

**(1988) 08 PAT CK 0002**

**In the Patna High Court**

Rajendra Singh

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

**Date of Decision :** 05-08-1988

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 173, 204, 482  
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14  
Essential Commodities Act, 1955 — Section 10  
Water (Prevention and Control of Pollution) Act, 1974 — Section 47

**Citation :** (1989) CriLJ 2277

**Hon'ble Judges :** S. Haider Shaukat Abidi, J

**Bench :** Single Bench

## Judgement

S. Haider Shaukat Abidi, J.—Petitioner Rajendra Singh -Chairman-cunt Managing Director of Central Coal Fields, Ranchi, the then Director (Commercial) Bharat Coking Coal Ltd., Dhanbad, has filed this application u/s 482 Cr. P.C. for quashing the entire proceeding pending against the petitioner in connection with the Weights and Measures Case No. 18 of 1980 including the order dated 7-6-1980 whereby the Chief Judicial Magistrate, Dhanbad, has taken cognizance of the offence u/s 25 of the Bihar Weights & Measures (Enforcement) Act, 1959 (for short the Act).

2. It appears that on 2-6-1980 a prosecution report was lodged by the Inspector of Weights and Measures, Sadar Dhanbad, before the learned Chief Judicial Magistrate, Dhanbad, saying that on 15-10-1979 a coal dump of M/s. Bharat Coking Coal Limited, a Government of India Undertaking, situated at Golf Ground was inspected. During the course of inspection it was found that in the said coal dump unstamped weighing scale was being used in contravention of the provisions contained in Rule 11 of the Bihar Weights and Measures (Enforcement) Rules (for short the Rules). The learned Chief Judicial Magistrate on the said report took cognizance of the offence u/s 25 of the Weights and Measures Act (for short "Measures Act") against the petitioner and others and thereafter transferred the case to the court of Sri A. Gouri.

3. In the application u/s 482 of the Code of Criminal Procedure (for short Cr. P.C.), it has been said that the order transferring the case to the court of Sri A. Gouri is in violation of the provision of Section 204 Cr. P.C., that the petitioner was the Director (Commercial) of M/s. Bharat Coking Coal Ltd. which is also a subsidiary of Coal India and that the Coal Dump is situated in Golf Ground far away from the colliery inspected; and that he was to look after the policy decision of M/s. Bharat Coking Coal Ltd. so far as commercial aspect is concerned; and that in the said coal dump competent persons were posted to look after the affairs of the said coal dump. No counter-affidavit has been filed by the State to controvert the allegations but the learned Counsel for the State has tried to refer to the record of the court below.

4. Shri K. D. Chatterjee, the learned Counsel for the petitioner has urged that when a company is an offender, then there are two situations in which a Director can have criminal liability. In the first case if the penal Section 2 makes him ipso facto liable, then there is a triable case against him. In case the penal Section 2 has not automatically fastened criminal liability on a director except on proof of certain matters like connivance, negligence etc. then there is no triable case, unless the matters are mentioned. The Full Bench Decision of Badri Prasad v. State of Bihar 1986 Pat LJR 246 : 1986 Cri LJ 699 is confined to the first category and, therefore, it is not necessary to make any averment except against the person who is a director, as he is liable by fiction. But in case he is not liable by fiction, then there should be some averments against the petitioner and for this contention, the learned Counsel relied upon the observations in the case of Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, that there was no clear allegation against the Manager and directors that they are responsible for conduct of business of the disputed sample and so the proceeding against the directors was quashed but not the managers.

5. Learned Counsel for the State referred not only to the decision in Municipal Corpn. Delhi v. Ram Kishan Rohatgi (supra) but also to the decision in Municipal Corporation of Delhi Vs. Purshotam Dass Jhunjunwala and Others, and also to the Four Full Bench decisions of this Court in support of the contention that the petitioner being managing director of the Firm was also liable and so there was no necessity for making averments in the complaint.

6. To appreciate the rival contentions of the learned Counsel for the parties it will be relevant to examine the provisions of law which is in issue in this case as well as those provisions which have been dealt with in the aforesaid two decisions of the Supreme Court and the four Full Benches of this Court. In this case Section 25 of the Measures Act is said to have been violated by the manager of the company. Sections 25 and 42 of the Measures Act, 1955 are as follows:

25. Penalty for use of unstamped commercial weights and measures : - Whoever uses in any transaction for trade or commerce or has in his possession for such use any commercial weight or measure or any weighing or measuring instrument which has not been verified or re-verified or stamped in accordance with the

provisions of this Act and the rules made thereunder shall be punishable, for a first offence, with fine which may extend to two thousand rupees, and for a second or subsequent offences, with imprisonment for a period which may extend to six months, or with fine or with both.

