(2022) 05 GAU CK 0052

In the Gauhati High Court

Case No : Criminal Revision Petition No. 152 Of 2020

M/S K.S. Oils Ltd. And 6 Ors. APPELLANT

Vs

State Of Assam And Anr RESPONDENT

Date of Decision : 30-05-2022

Acts Referred:

- Constitution Of India, 1950 — Article 227
- Prevention Of Food Adulteration Rule, 1955 — Rule 12B
- Code Of Criminal Procedure, 1973 — Section 155(2), 244(1), 245, 245(2), 397, 401, 482
- Prevention Of Food Adulteration Act, 1954 — Section 7, 16, 17, 17(2)

Citation : (2022) 05 GAU CK 0052

Hon'ble Judges : Robin Phukan, J

Bench : Single Bench

Advocate : S Chakravarty

Final Decision : Disposed Of

Judgement

1. Legality Propriety and correctness of the order dated 11.08.2016, passed by the learned Chief Judicial Magistrate, Kamrup, Guwahati, in C.R. Case No. 1200/2001, is challenged in this revision petition under Sections 379/401 of the Code of Criminal Procedure read with Article 227 of the Constitution India by seven petitioners. It is to be mentioned here that vide impugned order dated 11.08.2016, the learned Chief Judicial Magistrate, Kamrup, has dismissed the petition, filed by the petitioners, for discharging them from the case, on the ground that the matter of discharge in a warrant procedure case, instituted otherwise then on police report, is governed by Section 245 of the Code of Criminal Procedure and the case is still in the appearance stage and hence, the petition is pre-mature for consideration, and directed to issue non-bailable warrant of arrest against petitioner Nos. 2 to 7.

2. The factual background, leading to filing of the present revision petition, under Sections 397/401 read with Article 227 of the Constitution of India, is adumbrated herein below :-

“On 27.09.2021, Shri H. C. Kalita, Food Inspector, Kamrup, Guwahati, inspected M/S K.S. Oil Sales Deptt., R.K. Hour Market, T.R.P. Road, Fancy Bazar and collected sample of Mustard Oil of 375 ml of Big Bull Brand from a sealed tin containing 15 Kgs, which was stored for sale, from one Ashok Kumar Rai, Vendor. Thereafter, on 28.09.2001, the Food Inspector has sent the sample of Mustard Oil for analysis. Thereafter, the Public Analyst, Assam, opined that the sample does not conform to the standards and hence, adulterated, vide its report dated 01.11.2001. Thereafter, the Food Inspector has instituted C. R. Case No. 1200/2001 against the Company, viz. petitioner No. 1- M/S. K. S. Oil Ltd., and the Directors, viz. petitioner No. 2- Shri Kishore Kumar Garg, petitioner No. 3- Shri Omprakash Garg, petitioner No. 4- Shri Mohanlal Garg, petitioner No. 5- Ramesh Garg, petitioner No. 6- Shri Gobinda Garg, and petitioner No. 7- Shri Gopal Garg, to stand trial in the Court for commission of the offence under Section 7 of the Prevention of Food Adulteration Act, punishable under Section 16 of the Prevention of Food Adulteration Act, 1954, for selling and storing of sale of adulterated Mustard Oil (Big Bull Brand), on 11.09.2021, at A. T. Road Maligaon, Guwahati. Thereafter, taking cognizance upon the said complaint, the learned Court below has issued process to the accused Nos. 1 to 7 of the said complaint. Thereafter, the petitioners filed one petition before the Court of learned Chief Judicial Magistrate on 29.07.2014, under Section 17 of the Prevention of Food Adulteration Act, to delete/discharge the name of the Directors, i.e. the petitioner Nos. 2 to 7, who are not responsible for the said offence in view of the fact that there is a person responsible nominated under Section 17(2) of the said Act. Thereafter, hearing learned Advocates of both sides, the learned Court below, vide impugned order, dated 11.08.2016, had dismissed the petition.”

3. Heard Ms. S. Chakravarty, learned counsel for the petitioners. Also heard D. Das, learned Additional Public Prosecutor for the State respondents.

4. Ms. S. Chakravarty, learned counsel for the petitioners, submits that the impugned order, dated 11.08.2016, passed by the learned Chief Judicial Magistrate, Kamrup, in C.R. Case No. 2834/2001, suffers from manifest illegality and impropriety. Taking this Court through the impugned order, Ms. Chakravarty, submits that the learned Chief Judicial Magistrate agreed to the legal provision pointed out by the learned counsel and held the same is in conformity with law, but, refused to discharge the applicants, as the stage was pre-mature to discharge the petitioners, as the case is warrant procedure and instituted otherwise then on police report, which is governed by Section 245 of the Code of criminal Procedure. Ms. Chakravarty, taking us through the page No. 32 of the petition, submits that the company has nominated one Ananta Kumar Kulshrastha, a Manager of the Company, as the person responsible to the said company for the conduct of the business of the said company or establishment unit and thereby authorized to exercise all such power and take such step necessary for expedient to prevent the commission of any offence by the said company, under section 17(2) of the Prevention of Food Adulteration Act. Ms.

