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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.M.C.NO.2879/2007

Date of Pronouncement : 14th May, 2009

SUBHASH CHAND GUPTA & ORS. Petitioners

Through : Mr.R.P. Thakur, Advocate

Versus

STATE THROUGH FOOD INSPECTOR (PFA)
GOVT. OF NCT OF DELHI Respondents

Through : Mr.Lovkesh Sawhney, APP for State
along with Mr.S.K. Gupta,
Food Inspector.

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CORAM:
HON'BLE MR. JUSTICE G.S. SISTANI

1. Whether reporters of local papers may be allowed to see the Judgment ? **Yes**
2. To be referred to the Reporter or not? **Yes**
3. Whether the Judgment should be reported in the Digest? **Yes**

G.S. SISTANI, J.

1. This is a petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as, "Cr.P.C.") for quashing of Complaint Case No.100/2004 under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954, (hereinafter referred to as, "PFA Act") and the proceedings emanating therefrom against the petitioners.
2. A complaint under Section 16 of the PFA Act was filed against 14 accused persons, including the petitioners herein, namely, M/s Surya Kiran Trading Corporation (the Supplier-firm); Late Shri Kishan Gupta (one of the partners of M/s Surya Kiran Trading Corporation) who died during the pendency of the case in the trial court; Shri Subhash Chand Gupta; Shri Shobhit Gupta; Shri Vipul Gupta and Smt. Pooja

Gupta, who were the other partners of M/s Surya Kiran Trading Corporation.

3. Learned counsel for the petitioner submits that on 25.06.2002, the Food Inspector, Sh. S.K. Sharma had purchased a sample of "Pass Pass" (Mouth freshener) for analysis from Shri Om Prakash Tolani. The said sample consisted of polypacks of "Pass Pass" (Mouth freshner). After carrying out the sampling procedure, the sample was sent to the Public Analyst. According to the report of the Public Analyst, the sample was misbranded for the following reasons:

"The sample is misbranded as the ingredients declared are misleading because saffron is absent which was declared as one of the ingredients in Pass Pass pouch."

4. Learned counsel for the petitioner submits that, accordingly, the Director of the Department of Prevention of Food Adulteration, Govt. of NCT of Delhi, accorded the consent under Section 20 of the Act for launching prosecution against the accused persons for the aforesaid offences.
5. Insofar as the petitioners are concerned, it is alleged in the complaint that M/s Surya Kiran Trading Corporation is a partnership-firm having six partners (as mentioned above). Shri Kishan Gupta, one of the partners had since died and Master Archit Gupta being a minor was not prosecuted. It was further stated in the complaint that the firm M/s Surya Kiran Trading Corporation had not appointed any nominee and, therefore, all the partners except the minor partner were liable along with the partnership-firm.
6. Learned counsel for the petitioner submits that the sample was got re-analysed from the Central Food Laboratory and the certificate of analysis issued by the Central Food Laboratory gave the opinion that the sample contravened Rule 42 (ZZZ) (17) of the PFA Rules, 1955.

The Director, Central Food Laboratory opined that the sample of Rajni Supari (which had been supplied free with the pouches of Pass Pass) contravened rule 47 of the PFA Rules, 1955.

7. The petitioners who are the partners of M/s Surya Kiran Trading Corporation are aggrieved by the order dated 17.05.2004, passed by the Id. MM summoning the petitioners as the accused persons before him, to face the trial. It is the case of the petitioners that the proceedings against the petitioners stand vitiated *ab initio* on the ground that there is not even a whisper in the entire complaint that any of the petitioners herein were in charge of and responsible to the partnership-firm for the conduct of the business of the firm. Section 17 of the Act provides for vicarious liability as follows:

“17. Offences by companies – (1) Where an offence under this Act 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 (hereafter in this section referred to as the person responsible), 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.

