

pleas raised on behalf of petitioner was that there was no ground for proceeding against him and this ground was specifically considered in Para No. 17 of the said order and repelled holding that as the petitioner was ex-Executive President of the company and the offence\\violation of the order was committed during his tenure he is responsible for the offence/violation of the order in question by virtue of the provision contained in section 10 of the Act. File of the trial court seems to have been misplaced thereafter and the charge pursuant to aforesaid order dated 3rd October 1986 came to be framed on 14th October 1998. It is this charge which is under challenge in this petition.

6. Short submission advanced by Sh. Mukul Rohtagi appearing for petitioner was that the petitioner who was occupying senior position of Executive President in M/s. Birla Cotton Spinning & Weaving Mills Ltd, cannot be said to be the person in charge of and responsible to the company for the conduct of its business within the meaning of section 10 of the Act and, Therefore, the charge dated 14th October 1998 deserves to be set aside u/s 482 Cr. P . C . In support of the submission he invited my attention to a chart (Annexure "E") on page 76 of the paper book in addition to the decisions in Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, ; Sham Sunder and Others Vs. State of Haryana, Vikas Pahwa Vs. State, 1996 2 AD 549; Mahendra Pratap Singh Ratra and Another Vs. N.K. Metals and Another, and M/s. Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, 1998 SC 128. Submission has no force. As noticed above, criminal liability is sought to be vicariously fastened on the petitioner Along with M/s. Birla Cotton Spinning and Weaving Mills Ltd., for violation of Clause 22 of Cotton Textile (Control) Order 1948 and sub para 5 of para IV of the Textile Commissioner Notification No. CER/3/69/dated 19th September, 1969 in respect of alleged fraudulent stamping and misleading marking of blend composition on the fabrics, on the basis of allegations particularly set out in Para 4 of the complaint which read as under:-

"That the accused company known as M/s. Birla Cotton Spinning & Weaving Mills Ltd. has been taken over by M/s. Texmaco Ltd. and is functioning as such on the basis of information contained in Annexure-2 and the accused company now known as M/s. Birla Textiles (Prop. Texmaco Ltd) P.O. Birla Lines, Delhi-110007. That it is further submitted that accused No.2 is ex-Executive President of the said manufacturer/producer who was responsible and controller for the conduct of its business.

7. Para 10 of the decision in Ram Kishan Roghtagi"s case (supra) which has bearing on the issue on hand, reads thus:-

"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

Code of Criminal Procedure.

8. Ratio in the said case was quoted with approval in the subsequent decisions rendered by the Apex court.

9. Applying the said test the allegations as made in aforesaid Para No.4 of the complaint do make out the offence for which charge was framed on 14th October, 1998 against the petitioner. The plea that because of senior position the petitioner was enjoying in the said company at the relevant time, he cannot be vicariously held liable Along with the company by invoking section 10 of the Act can only be examined after conclusion of evidence at an appropriate stage by the concerned Metropolitan Magistrate. That apart, as observed earlier, said plea was decided against the petitioner by the aforementioned order dated 7th July, 1995 by the Additional Sessions Judge and correctness thereof had not been challenged by the petitioner. For both the reasons the impugned charge does not call for any interference in exercise of the power u/s 482 Cr.P.C. which power is to be exercised very sparingly. None of the decisions referred to above are of any assistance to the petitioner.

In the result the petition is dismissed.

10. As the matter pertains to a complaint filed in the year 1984, the concerned Metropolitan Magistrate will ensure that the case is disposed of within a period of 4 months from today. Let the file together with a copy of this order be sent back immediately.

11. Petitioner is directed to appear before the concerned court on 16th March, 2000.