(2003) 04 OHC CK 0019

In the Orissa High Court

Case No : C.R.M.C. No. 8768 of 2001

Minati Das and Another	APPELLANT
Vs	
State of Orissa	RESPONDENT

Date of Decision : 25-04-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Essential Commodities Act, 1955 — Section 10, 7, 9

Citation : (2003) CLT 665 (Suppl Crl) : (2003) CriLJ 3627 : (2003) 25 OCR 282 : (2003) OLR 754 Supp

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : Sanjit Mohanty, for the Appellant; D.K. Mohapatra, Standing Counsel (Vigilance), for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The petitioners, who are Directors of Maa Tara Rice Industries Private Limited, a company incorporated under the provisions of the Companies Act, in this application u/s 482, Cr.P.C. have . challenged the initiation of the Criminal Procedure in T.R. Case No. 18 of 2001 in the Court of the learned Chief Judicial Magistrate (Judge, Special Court), Sambalpur for commission of offences under Sections 7 and 9 of the Essential Commodities Act, 1955 for violation of the Provisions of Orissa Rice and Paddy Control Order, 1965, Orissa Rice and Paddy/Procurement (Levy) and Restrictions on Sale and Movement Order, 1982 and Orissa Declaration of Stocks and Prices of Essential Commodities Order, 1973.

2. The case of the petitioners is that one M/s. Jagannath Rice Mill of Durgapalli in the district of Sambalpur had been financed by the Orissa State Financial Corporation and the same was taken over by the Corporation for non-payment of the dues. Maa Tara Rice Industries Private Limited, a Company registered under the Companies Act consisting of four Directors including the petitioners have purchased the said unit from the Corporation in the month of November, 2000.

After obtaining license under the provisions of Orissa Rice and Paddy Control Order, 1965 in the name of Prabhat Kumar Biswal in the month of November, 2000 the Company started operating its business. The said Prabhat Kumar Biswal is the Managing Director of the Company and apart from Shri Biswal, there are three other Directors, namely, Sunil Kumar Agarwal and the petitioners before this Court. It is further case of the petitioners that on 5-1-2001 a resolution was passed by the Board of Directors of the Company that both the petitioners being non-working Directors would not be responsible for day to day affairs of the Company whether administrative or financial. Under the direction of the Collector, Sambalpur on 5-2-2001 a physical verification of the stock was conducted by the Executive Magistrate and Civil Supplies Officers, but no irregularities were found. However, on 31-3-2001 a search was conducted by the Vigilance Department and on the basis of such search and inspection, the Vigilance Department lodged an F.I.R. with the Superintendent of Police, Vigilance on 9-4-2001 vide Sambalpur Vigilance P.S. Case No. 33 of 2001 on the following allegations. The company procured 55.735 quintals of paddy in between 1-12-2000 and 31-3-2001 from different farmers without stating the detail address of the farmers in the receipt from whom they procured the paddy. Further the company had received orders and had shown procurement of paddy from outside districts, taut could hot produce the certificate at the time of inspection and thereby violated the provisions of Orissa Rice and Paddy Control Order, 1965 (Rule-7) as well as the Provisions of Orissa Rice and Paddy/ Procurement (Levy) and Restrictions on Sale and Movement Order, 1982 and Rule 3 of the Orissa Declaration of Stocks and Prices of Essential Commodities Order, 1973 and as such committed the offences under Sections 7 and 9 of the Essential Commodities Act. The further case of the petitioners is that the Confiscation Proceeding u/s 6-A of the Essential Commodities Act, 1955 i.e. E.C. Case No. 10 of 2001 was dropped as ho offence was committed by the company, but charge-sheet was submitted against all the Directors on 30th June, 2001 for commission of offences under Sections 7 and 9 of the Essential Commodities Act and on the basis of such charge-sheet, the learned C.J.M. took cognizance of the offences as aforesaid by order dated 13-9-2001.

