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IN THE HIGH COURT OF DELHI AT NEW DELHI

DATE OF DECISION: 20th NOVEMBER, 2013

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CRL.M.C. 175/2013 & CrI. M.A. No. 655/2013

RAJENDRA KUMAR GUPTA

..... Petitioner

Through: Mr. Rajesh Goyal, Advocate.

versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Through: Ms. Asha Tiwari, APP for the State.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. This is a petition under Article 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking quashing of DD No. 46-B dated 22nd September, 2012 under Sections 28/112 of Delhi Police Act, 1978 (for short 'D.P. Act').

2. The relevant facts germane to the present case are that the petitioner whose prosecution is sought to be initiated under Sections

28/112 of D.P. Act is working as an employee at a shop called as M/s Hydrabadi Biryani eating house which is selling readymade food material to its customers from the premises No. G-19, Ground Floor, Aggarwal Metro Height-II, Netaji Subhash Palace, Pitampura, Delhi.

3. The allegation against the petitioner is that on 22nd September, 2012 he was sitting at the counter of the shop and was attending the customers. Head Constable Suresh Kumar bearing batch No. 648/NW came to the shop and enquired for the license of the shop from the petitioner. The petitioner informed Head Constable Suresh Kumar that he was only an employee of the eating shop and does not have copy of the license. He was also informed that Mr. Vivek Kapoor, owner of the premises, comes to the premises 3 to 4 times a month and he must be having the copy of the license, however, without considering the plea of the petitioner, Head Constable Suresh Kumar handed over a copy of DD No. 46-B dated 22nd September, 2012 under Sections 28/112 of D.P. Act and directed the petitioner to appear before learned Metropolitan Magistrate on 26th September, 2012. The petitioner appeared before learned Metropolitan Magistrate and informed that he is only an employee and he could not be prosecuted for running the

shop as an employee. He further informed learned Metropolitan Magistrate that the owner of the premises has applied for the license but the same has not been granted till date. He was informed that in case the petitioner wants to contest proceedings he should get bail and contest the proceedings by leading evidence. Being aggrieved, the present petition has been filed for setting aside DD No. 46-B dated 22nd September, 2012 under Sections 28/112 of D.P. Act.

4. Learned counsel for the petitioner has relied upon *S.A.S. Pahwa v. State* 2000 (3) CC Cases HC 323 and *Janak Raj v. State of NCT of Delhi* 2012(3) JCC 2215 wherein under the same circumstances DD registered against the employee were quashed.

5. Learned Additional Public Prosecutor for the State submitted that in view of the judgments relied upon by learned counsel for the petitioner, she does not wish to say anything further in the matter.

6. This Court in **S.A.S Pahwa** (supra) has held as under:-

“8. In relation to offence under Section 112, it is contended that a servant or agent is not supposed to obtain a licence in ordinary course, and it does not appear plausible to say that a servant or an agent would fall within the term “whoever” notwithstanding the fact that the term “whoever” is much wider than the terms

“owner” or “proprietor”. The term “whoever” in Sub-section (1) of Section 112 has to be read in proper perspective. This Court would not assume that the legislature could be indulging in legislative absurdity by asking a servant or agent to obtain licence for his master or the employer or principal, for servant or agent shall always in obtaining a licence for lack of authority to do so from his employer or principal and fulfilling other requirements for grant of licence.....”

7. In **Avnish Sharma Vs. State, Crl.M.C. 1034/2005** decided on 24th January, 2008 another learned Single Judge of this Court has held as under:-

“ 4. The principal contention of the Petitioner is that the prosecution under Sections 28/112 of the DP Act can be maintained only against the owner/license holder in respect of the premises in question and not an employee of such owner. Reliance has been placed in the judgment of this Court in S.A.S. Pahwa v. State 88 (2000) DLT 194 where under the similar circumstances the proceedings were quashed.

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6. This Court in S.A.S. Pahwa held as under: (DLT, Pg.198). In relation to offence under Section 112, it is contended that a servant or agent is not supposed to obtain a licence in ordinary course, and it does not appear plausible to say that a servant or an agent would

fall within the term whoever notwithstanding the fact that the term whoever is much wider than the terms owner or proprietor. The term whoever in Sub-section (1) of Section 112 has to be read in proper prospective. This Court would not assume that the legislature could be indulging in legislative absurdity by asking a servant or agent to obtain licence for his master or the employer or principal, for servant or agent shall always fail in obtaining a licence for lack of authority to do so from his employer or principal and fulfilling other requirements for grant of licence. Moreover, if Section 111 is read in this context with Section 112 as well as with the provisions of Section 17 of the Prevention of Food Adulteration Act along with similar other provisions coupled with absence of any provision excepting Section 111 in Delhi Police Act, make it evident that even a servant or agent in charge and responsible for doing business in a place of public entertainment, could not be prosecuted for offence under Section 112 of the Act ordinarily.”

8. Relying upon the aforementioned authorities, in **Janak Raj** (supra) the DD under Sections 28/112 D.P. Act registered against the Manager of the premise and the proceedings arising therefrom were quashed.

9. Keeping in view the fact that the petitioner is only an employee of the eating house as also in view of the legal position enunciated above, he cannot be prosecuted under Section 28/112 of D.P. Act as he

is not supposed to obtain a license for running the business of eating house. As such, so far as the petitioner is concerned DD No. 46-B dated 22nd September, 2012 under Section 28/112 of D.P. Act as well as proceedings emanating therefrom are quashed.

10. However, it is pertinent to note that as averred in the petition itself, the petitioner has apprised the Head Constable Suresh Kumar that the owner of the premises is Sh. Vivek Kapoor and he also informed the Trial Court that the owner of the premises had applied for the license, however, the same has not been given till date, meaning thereby that the eating house was admittedly being run without a license. Despite knowing the name of the owner of the premises and the fact that the owner of the premises was running his business without license, yet, surprisingly no action has been taken against him by the concerned authority till date.

11. A copy of the order be sent to the Commissioner of Police for information and for giving necessary/appropriate directions to the concerned authorities that in case any premises is covered under Section 28/112 of the D.P. Act which requires a license then in the absence of requisite license *kalandara* be prepared against the owner/

the person who can apply for license and not against the employees as it is generally noticed that police officials satisfy themselves by making *kalandara* against an employee who are available at the premises in question, irrespective of the fact whether they are competent to apply for the license or not.

12. With these observations the petition stands disposed of.

**SUNITA GUPTA
(JUDGE)**

NOVEMBER 20, 2013

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