8. Learned counsel for the petitioners submits that in the absence of even a slightest suggestion in the entire body of the complaint that any of the partners-petitioners, was in-charge of and responsible for the conduct of the business of the firm at the time the offence was alleged to have been committed; on this ground alone, the complaint against the petitioners herein is liable to be quashed and the proceedings against the petitioners are liable to be dropped forthwith. It is contended that there are a plethora of case laws decided by the Apex Court as also by this Court, laying down in no

uncertain terms that unless there are averments in the complaint that any such person was in charge of and responsible for the conduct of the business at the time the offence was alleged to have been committed, the complaint against such accused cannot survive or proceed, and the proceedings against such accused persons in the absence of such averments in the complaint are liable to be quashed. To buttress his argument, learned counsel for the petitioner relies upon the case of **Nalin Thaur and others Vs. State of Maharashtra** reported at **(2004) 1 FAC 68**.

9. Learned counsel for the petitioner further submits that there are corresponding provisions in the Negotiable Instruments Act ("NI Act"), Essential Commodities Act, 1955, and Drugs and Cosmetics Act, 1940, which provide for vicarious liability in the similar terms. The provisions under all the aforesaid statutes being *pari materia*, the judgments under those enactments are applicable with equal vigour and force to cases arising under the Act. In **Saroj Kumar Poddar Vs. State (NCT of Delhi) and another**, reported at **(2007) 2 SCC (Crl.) 135**, the Supreme Court held that there were no averments in the complaint as to how and in what manner the appellant was responsible for the conduct of the business of the company. The allegations made in the complaint, thus, did not satisfy the requirements of Section 141 of the NI Act, which were obligatory.

10. In view of the facts and circumstances of the present case and in view of the settled position of law, it is prayed that this Court in exercise of its inherent powers under Section 482 of the Cr.P.C. may quash the Complaint Case No.100/2004 under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954, titled as "**Food Inspector (PFA), Government of Delhi Vs. Om Prakash Totlani**

and Others”, and the proceedings emanating therefrom, against the petitioners pending in the Court of Id. MM.

11. On the contrary, learned counsel for the respondents submits that as per section 17 of the Prevention of the Food Adulteration Act, in the absence of any director having been nominated, every person who was/were incharge and responsible for the conduct of the company at the time of the offence, shall be deemed to be proceeded against and punished accordingly. He also submits that the petitioners having chosen not to nominate a single person, leaves no scope for doubt that all the petitioners were in-charge and responsible for day to day conduct of the business of the company and thus would be liable. Hence the summoning order is justified and present petition deserves to be dismissed.

12. I have heard leaned counsel for the parties. In the facts of this case it is not in dispute that a Food Inspector had purchased a sample of “Pass Pass” (Mouth freshener) for analysis, from one Sh. Om Prakash Tolani. The said sample was thereafter sent to the Public Analyst. According to the report of the Public Analyst, the sample was misbranded and accordingly a complaint was filed against as many as fourteen persons and the petitioners herein were also arrayed as a party. In the complaint filed before the trial court, the role of the petitioners and the allegations against them were made as under:

“..... And further the sampled food article was purchased by M/s Jain Provision Store, from M/s Surya Kiran Trading Corporation..... M/s Surya Kiran Trading Corporation is a partnership concern having six partners, namely, (1) Sh. Shri Kishan Gupta, s/o late Sh. Sooraj Mal, (2) Sh. Subhash Chand Gupta s/o late Sh. Sooraj Mal, (3) Sh. Shobhit Gupta s/o Sh. Subhash Chand, (4) Sh. Vipul Gupta s/o Sh. Shri Kishan (5) Smt. Pooja Gupta w/o Sh. Puresh Kumar Gupta and Master Archit Gupta (minor).

Since there is no nominee appointed by the firm all the partners except master Archit Gupta (minor) are also liable. Being a partnership firm M/s Surya

Kiran Trading Corporation is also liable. Sample food article was purchased by M/s Surya Kiran Trading Corporation from M/s Dharam Pal Satya Pal Ltd., 276 FIE, Patparganj, Delhi-92 which is a consignee agent of D.S. Foods Ltd.”