Explanation : (1) When any such weight or measure or weighing or measuring instrument is found in the possession of any trader or any employee or agent of such trader, such trader, employee or agent shall be presumed until the contrary is proved, to have had it in his possession for use in transaction for trade or commerce.

(2) Where any weight or measure or weighing or measuring instrument is used or possessed in contravention of this Section 2 by any employee or agent of a trader on behalf of such trader, such trader shall, unless it be proved that the offence under this Section 2 was committed by his employee or agent without his knowledge or consent be also deemed to be guilty of the offence.

42. Offences by the companies : (1) If the person committing an offence under this Act is a Company, every person, who at the time of the offence 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 punishment 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.

(2) Notwithstanding anything contained in Sub-section (i), 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 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 2 : - (a) "Company" means any body corporate and includes a firm or other association of individuals; and (b) "director" in relation to a firm, means a partner in the firm.

7. In the aforesaid two decisions of the Supreme Court of Municipal Corporation of Delhi Vs. Purshotam Dass Jhunjunwala and Others, the violations of the provisions of the Prevention of Food Adulteration Act were complained of. While in the four Full Benches decisions different Acts were complained of as detailed below : - (1) Ram Kripal Prasad and Others Vs. The State of Bihar and Others, under the Employees Provident Fund and Miscellaneous Provident Fund Act, 1952 and the Rules framed thereunder; (2) Mahmud Ali Vs. State of Bihar and Another, under the Water (Prevention, Control and Pollution) Act, 1974; (3) Badri Prasad v. State of Bihar 1986 Pat LJR 246 : 1986 Cri LJ 699 under the Bihar

Shops and Establishment Act 1957 and (4) Madan Mohan Upadhaya v. State of Bihar 1986 Pat LJR 537 under the Essential Commodities Act.

8. Under these provisions, if the Companies commit offence, then they are also liable to be prosecuted under the various provisions of the Act. i.e. u/s 14 of the Employees Provident Fund Act, Section 47 of the Water (Prevention, Control and Pollution) Act, Section 35 of the Bihar Shops and Establishments Act, 1953 and Section 10 of the Essential Commodities Act deal with the Companies. Section 35 of the Bihar Shops and Establishments Act, 1953 runs as follows:

35. Penalty where the employer is a firm or company-If the person contravening any provision of this Act or a rule or order made thereunder is a company or a partnership firm, every director, partner, manager or secretary thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

Section 10 of the E. C. Act relating to offence by the Company is as follows:

10-Offences by companies : - (1) 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 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.

(2) Notwithstanding anything contained in Sub-section (1), 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, 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.

9. Looking to the Section 47 including Sub-section (1) and its proviso and Sub-section (2) of the Water Pollution Act, 1974 it appears that its provisions are same and similar as a whole to that of Section 10 of the E. C. Act But Section 35 of the Bihar Shops and Establishments Act appears a little different as it presumes that when offence has been committed by a company or a partnership firm then every director, partner, manager or secretary thereof shall, unless he proves that the contravention took place without his knowledge and that he exercised all due diligence to prevent such contravention, be deemed guilty of such contravention. u/s 10 of the E. C. Act and other similar provisions there is

no such presumption as in Section 35 of the Shops and Establishments Act. Under Sub-section (1) of Section 10 of the E. C. Act every person, who at the time of contravention, was in charge of or was responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the contravention provided he proves that contravention took place without his knowledge or he exercised all due diligence. So in Sub-section (1) director or partner is not deemed to be guilty only, any person in charge of and was responsible to the company for the conduct of the business and the company will be doomed. So far as director, manager, secretary or any other officer is concerned, they will also be deemed to be guilty of the offence if it is proved that the offence has been committed by the company and that the offence has been committed with the consent or in connivance with or is attributable to any neglect on the part of any such director, manager, secretary or other officer of the company. In such a situation we will have to consider the matter.

10. Thus for the purposes of this present case under Weights and Measures Act, if the offence u/s 25 has been committed by a company then every person, who at the time of offence committed, was in charge of or was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed guilty of the offence, provided he proves that the offence committed was without his knowledge or that he exercised all due diligence to prevent the commission of such offence. Further Sub-section (2) provides that notwithstanding anything contained in Sub-section (1) 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 or is attributable to any neglect on the part of any director, manager, secretary or other officer shall also be deemed to be guilty of the offence and punished accordingly. Therefore a manager, who is responsible to the conduct of the business of the company and the company shall be liable and also those persons whose consent or connivance or neglect whether they are director, manager, secretary or other officer can be proceeded against.

