

(1972) 03 OHC CK 0011

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 186 of 1971

Smt. Peelamedu Rajeswary Ramkrishna and Others

APPELLANT

Vs

B.N. Misra

RESPONDENT

Date of Decision : 13-03-1972

Acts Referred:

Essential Commodities Act, 1955 — Section 10, 10(1), 10(2), 3, 7

Citation : (1972) 38 CLT 422

Hon'ble Judges : R.N. Misra, J

Bench : Single Bench

Advocate : Y.S.N. Murty and S.P. Raju, for the Appellant; Additional Standing Counsel, for the Respondent

Final Decision : Partly Allowed

Judgement

R.N. Misra, J.—This is an application u/s 561-A of the Criminal Procedure Code to quash the prosecution against the petitioners, the first ten of whom are the members of the board of directors of the Jeypore Sugar Company Limited with its registered office at Rayagada in the district of Koraput. The petitioner No. 11 is the manager of the company and the last petitioner is the chemist employed by the company. The opposite party who happened to be the Civil Supplies Officer at Jeypore sent a prosecution report on October 21, 1971, to the Sub-divisional Magistrate at Rayagada alleging contravention of clauses 3 and 5 of the Sugar (Control) Order, 1966, and Clause 4(1) of the Sugar (Packing and Marking) Order, 1970, punishable u/s 7 of the Essential Commodities Act of 1955. On the basis of such prosecution report, the learned Magistrate has taken cognizance of the alleged offences.

2. It is contended that the prosecution as against the petitioners is not sustainable and on the basis of the report, the learned Magistrate should not have taken cognizance at all. In exercise of powers u/s 3 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government made the Sugar (Control) Order, 1966, and the Sugar (Packing and Marking) Order, 1970, has

been made in exercise of powers conferred by Clause 5 of the - Sugar (Control) Order, 1966. That order has. been referred to mainly because the alleged violation is of the Sugar (Packing and Marking) Order of 1970 which is made in exercise of powers conferred under Clause 5 of the Order of 1966. The substance of the offence alleged to have been committed as indicated in the prosecution report is :

"That the factory produced 2,931 bags of sugar grading Sugar-E grade 29 for the year 1969-70 and kept them in their godown No. 1 and lot number 6 of the factory. These sugar quality were below I. S. S. (Indian Sugar Standards.) The sample from the said stock was drawn by Shri R. S. Bal, Inspector (Sugar), Government of India, on 8-2-1971 in presence of the Chief Chemist of the Factory and sent to the Director of Sugar and Vanaspati, New Delhi, for examination. The Chief Director, Sugar and Vanaspati, in his report No. INSF-FRC-FI (5757)/71/645 dated 20-4-1971 declared these 2,931 E-29 Sugar below I, S. S. and the fact was intimated to Messrs, Jeypore Sugar Company Limited, Rayagada by registered post with acknowledgment due. Further, Messrs. Jeypore Sugar Co. Limited, Rayagada, was directed by the Chief Director in his aforesaid letter not to despatch sugar from the lot in question until either remarking it according to grade of sugar inside the bag or change the marking to correspond to contents of sugar in the bag. The Managing Director of Jeypore Sugar Co. Ltd. in his registered letter No. J/GM dated 2-5-1971 to the Chief Director of Sugar and Vanaspati, Jamnagar House, New Delhi, intimated that the entire quantity of 2,931 bags have been disposed of by 15-3-1971 and requested to condone the irregularity. Thus, the company and the Sugar Factory violated the above clause as mentioned in column 3 of the prosecution report and liable for punishment u/s 7 of the Essential Commodities Act, 1955, as they have not produced the I.S S. grade of sugar."

3. Under Clause 4 of the Order of 1970 the quality of sugar contained inside the bag has to be indicated in a label, the design whereof is to be in terms of the schedule annexed to the order. In the present case, as the substance of the prosecution allegation shows, the quality of the sugar contained did not correspond to the grade indicated on the bag and since it was below such quality the offence is said to have been committed.

4. In the instant case the contravention is said to be by a company. Section 10 of the Act, therefore, applies. It provides:

"(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 the 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."

5. Mr. Murty for the petitioners contends that unless it is alleged that all the members of the board of directors and the chemist had knowledge of the breach or that it is alleged that the breach was committed with the consent or connivance of these petitioners, a prosecution is unjustified. It is not disputed that mens rea is an ingredient of the offence. As was indicated in *Sweet v. Parsley*, [1970] A.C. 132 (H.L.) :

" Mens rea is an essential ingredient of every offence unless some reason can be found for holding that it is not necessary, and the court ought not to hold that an offence is an absolute offence unless it appears that that must have been the intention of Parliament. "

6. Parliament's intention is clear from the terms of Section "10. Mens rea has been referred to as a necessary element of the offence. Reading subsection (1) and Sub-section (2) of Section 10 together, there is no room to doubt that it is necessary for the prosecution to allege and establish in order to secure conviction of members of the board of directors that they were not only in charge of, or responsible for the conduct of business of, the company, but that they had necessary mens rea for the commission of the offence. From the prosecution report it appears that many of the directors live away from the place of production. The company has a whole-time director and a manager who are petitioners Nos. 2 and 11 respectively. They must be taken to be the persons who are in charge of, and responsible to, the company for the conduct of business of the company in respect of the material transaction with which the prosecution is concerned. In respect of such persons, the proviso to Sub-section (1) would apply. The burden by law is cast upon them to prove the absence of mens rea while in respect of others Sub-section (2) applies and the burden lies on the prosecution to establish complicity in the commission of the offences by consent or connivance. There is no allegation in the prosecution report, which corresponds to a petition of complaint, which would bring in the other petitioners excepting the petitioners Nos. 2 and 11.

7. Learned Additional Standing Counsel appearing for the opposite party contended that no objection on such score should be entertained and the prosecution should not be interfered with by exercise of inherent powers. Given opportunity at the trial the prosecution would lead evidence to support the

allegation and until then the court should not interfere with the prosecution. I am afraid, that would not be the proper approach to the matter. Circumstances in which a prosecution can be quashed have been authoritatively laid down by their Lordships of the Supreme Court in very recent decisions. One of such circumstances where there can be interference is as in the present case where, reading the petition of complaint as such, there is no allegation to satisfy the requirements by law for entertaining the prosecution itself.

8. I would accordingly accept the objection of Mr. Murty in part and direct that the prosecution shall not proceed against the petitioners excepting Shri G. Appa Rao, whole-time director, and Shri A.D.L. Prasad, Manager (petitioners Nos. 2 and 11 of this case). In regard to others the criminal prosecution is quashed. But it is made clear that if there is evidence led which would justify action to be taken under Sub-section (2) of Section 10 of the Act it shall be open to the learned Magistrate to issue summons to such of the directors and the chief chemist and the case will proceed against them also in accordance with law. The quashing of the proceeding at present may not be taken as disabling the learned Magistrate to proceed against those against whom the proceeding is now quashed. The revision petition succeeds in part.