Chakravarty further submits that a copy of the said notice was given to the local health authority and the local health authority has accepted the same and attested with seal and signature. Ms. Chakravarty further submits that relied upon a decision of Hon'ble Supreme Court in the case of R. Banerjee & Ors. Vs. H.D. Dubey & Ors, reported in (1992) 2 SCC 552, this Court in Criminal Revision Petition No. 73/2002, has quashed the proceeding against the petitioners. Ms. Chakravarty further submits that in the case of R. Banerjee (supra), Hon'ble Supreme Court has set aside the impugned order of the High Court and the order of the learned Magistrate, who had refused to discharge the petitioners of that case. Under the above circumstances, Ms. Chakravarty, has contended to allow the petitions.

5. Per contra, Mr. D. Das, learned Additional Public Prosecutor, submits that the impugned order suffers from no illegality or impropriety and as such, Mr. Das contended to uphold the same. Mr. Das further submits that since the case is being tried as warrant case and the stage is for appearance of accused, the learned Court below, according to Mr. Das has rightly dismissed the prayer.

6. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the impugned order dated 11.08.2016, passed by the learned Chief Judicial Magistrate, Kamrup, in C.R. Case No. 2835/2001, and the petition and the documents placed on record and also the judgment of Hon'ble Supreme Court in R. Banerjee (supra).

7. Section 17 of the Prevention of Food Adulteration Act dealt with the offence by company. Sub-Section (1) provides that "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."

7.1. Sub-Section (2) provides that "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."

7.2. Sub-Section (3) provides that " 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."

7.3. Sub-Section (4) provides that:- "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.

Explanation.—For the purposes of this section-

(a) "Company" means anybody corporate and includes a firm or other association of individuals;

(b) "director", in relation to a firm, means a partner in the firm; and

(c) "manager", in relation to a company engaged in hotel industry, includes the person in charge of the catering department of any hotel managed or run by it.]

8. Thus, a cursory perusal of Section 17(2) of the Prevention of Food Adulteration Act make it abundantly clear that when an offence under the Prevention of Food Adulteration Act is committed by a company, which has nominated any person to be in charge of or responsible to the company for the conduct of the business of the company, it is the nominated person who shall be proceeded against and punished for commission of offence. It is only when no one has been nominated, as required, every person, who at the time of commission of the offence, was in charge of and responsible to, the company for the conduct of the business of the company, shall be proceeded against. Even, in a case where a person, who has been nominated as the person responsible for the purpose of Section 17(2), can prove his innocence by showing that the offence is committed without his knowledge and notwithstanding the exercise of due diligence on his part to prevent commission of such offence by the company.

9. In the case of R. Banerjee & Ors. Vs. D. H. Dubey [AIR 1992 SC 1168], upon which the learned counsel for the petitioners relied on, Hon'ble Supreme Court has held that where a person has been nominated under Section 17(2), such a person, who is termed as person responsible, can alone be proceeded against and punished for the offence and it is only when such person has been nominated that every person, who, at that time, when the offence was committed, in charge of, and was responsible to, the company for the conduct of business of the company, can be proceeded against and punished.

10. Thus, the legal proposition, that can be deduced from the ratio laid down in the case of D. Banerjee (supra) is that where a company committed an offence under the Prevention of Food Adulteration Act, the person nominated under Section 17(2) to be in charge of, and responsible to the company for the conduct of the business of the company, can only be proceeded against unless it is shown that the offence was committed with the consent or connivance of any other Director, Manager, Secretary or Officer of the company or due to negligence of such a Director, Manager, Secretary or Officer of the company.

11. Keeping the aforesaid principles in mind, while the facts and circumstances of the case in hand is examined, I find that the company has nominated one Ananta Kumar Kulshrastha, a Manager of M/S K. S. Oil Ltd. as the person responsible under Section 17(2) of the Prevention of Food Adulteration Act in its meeting, held on 11.11.1998, at the Marina Office to be in charge of and responsible to the company for conduct of the business of the said company or establishment/ branch/unit thereof and authorized to exercise of such powers and take all such steps which may be necessary to expedient to prevent the commission of the offence by the said company, under the Prevention of Food Adulteration Act, 1954, which apparent from the page - (32 of the petition). A copy of the said resolution was forwarded to the local health authority also and the local health authority has acknowledged the same on 21.12.1998. The aforesaid nomination was made in the Form No. VIII, as provided under Rule 12B of the Prevention of Food Adulteration Rule, 1955. There is no quarrel at the Bar in this regard.

