

(2012) 01 JH CK 0129

In the Jharkhand High Court

Case No : Criminal W.J.C No. 140 of 1999 (R)

Omiyo Ranjan Jaiswal, Manoranjan Jaiswal, Sri Krishna
Ranjan Jaiswal and Shashi Ranjan Jaiswal

APPELLANT

Vs

The State of Bihar (Now State of Jharkhand) and Others

RESPONDENT

Date of Decision : 09-01-2012

Acts Referred:

Bihar Finance Act, 1981 — Section 49, 49(1), 49(2), 49(3)
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 192, 199, 406

Citation : (2012) 170 CompCas 14 : (2012) 3 JCR 356 : (2012) 3 JLJR 21 :
(2013) 57 VST 113

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.C. Mishra, J.—Heard learned counsels for both the parties.

2. Petitioner no.1 is the Director of M/s Sheo Narayan Jaiswal Pvt. Ltd, Lalpur, Ranchi and the petitioner Nos. 2, 3 and 4 are the Directors of M/s Ellen Breweries and Distilleries Pvt. Ltd., Lalpur, Ranchi and they have been made accused in Lalpur P.S Case No. 56 of 1999 for the offence under Sections 49(1)(b), 49(2)(g) and 49(3)(d) of the Bihar Finance Act, 1981.

3. According to the F.I.R., the said Companies namely M/s Sheo Narayan Jaiswal Pvt. Ltd. and M/s Ellen Breweries and Distilleries Pvt. Ltd. were engaged in manufacturing and sale of country liquor and they are alleged to have violated the provisions of the Bihar Finance Act in submitting their Sales Tax returns and accordingly, the F.I.R was lodged against the Directors of the said Companies, who are the petitioners for the offence under Sections 49(1)(b), 49(2)(g) and 49(3)(d) of the Bihar Finance Act, 1981. From the F.I.R it appears that on the basis of the allegations as detailed in "Fact Statement" attached to the F.I.R., the penalty of Rs. 2,13,22,927.50 paise was imposed upon M/s Sheo Narayan Pvt.

Ltd. and for the similar lapses, the penalty of Rs. 5,21,94,912.00 was imposed upon the other company, namely, M/s Ellen Breweries and Distilleries Pvt. Ltd. and the petitioners, being the Directors of the Company, were made accused. It may be stated that from perusal of the F.I.R and the "Fact Statements" attached thereto, it appears that there is no allegation whatsoever against the petitioners, nor the role of the petitioners in commission of the alleged offence as the Directors of the Company is mentioned; rather it is apparent that the allegation is solely against the Companies in both the matters. It may thus, be stated that against these petitioners, who have been made accused in the F.I.R, there is no allegation against them and the Companies against whom, there is allegation in the F.I.R, have not been made accused.

4. The petitioners have filed this writ application, stating inter alia, that the Companies are the separate legal entities and there cannot be any vicarious liability of the petitioners only being the Directors of the Company and as such, the F.I.R in Lalpur P.S case No. 56 of 1999, so far it relates to the petitioners, be quashed. So far as the imposition of penalties against the Companies are concerned, it has been brought on record by way of supplementary affidavit that the imposition of the penalties were challenged by both the Companies by filing separate appeals before the Joint Commissioner of Commercial Taxes (Appeals) who upheld the said imposition of the penalty and dismissed the appeals by orders dated 29.03.2000. Against the orders passed by Joint Commissioner of Commercial Taxes (Appeals) separate revision petitions were filed before the Commercial Taxes Tribunal. Initially vide Judgment dated 8.9.2009 the imposition of penalty was upheld by the Tribunal, but against the said judgment, review petitions were filed in which the penalties imposed on both the Companies were set aside by the Commercial Taxes Tribunal vide Judgment dated 7.9.2011 passed in those review petitions being RN 01 & 02 of 2010. The Judgments passed by the Commercial Taxes Tribunal have been brought on record as Annexure -5 series.

5. Learned counsel appearing for the petitioners has submitted that from perusal of the F.I.R, it would appear that no role whatsoever is assigned against these petitioners and it is well settled principle of law that the legal fiction of the principle of vicarious liability cannot be attracted and a person who is otherwise not personally involved in the commission of an offence cannot be made liable for the same, unless it is specifically provided in the statute concerned. It has been submitted that there is no provision for vicarious liability in section 49 of the Bihar Finance Act. Learned counsel has, accordingly, submitted that even if all the facts stated in the F.I.R. are accepted in toto, no offence can be made out against the petitioners and it is a fit case in which the F.I.R. be quashed.

6. In support of his contention, learned counsel has placed reliance upon the decision of the Hon"ble Supreme Court of India in the case of Maharashtra State Electricity Distribution Co. Ltd. and Another Vs. Datar Switchgear Ltd. and Others, , wherein, it has been laid down as follows:

30. It is trite law that wherever by a legal fiction the principle of vicarious liability is attracted and a person who is otherwise not personally involved in the commission of an offence is made liable for the same, it has to be specifically provided in the statute concerned. In our opinion, neither Section 192 IPC nor Section 199 IPC incorporate the principle of vicarious liability, and therefore, it was incumbent on the complainant to specifically aver the role of each of the accused in the complaint. It would be profitable to extract the following observations made in *Maksud Saiyed Vs. State of Gujarat and Others*, at p.667, para 19)

19. As, admittedly, drafts were drawn in the name of the company, even if the appellant was its Managing Director, he cannot be said to have committed an offence u/s 406 of the Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefore. In absence of any provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself.