3. Shri Sanjit Mohanty, the learned Sr. advocate appearing on behalf of the petitioners submitted that if the entire prosecution case is accepted to be true, the Same does not make out a case against the petitioners. According to Shri Mohanty, there is no specific allegation in the F.I.R. or in the charge-sheet that both the petitioners violated any of the provisions mentioned above and, therefore, no offence having been committed by the petitioners, the learned C.J.M. could not have taken cognizance of the offences so far as the petitioners are concerned. The second submission made by shri Mohanty is that the date on which the offence is alleged to have been committed, the petitioners were neither in charge of nor responsible to the conduct of the business of the company. Rather the resolution of the Board of Directors of the Company shows that the petitioners were non-working Directors of the company and not

responsible for the day to day affairs of the Company whether administrative or financial. According to Shri Mohanty, only because a person is Director of a Company does not necessarily mean that he fulfils the requirements of the provisions of law i.e. in-charge of and responsible for the day to day affairs of the Company in order to bring the liability. In absence of any material to show that a Director of the Company is in-charge of and responsible for its day to day affairs, no criminal liability can be attracted for any offence committed by the Company. Referring to certain pari materia provisions in other Acts as well as some decisions in this regard, it was submitted by Shri Mohanty that in absence of any material to show that the petitioners were in charge of and responsible for day to day affairs of the Company, the proceeding could not have been initiated against them. Shri D. K. Mohapatra, the learned counsel appearing for the Vigilance Department, on the other hand, submitted that there being no dispute that the petitioners are also Directors of the Company, at this stage of the proceeding, it cannot be said that they were not in charge of and responsible for day to day affairs of the Company and it will be open for them to prove during trial that they were not in charge of and responsible for day to day affairs of the Company or had no knowledge about the affairs of the Company and take the advantage of the proviso to Sub-section (1) of Section 10 of the Essential Commodities Act, 1955. He also submitted that the petitioners undisputedly being the Directors of the Company, it cannot be said that no prima facie case is made out against them.

4. So far as the first question raised by the learned counsel for the petitioners is concerned, Shri Mohapatra, the learned counsel appearing for the Vigilance Department has fairly submitted that during search by the Vigilance Department the irregularities found attracted violation of certain provisions of the three control orders mentioned earlier and the petitioners being Directors of the Company had been charge-sheeted for violation of the aforesaid provisions of the three Control Order and accordingly are found liable for commission of the offences under Sections 7 and 9 of the Essential Commodities Act. The very fact that both the petitioners are Directors of the Company, make out a prima facie case against them and, therefore, this Court in exercise of the powers u/s 482, Cr. P.C. should not quash the proceeding. The learned counsel appearing for the Vigilance Department fairly submitted that in the case diary there is no material to show that on the date of search the petitioners were in charge of or responsible for day to day affairs of the Company. According Shri Mohapatra, as Directors of the Company, they have been charge-sheeted. In view of such submission made by Shri Mohapatra, the second question raised by Shri Mohanty, the learned counsel for the petitioners becomes relevant for the purpose of this case. Undisputedly, there is no material as on today in the case record to show that on the date of search though the petitioners were Directors of the Company were in charge of or responsible for the day to day affairs of the Company. In this connection, reference may be made to Section 10 of the Essential Commodities Act, 1955 which is quoted below :--

"10. Offences by companies --

(1) If the person contravening an order made u/s 3 is a company, every person who, as the time the contravention 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 contravention 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 if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

XX XX XX"

5. A bare perusal of the aforesaid provision indicates that if the person contravening an order made u/s 3 is a company, every person who, at the time the contravention 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 contravention and shall be liable to be proceeded against and punished accordingly. The proviso to sub-section prescribes that if any person being a Director of the Company proves that the contravention took place without his knowledge and he had exercised all due diligence to prevent such contravention, he shall not liable for punishment. Similar provisions are available in Negotiable Instruments Act, Section 141 of the Negotiable Instruments Act, 1881 is quoted below :--

"141, Offences by companies --

(1) If the person committing an offence u/s 138 is 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 :

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

xx xx xx"

6. On comparison of both the provisions as available in the Essential Commodities Act and Negotiable Instruments Act, it will be found that there is absolutely no difference in both the provisions. While interpreting Section 141 of Negotiable Instruments Act, the Apex Court in the case of K.P.G. Nair Vs. Jindal Menthol India Ltd., observed as follows :--

"From a perusal of Section 141 it is evident that in a case where a company committed offence u/s 138 then not only the company but also every person who at the time when the offence was committed, was incharge 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 and liable to be proceeded against the punished accordingly. It follows that a person other than the company can be proceeded against under those provisions only if that person was incharge of and was responsible to the company for the conduct of its business.