13. Apt herein it would be to quote the observations of the Apex Court as early as in 1984 in the case of ***Shamji Mavji Parekh and Others Vs. Delhi Administration, Criminal Revision No. 4 of 1984***. The said case involved similar facts and circumstances in as much as that a violation of the Prevention of Food and Adulteration Act was alleged and also that no person had been nominated as the person in-charge of the affairs of the company. The Apex Court in categorical terms observed that in the absence of specific averments against the accused persons, that they were responsible for the affairs of the accused company, no case was made out against them. Relevant portion of the judgment is reproduced hereunder:

“Admittedly, no person has been nominated by the said firm to be in charge of and responsible to the firm for the conduct of the business of the firm and consequently, the case is obviously governed by Section 17(a)(ii) of the Act. From the very wording of the aforesaid provision of law it is quite obvious that the complaint should make a specific averment as to whether anyone of the partners or all the partners of the firm were in charge of and responsible for this firm for the conduct of its business and unless and until such averment is specifically made in the complaint the offence against the partners cannot be said to be made out even prima facie and such omission is fatal to the prosecution case. Municipal Corporation of Delhi V. Ram Kishan Rohtagi and others, 1982 (II) FAC 355 is a direct authority upon this point. In this authority the relevant averment made in the petition was that certain accused persons were the directors and as such they were in charge of and responsible for the conduct of the business of the accused-company. IT was held that the words “as such” indicted that the complaint had merely presumed that the directors of the company must be guilty because they were holding a particular offence. It was, however, held that so far as the directors were concerned there was not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there

was any act committed by the Directors from which a reasonable inference could be drawn for which they were vicariously liable. It was held that no case was made out against the Directors. In the case, in hand the averment is not there even in the nature of any such presumption and as a matter of fact there is nothing actually in the complaint alleging that the aforesaid partners of M/s Anuradha Industries, Bombay were in charge of and responsible for the conduct of the business of the firm. Under these circumstances, no liability as accused persons can be fastened upon the petitioners and consequently accepting the revision the impugned order for summoning them as accused persons in this case is set aside.”

14. Further in the case of ***Nalin Thaur and others Vs. State of Maharashtra*** reported at **(2004) 1 FAC 68** it was observed that:

“As regards the complicity of these appellants, counsel for the respondent submitted that in the complaint it is alleged that they are Directors of the Company. That apart, we do not find any allegation in the complaint. It is not stated in the complaint that the appellants during the relevant time was responsible to the company for the conduct of the business of the company. It is also to be noticed that in the complaint filed by the Food Inspector, there are no averments to implicate these appellants under sub-clause (4) of Section 17.”

15. Applying the aforesaid principles laid down by the Apex Court to the facts of this case, a bare look at the complaint filed before the trial court would show that there are no specific averments against the petitioners. A loose and casual statement has been made that, *since there is no nominee appointed by the firm all the partners except Archit Gupta (minor) are liable*. In view of the law laid down in the case of ***Shamji Mavji Parekh (supra) and Nalin Thaur (supra)***, the present petition is entitled to succeed.
16. Consequently, the Complaint Case No.100/2004 under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954, and the proceedings emanating therefrom against the petitioners herein, are

quashed. It is made clear that the order dated 17.05.2004, passed by the Id. MM summoning the petitioners as the accused persons before him, stands quashed, qua the petitioners only, namely, M/s Surya Kiran Trading Corporation; Late Shri Kishan Gupta, (since died during the pendency of the case in the trial court); Shri Subhash Chand Gupta; Shri Shobhit Gupta; Shri Vipul Gupta and Smt. Pooja Gupta.

17. Petition stands disposed of.

May 14th , 2009

G.S. SISTANI, J.