(2001) 08 P&H CK 0124

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 717 of 1999

Maj General (Retd.) C.L.Piplani — APPELLANT

Vs

State (UOI) — RESPONDENT

Date of Decision : 28-08-2001

Acts Referred:

Citation : (2002) 1 AICLR 797 : (2002) 1 C.C.Cases 259 : (2002) 1 CLR 27 : (2002) 1 ISJ(Banking) 356 : (2002) 1 RCR(Criminal) 210

Hon'ble Judges : K.S.Garewal, J

Advocate : Mr. TN Gupta, Advocate. Mr. HP Rana, Advocate for Mr. Rajan Gupta, Advocate., Advocates for appearing Parties

Judgement

K.S. Garewal, J.

1. This revision has been filed by Major General (Retd.) CL Piplani, MM Piplani and PN Piplani (this petitioner was deleted from the array of petitioners by order of this court dated July 7, 1999). The challenge is to the order of the learned Additional Sessions Judge, Patiala dated June 5, 1999 whereby revision petition filed by PC Aggarwal (respondent 2) was allowed and it was directed that the order dated March 7, 1998 passed by the learned Special Judicial Magistrate, CBI dropping charges against the two petitioners and Jaya Piplani (stated to have died on February 11, 1996) was without any basis and could not be maintained.

2. The brief facts of the case are that Deputy Chief Controller of Imports and Exports, Amritsar lodged a complaint under Sections 120B, 420, 471 IPC and Section 5 of the Imports and Exports Control Act on June 21, 1988 before the learned Special Judicial Magistrate Ist Class, Jalandhar (the case was later transferred to Special Judicial Magistrate, Patiala). Accused 1 was a partnership firm under the name and style M/s Impex Services, whose partners were PN Piplani, MM Piplani, CL Piplani and Smt. Jaya Piplani. Accused 2 was PC Aggarwal. Accused 3 was PN Piplani aforementioned. There were 7 other accused. The allegations were that PN Piplani had given a general powerof attorney in favour of Ravinder Kumar on the directions of PC Aggarwal. Ravinder Kumar was

working as a peon with PC Aggarwal. He signed as Ravi Kumar and filed an application on October 26, 1983 addressed to the Secretary, Apparel Export Promotion Council, the same was proposed by Parkash Chand Aggarwal and seconded by Mahavir Parshad Verma, who were the employees of PC Aggarwal. Membership number was issued to M/s Impex Services. Details of transactions were mentioned in the complaint. However, on investigation it was revealed that export orders of M/s JYO TAX INC Canada, were found bogus and this firm was found to be fictitious one. The details of various transactions were also given in the complaint.

3. On November 5, 1997 PN Piplani pleaded guilty to the offences under Sections 120B read with Section 420 IPC and Section 5 of the Imports and Exports (Control) Act (since repealed) and was convicted. He was sentenced to imprisonment till the rising of the court and to pay a fine of Rs. 5000/. Thereafter, on March 7, 1998 the prosecutor stated before the court that as PN Piplani, managing partner of M/S Impex Services, had already been convicted, no useful purpose was going to be served by summoning the other partners of the said firm, whereupon their names were ordered to be deleted. The effected partners were CL Piplani and MM Piplani, the petitioners herein and their mother Jaya Piplani.

4. The learned Additional Sessions Judge vide the impugned judgment observed that M/s Impex Services was a partnership firm and PN Piplani, MM Piplani, CL Piplani and Jaya Piplani were its partners. The court further found that the observations of the learned trial Magistrate that no useful purpose would be served by summoning the other partners was without basis and could not be maintained. It was held that when a criminal act was attributed to a firm then all its partners were equally and individually liable.

5. It has been argued that the petitioners were sleeping partners of the firm. Petitioner 1 was an army officer, who was commissioned in 1950 and retired as Major General in 1985. Petitioner 2 was a Merchant Navy Office, who joined the Navy in 1960 and has been in active service. During the period in which the import licence was alleged to have been issued to the firm, petitioner 2 was posted in Singapore. Neither of the two petitioners had anything to do with the actual conduct of the business of the firm. It is further submitted that although the firm had been impleaded as accused 1 in the complaint through all of its partners including PN Piplani, being the Managing Partners of the firm, yet complaint had impleaded PN Piplani as accused 3. Eventually PN Piplani pleaded guilty on behalf of the firm and on his own behalf on November 5, 1997, which plea was accepted and PN Piplani along with firm were held guilty of offences under Section 420 read with Section 120B IPC and Section 5 of the Imports and Exports (Control) Act. PN Piplani was denied the benefit of probation but at the hearing on the question of sentence, the learned Magistrate took into consideration the poor physical health and old age of PN Piplani and sentenced him to imprisonment till the rising of the court along with a fine of Rs. 5,000/. In

default of payment of fine he was to undergo simple imprisonment for one month. Firm M/s Impex Services was directed to pay a fine of Rs. 500/ as punishment.

6. On the basis of the circumstances as unfolded above, the inescapable conclusion is that the firm of which the petitioners were partners has already been convicted and sentenced. Its managing partners has also been convicted and sentenced. The learned Additional Sessions Judge overruled the conviction and sentence on the basis of a revision filed by one of the co accused. The complainant Department did not file a revision. The learned Additional Sessions Judge came to the conclusion that criminal act had been attributed to a partnership firm, therefore, all its partners were equally and individually liable.

7. Learned counsel has placed reliance on Sham Sunder Das and others v. State of Haryana, 1989(2) RCR 494 (SC) in support of the proposition that where offencer were allegedly committed by a partnership firm, all individual partners would not be prosecuted. Only the person who was entrusted with the business of the firm and who was responsible for the conduct of business could be prosecuted. This was a case under the Essential Commodities Act. The present case is under the Imports and Exports (Control) Act. Both cases are cases where prosecution had been launched for violations of law by the firm during the conduct of its usual business. Therefore, the principle laid down in Sham Sunder''s case (supra) would be applicable to the present case.

8. Resultantly, this petition deserves to be allowed, judgment of the Additional Sessions Judge, Patiala is hereby overruled and the prosecution launched against the petitioners is quashed.