It is true that the words of Section 141(1) need not be incorporated in a complaint as magic words but it cannot also be disputed that substance of the allegations read as a whole should answer and fulfil the requirements of the ingredients of the said provision for being proceeded against for an offence which he is alleged to have committed. On the above premise, it is clear that the allegations made in the complaint do not either in express words or with reference to the allegations contained therein make out a case that at the time of commission of the offence the appellant was incharge of and was responsible to the company for the conduct of its business,"

In the case of Smt, Katta Sujatha v. Fertilizers and Chem. Travancore Ltd, reported in 2002 (6) SCALE 169 while dealing with Section 141 of the Negotiable Instruments Act, the Apex Court observed as follows:--

"In short the partner of a firm is liable to be convicted for an offence committed by the firm if he was in charge of and was responsible to, the firm for the conduct of the business of the firm or if it is proved, that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of the partner concerned."

7. From the observations made by the Apex Court in the aforesaid two decisions, it is clear that a Director of the Company is liable for commission of the offence by the company provided he was in charge of and was responsible to the firm for the conduct of business of the firm. A similar provision is also available in Drugs and Cosmetics Act, 1940. Section 34 of the Drugs and Cosmetics Act, 1940 provides as follows :--

"34. Offences by companies --

(1) 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.

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 or that he exercised all due diligence to prevent the commission of such offence.

XX XX XX"

In the case of State of Haryana Vs. Brij Lal Mittal and Others, while interpreting the Section 34(1) of the Drugs and Cosmetics Act the Apex Court observed as follows (Para 9) :--

"In Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, while dealing with the applicability of Section 17(1) of the Prevention of the Food Adulteration Act, 1954 which is in pari materia with Section 34(1) of the Act, on similar facts, this Court observed as under :

So far as the Manager is concerned, we are satisfied that from the very nature of his duties it can be safely inferred that he would undoubtedly be vicariously liable for the offence, various liability being an incident of an offence under the Act. 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. In these circumstances, therefore, we find ourselves in complete agreement with the argument of the High Court that no case against the Directors (accused Nos. 4 to 7) has been made out ex facie on the allegations made in the complaint and the proceedings against them were rightly quashed.''"

8. In view of the discussions made above, it is clear that under Essential Commodities Act also unless materials are available to prove that a particular Director of the Company was in charge of or responsible for day to day affairs of the Company to the date the contravention is alleged, such a Director cannot be prosecuted for commission of offence under the Act. There being absolutely no material on record to show that both the petitioners were in charge of or responsible for day to day affairs of the Company on the date the search was made, the department could not have submitted charge-sheet for commission of the offences as alleged.

9. Coming to question whether this Court in exercise of the powers u/s 482. Cr. P.C. should interfere at this stage, reference may be made to Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, While dealing with Section 482, Cr. P.C. as well as the offence alleged to have been committed by the Company under the provisions of Food Adulteration Act, the Apex Court observed as follows (Paras 10 and 11):--

"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,

In the instant case the complaint clearly contains the allegations regarding the sample taken by the Inspector from a shop which was sent to the Public Analyst, was manufactured by the Company in question and that the Public Analyst found the samples to be adulterated. The complaint was filed against the Company, its Directors and the Manager. 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. In these circumstances, therefore, it can be said that no case against the Directors has been made out ex facie on the allegations made in the complaint and the proceedings against them were rightly quashed by the High Court."

10. In view of what has been decided by the Apex Court in the cases referred to above and in absence of any material on record to show that both the petitioners were in charge of or responsible for day to day affairs of the company on the date the search was made and contravention is alleged, the entire proceeding so far as the petitioners are concerned, is liable to be quashed.

11. Accordingly, the application is allowed and the proceeding in Sambalpur Vigilance G. R. Case No. 33/2001/T.R. 18/2001 pending in the Court of the learned C.J.M., Sambalpur stand quashed so far as the present petitioners are concerned. Further it is directed that in the event, in course of trial materials are placed before the Court by the department to show that both the petitioners or either of them was in charge of or responsible for day to day affairs of the Company on the date of the alleged contravention, it will be open for the Court to take such action as provided under law.