
(2008) 02 DEL CK 0285

In the Delhi High Court

Case No : Criminal M.C. 312 of 2006 and Crl M As 487 of 2006 and 11803 of 2007

Zal Balsara

APPELLANT

Vs

State of Delhi and Others

RESPONDENT

Date of Decision : 25-02-2008

Acts Referred:

Citation : (2008) 102 DRJ 65

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Siddharth Luthra, Ankit Goyal and Rajni Gupta, for the Appellant;
O.P. Saxena, APP, for the Respondent

Judgement

S. Muralidhar, J.—This is a petition u/s 482 of the Code of Criminal Procedure, 1973 ("CrPC") filed by the Petitioner seeking quashing of the Complaint Case No. 136/1997 titled Plant Protection Officer/Licensing Officer v. Singla Agencies and Ors. u/s 29(1) of the Insecticides Act, 1968 ("Act"). In the array of the accused in the complaint the Petitioner was shown as accused No. 4 with the name ?Jai Balsara? although it should read as "Zal Balsara. "

2. The complaint states that the Insecticides Inspector, Government of Delhi visited the shop of M/s. Singla Agencies, 29/1, Shakti Nagar, Delhi for inspection of records of storage of insecticides being sold in the said shop. The Insecticides Inspector purchased three packets of ALLTHRIN 4 W.W Mats. The samples were sealed in the presence of the accused. One of the samples was sent to the Government Analyst. The report revealed that the sample was misbranded. Paras 7 and 8 of the complaint read as under:

7. That the accused firm M/s. Singla Agencies has furnished reply under this letter dated 25.1.1996 (Annex VII) informing that a said material was manufactured by M/s. Genesis Chem. Pest (P) Limited and marketed by M/s. Balsara Hygiene Products Limited and the same was purchased from M/s. Balsara Hygiene Products Limited under the bill No./Invoice No. 400392 dated

11.9.1995 (Annexure VII).

8. That on hearing from the accused/distributor marketed by M/s. Balsara Hygiene Products Limited under the letter dated 27.5.96 (Annexure IX) was issued to explain the reason that why the firm has conducted the sale of misbranded insecticides, the firm has furnished their reply under their letter dated 22.7.96 (Annexure IX) which was considered but not found satisfactory hence the above complaint is being filed in this Hon''ble Court.

3. Balsara Hygiene Products Limited ("the Company") and the Petitioner had filed a joint petition CrI M (M) No. 1287 of 2001 in this Court seeking quashing of the criminal proceedings. By a judgment dated 23rd August, 2003 the learned Single Judge of this Court dismissed the petition. As regards the contention of the Petitioner that there was no averment in the complaint that Zal Balsara was responsible for the conduct of the business of the Company, this Court held: (para 10)

10. Learned Counsel for the petitioners lastly argued that there is no allegation in the complaint that petitioner No. 2 was responsible for the conduct of the business of petitioner No. 1 company and he has been arrayed as an accused only because he was the director. He further argued that petitioner No. 2 is located at Mumbai and was not responsible for the conduct of business of petitioner No. 1. In support of this submission, reliance was placed on the Supreme Court decision in Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, . It was a case under the Provision of Food Adulteration Act. In that case the Manager (accused No. 2) and all the directors (accused Nos. 4 to 7) were charged. The complaint against the Manager was upheld looking into the nature of his duties and the complaint against the directors was quashed observing that if during the trial some evidence comes on record, cognizance could be taken against the directors as well u/s 319 CrPC. Each case depends upon its own facts. Here, in reply to the notice served upon them by the Insecticide Inspector before filing of the complaint, petitioners did not take any stand as to who was responsible for the conduct of business of the company (petitioner No. 1). This fact is especially within their knowledge and the onus to prove the same would lie upon them after the initial burden is discharged by the prosecution that the sale was effected by the company as provided by Section 106 of the Indian Evidence Act. Even in the petition before this Court it is not stated as to who was responsible for the conduct of business of petitioner No. 1. Petitioner No. 2 has not yet appeared before the trial court. In view of the same, I do not find any merit in this contention and reject the same.