11. In the case of Municipal Corpn. of, Delhi v. Ram Kishan 1983 Cri LJ 159 (SC) (supra) in Clause (5) of the complaint, which was filed for violation of the provision of Food Adulteration Act, it was mentioned that accused No. 3 was the manager of accused 2, and accused 4 to 7 were the directors of the accused No. 2, were in charge of and was responsible for the conduct of the business of accused 2 at the time of sampling. The Supreme Court observed at page

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 Director 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 4 to 7) has been made out ex facie on the allegations made in the complaint and the

proceedings against them were rightly quashed.

12. In the case of *Municipal Corpn. Delhi v. Purushotam Dass* 1983 Cri LJ 172 (SC) (*supra*) arising out of violation of Prevention of Food Adulteration Act, their Lordships of the Supreme Court quoted from para 5 of the complaint "that the accused Ram Kishan Bajaj is the Chairman, accused R.P. Neyatia is the Managing Director and accused 7 to 12 are the Directors of the Hindustan Sugar Mills Ltd. and were in charge of and responsible to it for the conduct of its business at the time of commission of offence," and observed (at p. 172):

In the instant case, a clear averment has been made regarding the active role played by the respondents and the extent of their liability. In this view of the matter, it cannot be said thaupara 5 of the complaint is vague and does not implicate respondents 1 to 11. As to what would be the evidence against the respondents is not a matter to be considered at this stage and would have to be proved at the trial. We have already held that for the purpose of quashing the proceedings only the allegations set forth in the complaint have to be seen and nothing further.

13. It will be relevant to refer to the observations of the Supreme Court in the case of *Satya Narain Musadi and Others Vs. State of Bihar*, wherein their Lordships of the. Supreme Court observed that the report as envisaged u/s 173(2) of the Code as required under Sub-section (5) of the said Section 2 has to be accompanied by all the documents and the statements mentioned therein. Their Lordships while dealing with the provisions as contained in u/s 173(2) of the Cr. P.C. about the report by the police after investigation observed at page as follows:

...The report as envisaged by Section 173(2) has to be accompanied as required by Sub-section (5) by all the documents and statements of the witnesses therein mentioned. One cannot divorce the details which the report must contain as required by Sub-section (2) from its accompaniments which are required to be submitted under Sub-section (5). The whole of it is submitted as a report to the Court. But even if a narrow construction is adopted that the police report can only be what is prescribed in Section 173(2) there would be sufficient compliance if what is required to be mentioned by the statute has been set down in the report. To say that all the details of the offence must be set out in the report u/s 173(2) submitted by the police officer would be expecting him to do something more than what the Parliament has expected him to set out therein. If the report with sufficient particularity and clarity specifies the contravention of the law which is the alleged offence, it would be sufficient compliance with Section 11. The details which would be necessary to be proved to bring home the guilt to the accused would emergent a later stage, when after notice to the accused a charge is framed against him and further in the course of the trial. They would all be matters of evidence and Section 11 does not require the report to be or to contain the evidence in support of the charge, its function being merely to afford a basis for enabling the Magistrate to take cognizance of the case (see *Bhagwati*

Saran and Another Vs. The State of Uttar Pradesh, .

14. In the case of Drugs Inspector, Palace Road, Bangalore Vs. Dr. B.K. Krishnaiah and Another, the accused is alleged to have stocked drugs the potentiality of which expired and sold such drugs to the Complainant. The complainant then lodged a complaint against the accused for offence u/s 18(a) (iv) of the Act and the rules made thereunder punishable under Sections 28(b) and 28 of the Drugs Act, The learned Magistrate perused the partnership deed which showed that all the partners were responsible and so overruled the contentions and took cognizance against all the accused persons. The High Court considering Section 34(1) of the Act held that the complainant had not complained that the accused Nos. 2 to 4 (petitioners) were any more in charge of or responsible to the firm for the conduct of the business of the firm (accused 1). The Supreme Court held at page

The only question for consideration for the High Court in this case was whether the accused or any one of them were liable. In para. 17 of the complaint petition, the complainant quoted the provisions of the Act. In addition he cited the names of the witnesses, submitted a list of documents including a copy of the partnership deed at item No. 13 of the list of documents. The learned Magistrate perused the partnership deed and prima facie found that the respondents and the deceased accused were liable for offence and proceeded for trial. The learned High Court committed an error in holding that there was no allegation that the respondents were not responsible for the management and conduct of the firm. The extent of their liability would be established by evidence during trial. In our opinion, the judgment of the High Court is erroneous and is liable to be set aside.

