(2019) 02 KAR CK 0011

In the Karnataka High Court

Case No : Criminal Petition No. 4280 Of 2018

Sanofi India Limited	APPELLANT
Vs	
Central Bureau Of Investigation	RESPONDENT

Date of Decision : 15-02-2019

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 420
Prevention of Corruption Act, 1988 — Section 11, 12, 13(2), 13(1)(b), 13(1)(d)
Code of Criminal Procedure, 1973 — Section 482

Citation : (2019) 02 KAR CK 0011

Hon'ble Judges : P.S. Dinesh Kumar, J

Bench : Single Bench

Advocate : Uday Holla, Anind Thomas, P. Prasanna Kumar

Final Decision : Dismissed

Judgement

1. This petition by a Public Limited Company is presented with a prayer to quash proceedings in Special C.C.No.226/2017 before XLVI Additional City Civil and Sessions Judge and Special Judge for CBI Cases, Bengaluru City (CCH-47).

2. The question for consideration in this petition is, 'whether a Company alone can be prosecuted for commission of criminal offences without its directors?'

3. Heard Shri Uday Holla, learned Senior Advocate for petitioner and Shri P. Prasanna Kumar, learned Standing Counsel for the respondent-CBI.

4. Briefly stated the facts of the case are, CBI registered FIR No.RC.17(A)/2015 against six persons on 31.7.2015. After investigation, charge sheet has been filed against Dr.P.Anand, Scientific Officer (Medical), Bhabha Automic Research Centre (BARC), Mysuru (accused No.1) and petitioner, M/s Sanofi India Limited, a Company incorporated under the Companies Act, 1956, alleging commission of offences punishable under Section 120-B read with Section 420 IPC; and Sections 11, 12, 13(2) read with Section 13(1)(b) and (d) of the Prevention of Corruption Act, 1988.

5. Shri Uday Holla, learned Senior Advocate for the petitioner argued that to sustain a charge under Sections 120-B and 420 of IPC, mens rea is an essential ingredient. Petitioner is a juristic person and therefore, criminal proceedings against petitioner are unsustainable in law. In support of his contentions, he relied upon following authorities:

(i) State through Superintendent of Police, CBI/SIT v. Nalini and others [(1999) 5 SCC 253];

(ii) Central Bureau of Investigation, Hyderabad v. K.Narayana Rao [(2012) 9 SCC 512);

(iii) International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and others v. Nimra Cerglass Technics Private Limited and another [(2016) 1 SCC 348];

(iv) Dr.Saleem Ur Rehman v. State of Jammu and Kashmir and others (OWP No.1961/2015); and

(v) CRL.O.P.(MD)11759 and 11760 of 2017 and CRL.M.P.(MD)Nos.8096 to 8099 of 2017 (Ritesh Bawri and others v. M/s.Dalmia Bharath (Ltd) and another) - Madras High Court.

6. Shri Holla, submitted that according to prosecution, Dr. P.Anand received illegal gratification of Rs.42,750/- from petitioner on the pretext of conducting HbA1C test (Lantus Dose Optimisation Programme) and giving lectures on insulin therapy. It is also alleged that BARC had tendered a sum of Rs.22,500/- to Dr.Lal Path Labs Private Limited for conducting the very same HbA1C test and an equivalent sum was fraudulently received by Dr.P.Anand from petitioner.

7. In substance, Shri Holla contended that petitioner engages itself in a host of training programmes with respect of diabetes and it's management. It has paid honorarium to Dr. P.Anand for his services which has been misconstrued as illegal gratification.

8. Adverting to paragraph No.583 in State v. Nalini(p.517), Shri Holla urged that, a charge of conspiracy prejudices the accused and forces him into a joint trial. It is difficult to trace the precise contribution of members of conspiracy. He pointedly adverted to observations of Judge Learned Hand, referred to therein and argued that many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree with the main offenders.

9. He argued that Company being a juristic person, is incapable of entering into conspiracy. Therefore, it is incongruous to prosecute a Company alone. He contended that criminal prosecution against a reputed Company will lead to serious consequences and prejudices Company's interests.

10. Shri Holla, next contended that High Court of Jammu & Kashmir in Dr.Saleem Ur Rehman, has held that the FIR registered against the Private Limited

Company is not legally tenable and Madras High Court in Ritesh Bawri has taken a view that a Company being a juristic person is incapable of hatching a plan joining with other individuals.

11. Adverting to paragraph No.24 in CBI Vs. K.Narayana Rao, he argued that offence of conspiracy cannot be deemed to have been established on mere suspicion.

12. Shri Prasanna Kumar, learned Standing Counsel for CBI, placing reliance on Iridium India Telecom Ltd. v. Motorola Inc. (2011)1 SCC 74 argued that a Corporation cannot escape criminal liability. On the facts of this case, he submitted that Dr.P.Anand being an employee with BARC has received money from petitioner-company.