12. Since the company has nominated one person, namely, Ananta Kumar Kulshrastha, to be the person responsible for conduct of the offence under Section 17(2) of the Prevention of Food Adulteration Act, the said nominated person alone is responsible to the company for conduct of the business. But, unfortunately, the complainant, Food Inspector, did not enquired about the same and he arrayed all the Directors of the company, i.e. petitioner Nos. 2, 3, 4, 5, 6 & 7, as the accused, here in this case, instead of making the said nominated person as an accused.

13. This legal position is admitted by the learned Court below also in its impugned order, dated 11.08.2016, in the following terms: "Perusal of the statutory provision shows that learned engaged counsel's submission is in conformity with law". But the learned Court below refused to exercise its power as the matter of discharge in a warrant procedure case instituted otherwise then on police report is governed by Section 245 of the Code of Criminal Procedure and the same is still in the appearance stage and as such, it is pre-mature for consideration and thereby rejects the same.

14. In the case of Ajoy Kumar Ghose Vs. State of Jharkhand and another (2009) 14 SCC 115, Hon'ble Supreme Court had the occasion to observe in Paragraph nos.36 and 37 as follows:-

"36. The Magistrate has the power to discharge the accused under Section 245(2) Cr.P.C. at any previous stage i. e. before the evidence is recorded under Section 244(1) Cr.P.C., which seems to be the established law, particularly in view of the decision in Cricket Association of Bengal & Ors. Vs. State of West Bengal & Ors. reported in 1971 (3) SCC 239, as also the subsequent decision of the Bombay High Court in Luis de Piedade Lobo Vs. Mahadev Vishwanath Parulekar reported in 1984 Criminal Law Journal 513. The same decision was followed by Kerala High Court in Manmohan Malhotra Vs. P.M. Abdul Salam & Anr. reported in 1994 Criminal Law Journal 1555 and Hon'ble Justice K.T. Thomas, as the Learned Judge then was, accepted the proposition that the Magistrate has the power under Section 245(2) Cr.P.C. to discharge the accused at any previous stage. The Hon'ble Judge relied on a decision of the Madras High Court in Mohammed Sheriff Sahib Vs. Abdul Karim Sahib reported in AIR 1928 Madras 129 (1), as also the judgment of Himachal Pradesh High Court in Gopal Chauhan Vs. Smt. Satya reported in 1979 Criminal Law Journal 446.

37. We are convinced that under Section 245(2) Cr.P.C., the Magistrate can discharge the accused at any previous stage i.e. even before any evidence is recorded under Section 244(1) Cr.P.C. In that view, the accused could have made the application. It is obvious that the application has been rejected by the Magistrate. So far, there is no difficulty."

15. In the case of State of Haryana Vs. Bhajan Lal, reported in AIR 1992 SC 604, Hon'ble Supreme Court has issued seven guidelines, which should be followed by the Court in the exercise of its inherent power vested by section 482 Cr.P.C.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

16. Here, the case of the petitioners is, squarely covered by point No. 6 of the guidelines, so laid down in the case of Bhajan Lal (supra) and as such prosecution of the present petitioners in C.R. Case No. 2834/2001 is clearly an abuse of the process of the law. The learned court below has failed to exercise its power conferred by section 245(2) of the Code of Criminal procedure and to proceed against the actual person responsible for the offence.

17. In M/s KS Oils Ltd. & 7 Ors. Vs. State of Assam, Criminal Revision Petition No. 73/2002, a co-ordinate Bench of this Court, in a similar situation, has allowed the petition and set aside the impugned order of the learned Court below by holding that in the circumstances, prosecution of accused Nos. 2 to 7 would be nothing but abuse of the process of the Court. In fact, when such a prosecution is barred by law, the High Court is duty bound to interfere with such a prosecution in exercise of its revisional jurisdiction and if necessary, under Section 482 of the Code of Criminal Procedure.

18. In view of above settled legal position, the impugned order, so passed by learned Chief Judicial Magistrate, dated 11.08.2016, in C.R. Case No. 2834/2001, to the considered opinion of this Court, fails to withstand the test of legality, propriety and correctness.

19. In the result, we find sufficient merit in these petitions and accordingly, the same stands allowed. The impugned order dated 11.08.2016, passed by the learned Chief Judicial Magistrate in CR Case No. 2834/2001 stands set aside. It is provided that the learned court below shall hear the parties a fresh on the petition dated 29.07.2014, and thereafter, proceed to dispose of the same in accordance with the provisions of law, as discussed herein above. Further, it is made clear that if any incriminating materials come out against the petitioners, during the trial, as provided in Section 17 (4) of the Prevention of Food Adulteration Act, then the learned Court below will be at liberty to proceed against them under the relevant provision of law.

20. In terms of above, these three revision petitions stands disposed of. The parties have to bear their own costs.