4. Mr. Siddharth Luthra, learned Senior counsel urges only one ground in support of this petition u/s 482 CrPC. Referring to Section 33 of the Act which concerns offences by companies , he submits that in regard to a similar provision in Section 141 of the Negotiable Instruments Act, 1881 ("NI Act"), the law in regard to the minimum averment to be mandatorily contained in a complaint for the offence u/s 138 read with 141 NI Act was explained by the Supreme Court in

S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, . The present complaint does not satisfy that requirement since the only reference to Zal Balsara is in the cause title of the complaint where while arraying him as accused No. 4, he is described as Director of the Company. The law settled by the Supreme Court in 2005 in Neeta Bhalla (I) was a change in the circumstance prevailing at the time this Court dismissed the earlier petition u/s 482 CrPC. The said law has been reiterated in the subsequent judgments in Saroj Kumar Poddar Vs. State (NCT of Delhi) and Another, and S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, . He further relies upon the judgment of the Supreme Court in Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Others, o contend that the dismissal of the earlier petition u/s 482 CrPC on merits would not preclude the Petitioner from filing a fresh petition u/s 482 CrPC in view of the changed circumstances.

5. Mr. O.P. Saxena, learned APP appearing for the State submits that the earlier judgment rejected this very contention of the Petitioner on merits and Therefore, the Petitioner should not be permitted to reopen the issue by a fresh petition u/s 482 CrPC. However, on merits, Mr. Saxena was unable to point out any averment in the complaint (apart from the cause title where he is shown as Director) which even remotely mentioned the petitioner Zal Balsara as being in charge of the affairs of the Company or being responsible to it for the conduct of its business.

6. As regards the maintainability of the present petition, learned Senior counsel for the Petitioner is right in his contention that the changed circumstance in the form of the law as explained in Neeta Bhalla I would enable the Petitioner to file another petition Section 482 CrPC. In Superintendent and Remembrancer of Legal Affairs, West Bengal v. Mohan Singh the Supreme Court explained the position in relation to the erstwhile Section 561A of the Code of Criminal Procedure 1898 (which corresponds to Section 482 CrPC) as under: (SCC, pp 709-10)

Section 561A preserves the inherent power of the High Court to make such orders as it deems fit to prevent abuse of the process of the Court or to secure the ends of justice and the High Court must Therefore, exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked. The High Court was in the circumstances entitled to entertain the subsequent application of respondent Nos. 1 and 2 and consider whether on the facts and circumstances then obtaining the continuance of the proceeding against the respondents constituted an abuse of the process of the Court or its quashing was necessary to secure the ends of justice. The facts and circumstances obtaining at the time of the subsequent application of respondent Nos. 1 and 2 were clearly different from what they were at the time of the earlier application of the first respondent because, despite the rejection of the earlier application of the first respondent the prosecution had failed to make any progress in the criminal case even though it was filed as far back as 1965 and the criminal case rested where it was for a

period of over and half years.

The Supreme Court has reiterated the above observations in Neeta Bhalla II while rejecting a similar contention as to maintainability of a second petition u/s 482 CrPC. Therefore, the objection to the maintainability of the present petition is negative.

7. Turning to the merits, a perusal of the complaint shows that there is absolutely no averment at all concerning the Petitioner here apart from describing him as a Director in the cause title of the complaint. Clearly, the complaint does not satisfy the minimum requirement of the law as explained by the Supreme Court in Neeta Bhalla I. Therefore, the inescapable conclusion is that as far as the petitioner is concerned not even a prima facie case of an offence u/s 29(1) of the Act can be said to be made out on a reading of the complaint as a whole.

8. For the above reasons, the petition is allowed and the Complaint Case No. 136/1997 titled Plant Protection Officer/Licensing Officer v. Singla Agencies and Ors. u/s 29(1) of the Act pending before the learned Metropolitan Magistrate, Delhi is hereby quashed in so far as the Petitioner is concerned.

9. The petition and the pending applications are disposed of.

10. A copy of order be given dusty to learned Counsel for the parties. A certified copy of this order be delivered to the concerned trial court within one week from today.