15. In the Full Bench decision of Ram Kripal Prasad and Others Vs. The State of Bihar and Others, which had arisen on account of violation of the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 read with rules thereunder, the Full Bench referring to the complaint of that case in which it was said that the petitioner's firm was an establishment and had been allotted code number administratively labelled in each establishment covered by the Act and that the accused were in charge of the said establishment and were responsible for the conduct of the business observed at page

...It is held that a petition of complaint for offences u/s 14 of the Act need not in terms plead each and every minuscule relevant fact nor the precise number of employees of the prosecuted establishment. In any event, the failure to do so does not vitiate the proceedings on such technical ground alone.

16. In the next Full Bench decision of Mahmud Ali (AIR 1986 Pat 133) (supra) Mahmud Ali was the Managing Director and during the course of trial P. W. 2 had deposed about his complicity as he was Managing Director in charge and responsible to the company for the conduct of the business at the time of commission of the offence. The Full Bench observed at page 128 (of Pat LJR) : at p. 139 of AIR Pat as follows:

Thus viewed, Section 47(1) and the proviso thereto would lay down that once the offence is either alleged or established against the company and the added factum of being in charge of and responsible to the company for the conduct of its business is existent against a person, he becomes liable, therefore, without more, vicariously. The burden is then laid upon him to establish and prove a total absence of knowledge about the commission of the crime or a diligent prevention thereof,

Analysed as above, Section 47(1) spells out a deeming fiction of vicarious liability and a rule of evidence laying the burden of proof on persons in charge of and responsible to the company for the conduct of its business.

Once it is held as above, the argument of the learned Counsel for the petitioner falls in its place and stands conclusively repelled. It is settled beyond cavil that rules of evidence and deeming fictions are not to be expressly spelt out and pleaded. They are matters which are for consideration and application in the course of the trial. To require that the complaint itself must plead a rule of evidence or in terms, spell out a deeming fiction provided by the statute therein is an argument bordering on hyper technicality. One must always keep in mind the broader perspective that the administration of criminal law is more a matter of substance than of form and should not be allowed to be obscured by pettifogging technicality. This aspect seems to be well covered, if not wholly concluded by the recent Full Bench judgment of this Court in *Ram Kripal Prasad and Others Vs. The State of Bihar and Others*, :

...The factum of being the Managing Director of the Company is by itself sufficient to attract the, provisions of Section 47(1) and the vicarious liability specified therein. The specific words therein - he was in charge of and was responsible to the company for the conduct of the business of the company are not a magic incantation which unless repeated, would vitiate a prosecution if the substance of the matter is well spelt out either in complaint itself or in categorical terms by acceptable testimony.

The Full Bench later observed that their view finds direct support from the decisions in *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, where even manager of lesser rank was held vicariously liable by the Supreme Court, and similarly in the case of *Municipal Corporation of Delhi Vs. Purshotam Dass Jhunjunwala and Others*, the Supreme Court observed that primarily by virtue of their offices despite the cryptic allegation that they were in charge of the business, it was sufficient to foist them with liability and that the designation of Managing Director, Chairman and secretary by itself adequately indicative of their primal role in a company.

17. In the third Full Bench decision of *Badri Prasad v. State of Bihar* 1986 Cri LJ 699 (supra), the Full Bench considered the case of the petitioners u/s 35 of the Bihar Shops and Establishments Act, 1953 and observed at page 253 para 17 : at p. 705 para 17 of Cri LJ:

It is held that Section 35 of the Act does not inflexibly require the pleading that the Director, Partner, Manager or Secretary either exercised ultimate control over the affairs of the company or the partnership firm, or was in immediate charge of the general manager or control thereof, in all complaints against them, for offences in contravention of the said Act.

18. In the fourth Pull Bench Decision of Madan Mohan Upadhaya v. State of Bihar 1986 Pat LJR 531(supra) wherein violation of provision of E. C : Act was complained of, the Full Bench observed about Section 10 of the said Act as under:

...Section 10(1) spells out a deeming fiction of vicarious liability and also a rule of evidence laying the burden of proof on persons in charge of and responsible to the company for the conduct of its business. (para 13).