Though it is claimed that money was paid as honorarium, records disclose that petitioner-company was favoured with purchase order based on the manipulations made by Shri P.Anand.

13. I have carefully considered rival contentions and perused the material papers.

14. In the conspectus of facts of this case, following points arise for consideration:

i) Whether prosecution is maintainable only against a corporate entity without its directors or person in charge of the affairs being arraigned as an accused ?

(ii) Whether criminal proceedings in the instant case are liable to be quashed?

15. The principal argument of Shri. Holla is, a corporate entity cannot be prosecuted as an accused independently because it cannot enter into conspiracy in the absence of any living person acting on its behalf.

16. In CBI Vs. K.Narayana Rao, CBI had charge sheeted an advocate alleging that he had given false legal opinion. The High Court had quashed the proceedings against the advocate in a petition filed under Section 482 Cr.P.C. Upon being challenged, the Supreme Court of India dismissed the appeal by holding that there was no prima facie case for proceeding in respect of the charges alleged insofar as respondent therein was concerned. Thus, quashing of proceedings in that case was based on analysis of facts.

17. More than a century ago, punishing a Corporate Entity was not considered possible. The view was, a company was without a conscience as it had "no soul to be damned, and no body to be kicked" This phrase has been attributed to a Lord Chancellor of England. See, John C. Coffee, Jr., "No Soul to Damn, No Body to Kick": An Unscandalized Inquiry Into the Problem of Corporate Punishment, This article appears in Michigan Law Review, Volume 79, Issue 3, Dated (January 1981), Pages 386-459. With development in law, companies are also held liable under criminal law not just for strict liability offences, but even for offences that require mens rea.

18. In Iridium India Telecom Ltd., the Supreme Court of India has authoritatively held as follows:

"66. These observations leave no manner of doubt that a company/corporation cannot escape liability for a criminal offence merely because the punishment prescribed is that of imprisonment and fine. We are of the considered opinion that in view of the aforesaid judgment of this Court, the conclusion reached by the High Court that the respondent could not have the necessary mens rea is clearly erroneous."

(Emphasis supplied)

19. In the instant case, learned trial Judge has taken cognizance of offences punishable under Sections 120-B read with 420 IPC and Sections 11, 12 and 13(2) r/w 13(1)(b) & (d) of Prevention of Corruption Act against both accused.

20. CBI has charged that in pursuance of the criminal conspiracy, petitioner-company had cheated BARC to the tune of Rs.3,53,361/- and abetted Dr.P.Anand in committing the above offences. In the charge sheet it is alleged:

? that during the years 2011-12, 2013-14 and 2014-15, Dr.P.Anand being a public servant entered into criminal conspiracy with petitioner company in the matter of purchase of medicines/drugs for rare materials project, BARC, Mysuru and caused financial loss;

? that at the time of placing indent in the BARC for purchase of medicines, Dr.P.Anand had acted dishonestly with an intention to cheat and categorized 9 items in the indent as proprietary items and indicated to purchase them from petitioner-company ignoring the L1 tenderers contrary to Rules contained in the Procurement and Operational Manual for Medical Store Organisation and Government Medical Store Depots, Government of India, Directorate General of Health Services and General Financial Rules of Government of India;

? that in procurement of insulin Glargine Cartridge, tender enquiries were sent to fifteen companies during the year 2013-14. Out of them, ten companies had submitted quotations and order was given to petitioner which had quoted Rs.393.01 per cartridge, whereas at the relevant period, M/s Wockhardt Ltd., another well known competitor had quoted Rs.299/- per cartridge. However, supply order was given to petitioner-company ignoring L1 tenderer;

? that similar allegation of suppressing L1 tenderer is made in respect of purchase of insulin for the year 2014-15; and

? that Dr.P.Anand had received Rs.42,750/-as illegal gratification under the pretext of conducting HbA1C Test through his account No.00651000039828 in HDFC Bank, Saraswatipuram Branch, Mysuru. On the other hand, Rs.22,500/- was already paid by BARC to Dr.Lal Path Labs Private Limited for conducting the same HbA1C test.

Thus, in substance, it is alleged that Dr.P.Anand had received money from petitioner-company.

21. It is also held in Iridium India Telecom Ltd., that complainant is entitled to an opportunity to prove the averments made in the complaint(see paragraph No.75). In the instant case, after investigation, charge sheet has been filed alleging that orders were given to petitioner-company though it was not the L1 tenderer.

22. The above discussion leads to an inference that criminal prosecution against a Corporate entity without its directors or a person in charge of the affairs of the company is maintainable. Further, in view of specific allegations of favouring petitioner-company, though it was not the L1 tenderer, in preference to other tenderers who had quoted less than petitioner-company, in my view, trial is necessary. I say so, because the charge sheet contains details of quotes given by other companies which can be proved only in a full-fledged trial.

23. Resultantly, this petition must fail and it is accordingly dismissed.

No costs.