

(2023) 11 CHH CK 0047

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition No. 1649 Of 2017

Satish Goel

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 20-11-2023

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 17, 17(1)(a), 17(1)(b), 17(2)
Negotiable Instruments Act, 1881 — Section 141

Citation : (2023) 11 CHH CK 0047

Hon'ble Judges : Ramesh Sinha , CJ

Bench : Single Bench

Advocate : Abhishek Sinha, Ashish Surana, Avinash Mishra

Final Decision : Allowed

Judgement

1. Heard Mr. Abhishek Sinha, learned Senior Advocate assisted by Mr. Ashish Surana, learned counsel for the petitioner. Also heard Mr. Avinash Mishra, learned Panel Lawyer, appearing for the respondent/State.

2. The present petition has been filed by the petitioner with the following reliefs:

"3.1 That this Hon'ble Court may kindly be pleased to set-aside and quash the impugned order dated 13.11.2017(Annexure P/1) passed by learned Judicial Magistrate First Class, Durg in Criminal Case 2007/1998 (State of Chhattisgarh vs. Khemraj and another) and further be pleased to quash complaint (Annexure P/2) filed against the petitioner.

3.2 This Hon'ble Court may kindly be pleased to grant any order relief(s) order(s) in favour of petitioner, which deemed fit and just in the facts and circumstances of the case. "

3. The facts of the case are that a complaint had been filed by the respondent against the petitioner on 11.08.1998. As per the averments made in the complaint filed by the respondent on 11.05.1998, the Food Inspector, Office

Deputy Director of Food and Drug Administration Department, Durg had conducted an inspection in M/s Deepak Kirna in which, accused No.1 Khemraj is proprietor. During inspection, the sample of wheat flour (Atta) was sealed and taken for laboratory test. It is alleged that the name of the Company appeared in the sack bag of the wheat flour which was sealed by hand stitched laces. The sample of 600 gram wheat flour was purchased and was sealed in 3 different boxes containing 200 grams each. The sample were forwarded to Public Analyst, Bhopal and as per the report of the Public Analyst, Bhopal dated 07.07.1998, the samples of wheat flour was found adulterated. In the meanwhile, the Deputy Director of Food and Drug Administration Department, Durg have communicated the manufacturing Company by letter dated 25.05.1998 about the said incident. Later, the Deputy Director of Food and Drug Administration Department, Durg gathered information about the manufacturing Company from the industrial department and found out that the Director of the Company is one Mr. Satish Goel, based on such information, the petitioner was arrayed as an accused as the sample sent for laboratory test had come as adulterated.

4. Mr. Abhishek Sinha, learned Senior Advocate submits that the petitioner is one of the director of the Company. The Company is a private limited Company and having its production unit at Raipur. It is also submitted that the petitioner was not involved in day to day functioning of the Company as he was living in Nagpur. It is further submitted that the petitioner being a director cannot be prosecuted without prosecuting the Company. The complaint has been filed by the respondent against the petitioner without arraying the Company as a party is not maintainable as the primary liability would lie upon the Company. He relied upon the judgment passed by the Supreme Court in the case of Hindustan Unilever Limited vs. State of Madhya Pradesh reported in (2020) 10 SCC 751, in the case of Aneeta Hada v. Godfather Travels and Tours Private Limited reported in (2012) 5 SSC 661 and a decision of the Co-ordinate Bench of this Court passed in CrMP No.56 of 2017 (Jai Gopal Soni vs. Shri Shivraj Singh and others on 11.05.2017 and the same was affirmed by the Hon'ble Supreme Court. Hence, the entire proceeding of the trial stands vitiated against the petitioner.

5. Mr. Avinash Mishra, learned Panel Lawyer submits that the main ground of the petitioner for quashing of the impugned proceedings is that the Company has not been made as an accused, therefore, the complaint is not maintainable. Section 17 of the Prevention of Food Adulteration Act, 1954 (for short, the Act of 1954) provides the Offences by Companies. It provides that when an offence under the Act has been committed by a Company, the person, if any, who has been nominated under Sub-section (2) of the Section 17 of the Act of 1954 to be incharge of or responsible to the Company for the conduct of the business of the Company or where no person has been so nominated, every person who at the time of offence was incharge of or responsible to the Company are to be prosecuted. It is further submitted that a letter was written to the petitioner vide letter No. 90 dated 12.05.1998, for disclosure of the names of nominee of the Company, if any. In response to the said letter, the petitioner has informed vide

letter dated 22.07.1998 that there is no person who has been nominated by the Company as nominee and the petitioner Satish Goel is the person, who is owner / active member of the Company is responsible for conduct and business of the Company. Since, the petitioner himself has disclosed the fact that the Company has not been nominated any person and the petitioner himself is an owner / active member to conduct the business.

6. I have heard the learned counsel for the parties and perused the materials available on record.

7. Section 17 of the Act of 1954 reads as under:

"17. Offences by Companies .- (1) Where an offence under this 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, 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"

8. In Hindustan Unilever Limited (supra), the Hon'ble Supreme Court has held that Clause (a) of sub-section (1) of Section 17 of the Act of 1954 makes the person nominated to be in charge of the responsible to the Company for the conduct of business and the Company shall be guilty of the offences under Clause (b) of sub-section (1) of the Section 17. Therefore, there is no material distinction between Section 141 of the NI Act and Section 17 of the Act which makes the Company as well as nominated person to be held guilty of the offences and / or liable to be proceeded and punished accordingly, Clause (a) and (b) are not in the alternative but conjoint. Therefore, in the absence of the Company, the nominated person cannot be convicted or vice versa.

9. The law with regard to arraigning the Company as an accused in case of commission of offence by Company as well settled and stands conclusively and authoritatively decided by the Supreme Court in Aneeta Hada (supra) in which, Their Lordships of the Supreme Court were pleased to frame a question in paragraph 3 of the its judgment, "whether the Company could have been made liable for prosecution without being impleaded as an accused and whether the Directors could have been prosecuted for offences punishable under the aforesaid

provisions without the Company being arrayed as an accused. Their Lordships considered various authorities on the point and finally, in clear and unmistakable terms held in paragraph 59 that under Section 141 of the Negotiable Instruments Act, 1881, arraigning of a company as an accused for maintaining the prosecution, is imperative. Their Lordships further held that the other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provisions itself.

10. In the instant case, admittedly, the Company has not been arrayed as an accused in the complaint which is a juristic person filed under the Act of 1954 by the State respondent. Further, the fact that under Section 17(1)(a) of the Act of 1954, it is mandatory that Company as well as nominated person be accused of the offence under the Act of 1954 for prosecution.

11. In view of the foregoing discussion and settled preposition of law as has been discussed above in the instant case, the present Cr.M.P. stands allowed and the impugned order dated 13.11.2017 (Annexure P/1) passed by learned Judicial Magistrate First Class, Durg in Criminal Case 2007/1998 (State of Chhattisgarh vs. Khemraj and another) as well as all consequential proceedings are hereby set-aside with respect to present petitioner.

12. Office is directed to send a copy of this order to the learned trial Court for necessary information and compliance.