The Full Bench further observed in para-14:

...It is settled beyond cavil that rules of evidence and deeming fictions are not to be expressly spelt out and pleaded. They are matters, which are for consideration and application in the course of the trial. To require that the complaint itself must plead a rule of evidence or, in terms, spell out a deeming fiction provided by the Statute therein is an argument bordering on hypertechnicality. One must always keep in the broader perspective that the administration of criminal law is more a matter of substance than form and it should not be allowed to be pettifogged by obscure technicality. This argument seems now to be wholly well covered and concluded by the recent Full Bench judgments of this Court in Ram Kripal Prasad and Others Vs. The State of Bihar and Others, Mahmud Ali Vs. State of Bihar and Another, and Badri Prasad Gupta v. State of Bihar 1986 Cri LJ 699 (supra).

19. Thus following the said observations of the Supreme Court as well as the Full Benches of this Court it can be said that a Managing Director from the very nature of his duty can be inferred to be vicariously liable for the offence committed by the company. It is for him to show at the time when the evidence came that he was not responsible to the company for the conduct complained of or that he had no knowledge about the commission of the offence or that he exercised diligent prevention of the commission of the offence. At the initial stage it is sufficient if it is made out that he was managing director or the manager to the company. In a complaint, no doubt, details are to be given but that would be only such as to bring the person concerned within the net of the offence. Violation of the provisions of law which has been complained of, designations of the accused connecting with the complaint and showing their relationship with the establishment, some material from which it could be reasonably inferred that some offence has been committed, the names of the witnesses or any other document or evidence collected mentioned in the complaint or is accompanied with the complaint then it will be sufficient material for a court to come to a prima facie conclusion that cognizance of the offence has to be taken against him. To expect that at the initial stage to give out the entire

details of the evidence and material to be produced in court will be expecting too much as it is not provided under law. It becomes at the later stage that the prosecution is to produce the evidence which will be subjected to cross-examination by the accused and judicial scrutiny by the court. In case, the evidence is scanty and does not inspire confidence the accused can be discharged or acquitted, otherwise the case is to have its own course in accordance with law. Demanding the matter of the final stage at the initial stage and judging the case from that angle will be a hypertechnicality and distortion of the provisions of law. With all these it cannot be said that nothing should be said in the petition and without adding or subtracting anything in the complaint or the material supplied nothing is made out against the accused, then he is not to face the ordeal of the long drawn trial and harassment, and in this situation the Court can exercise inherent jurisdiction u/s 482 of the Code of Criminal Procedure for quashing the same.

20. In the case of Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, the Supreme Court observed that where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at the face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence then the complaint can be quashed. In the case of Dr. Sharda Prasad Sinha Vs. State of Bihar, against the Supreme Court further observed that where the allegations set out in the complaint or the charge-sheet do not constitute any offence then the High Court in exercise of its inherent jurisdiction u/s 482 Cr. P.C. can quash the order taking cognizance of the offence. In the case of J.P. Sharma Vs. Vinod Kumar Jain and Others, against the Supreme Court observed that at the initial stage without adding or subtracting anything if any prima facie case for trial is made out then High Court can exercise its jurisdiction and that the Court is not concerned at this stage with the truth or otherwise of the allegations made in the complaint. It is a matter to be considered at the trial. Thus the accused is to appear on the issue of the notice after taking cognizance and to make out that no case is there against him and if it is found so, he can have favourable order of discharge or acquittal. In the case of Roshanali Burhanali Syed Vs. State of Gujarat, (2) the Supreme Court observed that all that the learned Magistrate has done was that to issue summon to him and eventually when the accused appears and the Magistrate comes to the conclusion that the offence is not made out, then he will be discharged or acquitted as the case may be. But it is difficult to appreciate as to why the order issuing summons should be quashed. In the case of Drugs Inspector, Palace Road, Bangalore Vs. Dr. B.K. Krishnaiah and Another, the Supreme Court has observed that the High Court is to see whether the allegations made in the complaint petition making out a prima facie case against the accused.

21. In this case the complaint mentions the provisions of law, violation of which have been complained of, the accused with their names, designations showing their connection and relationship with the company, gist of the offences

complained of, names of the witness. The present petitioner has been mentioned as managing director who is liable, as found above vicariously as also being in charge as manager on account of his position. So taking all these facts into consideration it cannot be said that the learned Magistrate has got no material at the stage of taking cognizance of the offence. He was right in taking cognizance of the offence and that too against the petitioner. In these circumstances the order of taking cognizance is upheld.

22. In the result, this application is dismissed. However, the petitioner will be at liberty to appear before the court below and make out a case that though he was manager at the relevant time but he was not at all connected with the offence; that he exercised all reasonable care to prevent the same or that the offence has been committed without his knowledge and that he has no hand, whatsoever, in the said offence. If he is able to show all these things to the court when evidence comes, then he can have a favourable order for himself; otherwise the long hands of law will not spare the culprit whose offence is made out.