
(2013) 12 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : Crl. Misc. No. M-24865 of 2010 (O and M)

Rishadh Kaikushru Noroji

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2013) 12 P&H CK 0030

Hon'ble Judges : Sabina, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sabina, J.—Petitioner has filed this petition u/s 482 of the Code of Criminal Procedure, 1973 for quashing of the criminal complaint No. 409 of 2001 dated 7.11.2001 Med "State Govt. of Haryana v. Sanjay S. Bhonsale and others (Annexure P-1) under Sections 3(k)(i) read with 29(1) and 17(1)(a) of the Insecticides Act, 1968 ("Act" for short) and all the subsequent proceedings arising therefrom. Learned senior counsel for the petitioner has submitted that the petitioner was neither the managing director nor director of the company. Petitioner was also not responsible for the conduct of business of the company. Petitioner was merely a shareholder of the company and could not be fastened with criminal liability with regard to alleged violation of provisions under the Act. In support of his arguments, learned counsel has placed reliance on the decision of the Apex Court in State of NCT of Delhi through Prosecuting Officer, Insecticides, Government of NCT, Delhi Vs. Rajiv Khurana, wherein, it has been held as under:--

19. In K.K. Ahuja's case (supra) the court summarized the position u/s 141 of the Act as under:--

(i) If the Accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is

sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix "Managing" to the word "Director" makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under Sub-section (2) of Section 141.

(iii) In the case of a Director, secretary or manager [as defined in Section 2(24) of the Companies Act] or a person referred to in clauses(e) and (f) Section 5 of the Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case u/s 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable u/s 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.

(iv) Other officers of a company cannot be made liable under Sub-section (1) of Section 141. Other officers of a company can be made liable only under Sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.

20. The court further observed that the trauma, harassment and hardship of the criminal proceedings in such cases may be more serious than the ultimate punishment, it is not proper to subject all the sundry to be impleaded as accused in a complaint against a company, even when the requirements of section 138 read with section 141 of the Act are not fulfilled

21. The legal position which emerges from a series of judgments is clear and consistent that it is imperative to specifically aver in the complaint that the accused was in charge of and was responsible for the conduct of business of the company. Unless clear averments are specifically incorporated in the complaint, the respondent cannot be compelled to face the rigmarole of a criminal trial.

2. Learned state counsel, on the other hand, has opposed the petition and has submitted that the petitioner was responsible for running the business of the company and was a major shareholder of the company.

3. After hearing learned counsel for the parties, I am of the opinion that the instant petition deserves to be allowed.

4. In the present case, the premises of M/s. Bhagwati Pesticide and Seed store

was inspected on 1.12.2000. Samples of insecticides manufactured by M/s. Bahar Agro Chem. & Feeds Pvt. Ltd. were drawn from sealed packing. As per the report of the analyst, the samples were declared misbranded. Petitioner has been arrayed as accused No. 2.

5. In the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, , the Apex Court has held as under:--

The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers u/s 482, Cr.P.C. Can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently chennelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power, should be exercised:--

(1) Where the allegations made in the first information report or the complainant/respondent No. 2, 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 u/s 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 Magistrate as contemplated u/s 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 specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceedings 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.

We also give a note of caution to the effect that the power of quashing a criminal

proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

Section 33 of the Act reads as under:--

Offences by companies - (1) Whenever 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, or 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 under 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.

(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.

Explanation - For the purpose of this section. -

(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.

6. In the present case, petitioner is admittedly not the director or chairman of the company. Merely because the petitioner is a shareholder of the company does not make him liable for criminal liability in case the sample manufactured by the company was found to be misbranded.

Para 10 of the complaint reads as under:--

That the same misbranded insecticide was manufactured and distributed for sale by M/s. Bahar Agro Chem. Feed Pvt. Ltd. which is violation of Section 17(1)(a) of the Insecticide Act, 1968. The accused No. 1 and 2 Sanjay S. Bhonsale and Rishad Kaikushru Naoroji are responsible for the same, on behalf of manufacturing firm. This offence is also punishable u/s 29(1)(a) of the Insecticide Act, 1968.

7. Thus, merely because in the above para, it has been stated that petitioner is responsible for the misbranding of the insecticide on behalf of manufacturing firm does not make the petitioner liable for criminal prosecution as there is no specific averment as to how the petitioner, who was merely a shareholder of the company, was responsible for maintaining the quality of the insecticide. So far as accused Sanjay S. Bhonsale is concerned, he was described as Junior Officer, Quality Control. Petitioner has been described as partner of manufacturing firm, although, he is merely a shareholder of the company.

8. In the facts and circumstances of the case, continuation of criminal proceedings against the petitioner would be nothing but an abuse of process of law. Accordingly, the present petition is allowed. Criminal complaint No. 409 of 2001 dated 7.11.2001 titled "State Govt. of Haryana v. Sanjay S. Bhonsale and others (Annexure P-1) under Sections 3(k)(i) read with 29(1) and 17(1)(a) of the Act and all the subsequent proceeding arising therefrom, qua the petitioner, are quashed.