(Emphasis supplied)

7. In this connection, learned counsel has also placed reliance upon the decision of the Hon''ble Supreme Court of India in the case of *Sham Sunder and Others Vs. State of Haryana*, , where it has been held as follows:

3''9. But we are concerned with a criminal liability under penal provision and not a civil liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold.

(Emphasis supplied).

8. In this connection, reliance has also been placed upon the decision of the Hon''ble Supreme Court of India in the case of *Monaben Ketanbhai Shah and Another Vs. State of Gujarat and Others*, , wherein also, similar view has been expressed by the Hon''ble Apex Court.

9. Learned counsel for the petitioners has also submitted that from the documents brought on record as Annexure -5 series, it would appear that the penalty which was imposed against the Companies have been set aside in review petitions by the Commercial Taxes Tribunal and accordingly, no offence survived either against the Companies or against the Directors of the Company and the prosecution of the petitioners is fit to be quashed on this score as well. In this connection, learned counsel has placed reliance on the decision of the Hon''ble Supreme Court of India in the case of *K.C. Builders and Another Vs. The Assistant Commissioner of Income Tax*, .

10. Learned G.A. appearing for the State on the other hand, submitted that it is well settled principle of law that at the initial stage, the F.I.R should not be quashed. In this connection, learned counsel has placed reliance upon the decision of the Hon''ble Supreme Court of India in the case of *State of Madhya*

Pradesh Vs. Awadh Kishore Gupta and Others, , wherein it has been held that while exercising jurisdiction u/s 482 of the Cr.P.C., the High Court should not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would sustain or not. The decision of the Hon''ble Supreme Court of India in State of Haryana and others Vs. Ch. Bhajan Lal and others, has been cited with approval by the Hon''ble Supreme Court of India in this case, in which, the illustrative categories for exercise power u/s 482 of the Cr.P.C. have been detailed. In paragraph 13, in this decision, it has been held that the Court should not act on annexure to the petitions u/s 482 4 of the Code, which cannot be termed as evidence without being tested and proved.

11. In this connection, learned G.A. has also placed reliance upon the decision of the Hon''ble Supreme Court of India in the case of State of Bihar and Another Vs. Md. Khalique and Another, , wherein it has been held that at the initial stage, the High Court should not interfere with the investigation of a case and should permit the police to complete it. It may be pointed out that upon going through this decision it is apparent that in the said case, on the basis of the acquisition made in the F.I.R, the offence was made out against the accused.

12. After having heard the learned counsels for both the sides and upon going through the record, I find that the only material against the petitioners in the present case is that the petitioners are the Directors of the Companies which had allegedly violated the provisions of the Bihar Finance Act and thereby, had committed offence under Sections 49(1)(b), 49(2)(g) and 49(3)(d) of the said Act. From bare perusal of Section 49 of the Bihar Finance Act it is apparent that it does not provide for any vicarious liability of a person against whom no role is assigned in commission of any offence under this section. No role is assigned against the petitioners in the entire F.I.R and the allegation is only against the Companies specifically. This apart, the petitioners have also brought on record the fact that even the penalty imposed upon the Companies, have been set aside by the Commercial Taxes Tribunal vide Judgment dated 7.9.2011 passed in the review petitions bearing Nos. RN 01 & 02 of 2010 which has been brought on record as Annexure -5 series. As such, no offence can be said to survive against the petitioners and the prosecution of the petitioners is fit to be quashed on this score as well.

13. In the case of State of M.P. Vrs. Awadh Kishore Gupta and Ors. (supra), the Hon''ble Supreme Court of India has also laid down the law as follows:

8. --In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/ continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the 5 question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

(Emphasis supplied).

14. In the facts of this case, I am of the considered view that this matter is fully covered by the decision of the Hon'ble Supreme Court of India in the case of Maharashtra State Electricity Distribution Co. Ltd. (Supra), wherein it has been held that it is trite law that wherever by a legal fiction the principle of vicarious liability is attracted and a person who is otherwise not personally involved in the commission of an offence is made liable for the same, it has to be specifically provided in the statute concerned. As even on the plain reading of the F.I.R., there is no role assigned to the petitioners, the continuance of the criminal proceeding against them cannot be sustained in the eyes of law as the same shall amount to abuse of the process of law, apart from amounting to only unnecessary harassment to the petitioners.

15. In view of the aforementioned discussions, the prosecution of the petitioners pursuant to the F.I.R. in Ranchi Sadar Lalpur P.S case No.56 of 1999, as also the said F.I.R., so far the petitioners are concerned, are hereby, quashed. This writ application is, accordingly, allowed in the aforesaid terms.