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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 1198/2016

STATE (GOVT. OF NCT OF DELHI)

..... Appellant

Through: Ms. Richa Kapoor, ASC with Mr.
Ashish Negi & Ms. Seema Patnaha,
Adv. for State

versus

VIRENDER KUMAR GOEL

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

20.12.2016

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Crl.M.A. No. 19759/2016

Exemption allowed, subject to all just exceptions. The application stands disposed of.

CRL.A. 1198/2016 & Crl.M.A. No. 19757-58/2016

1. Since I have heard the learned ASC and proceed to dispose of the appeal on merits, I do not find it necessary to issue notice on these applications seeking stay and condonation of delay.
2. The State has preferred the present leave appeal to seek leave to appeal against the judgment dated 21.07.2015 passed by the learned Distt. &

Sessions Judge in FSAT Appeal No.4/2015 titled Vinod Kumar Goel v. State through Food Safety Officer, whereby the said appeal preferred by the respondent herein has been allowed and the learned D&SJ has directed the Adjudicating Officer/ Additional District Magistrate to refund the penalty amount of Rs.35,000/- imposed upon the respondent.

3. The background facts are that one Ram Kumar Goel was running his proprietary business of a kirana shop under the name and style Goel Provision Store at L-103A, Dilshad Garden, Delhi. On 26.08.2011, the Food Safety Officer inspected the shop of Ram Kumar Goel and during inspection, he lifted a sample of the rice and found the same to be insect infested with living and dead insects. The sample was sent, at the option of the proprietor, to CFL Pune for examination. Thereafter, a complaint was preferred before the learned Addl. Distt. Magistrate. It appears that the proprietor Ram Kumar Goel went missing during pendency of the complaint and a missing report was registered at PS Seemapuri on 18.08.2012 vide DD No.61B. After hearing the parties, the Trial Court imposed a penalty of Rs.50,000/- vide order dated 16.10.2012. It appears that in the proceedings, it was also recorded that there was a subsequent order dated 01.11.2012, which is not borne out from the record.

4. The penalty was, accordingly, imposed upon the son of the proprietor, who is the respondent. It is pointed out that the respondent even paid the said penalty of Rs.50,000/- on 19.11.2012 without any reservation or demur. However, the order imposing penalty of Rs.50,000/- was subsequently challenged and the same was set aside. In the second round, a penalty of Rs.35,000/- was imposed upon the respondent. The respondent thereafter

preferred an appeal before the learned District & Sessions Judge, who has allowed the appeal by the impugned judgment and directed refund of the penalty of Rs.35,000/-.

5. The reason found in the impugned judgment for allowing the appeal is that it was Ram Kumar Goel, who was the proprietor of the Goel Provision Store, and a penalty order could not have been passed against his son. The learned Judge has held in para 7 and 8 of the impugned judgment as follows:

“7. From the material available on record, it stands established that none of the documents indicates the presence of the appellant at the time of taking the samples. The FBO’s signature were obtained on the DO slip and wrapper of the bottles containing the sample. Food Safety Officer also took the signatures of FBO’s on the labels of all counterparts of the sample. Punchnama was also prepared on the spot. All the documents prepared by the Food Safety Officer which were signed by Sh. Ram Kumar Goel) FBO-cum-proprietor) in the presence of witness Sh. Ram Pratap Singh. As per the allegations of the complaint moved under Rule 3.1.1(3) of FSS Rule 2011, Sh. Ram Kumar Goel (FBO-cum-proprietor) was found storing the articles of food at the time of taking the sample. It was specifically mentioned in the said complaint that Sh. Ram Kumar Goel s/o late Sh. Meg Raj Goel, M/s Goel Provision Store, L-103A, Dilshad Garden, Delhi-110095 has committed the offence on account of samples sub-standard in violation of standards of “Rice” laid down under Regulation no.2.4.6.5 of Chapter 2 of the Food Safety & Standards (Food Products & Food Additives) Regulation, 2011”. Notice in form V-A was given to Sh. Ram Kumar Goel and the price of the sample was paid to him vide Food Business Operators receipt dated 26.08.2011. Missing report with regard to the father of the appellant was registered with the police station Seemapuri, Delhi on 18.08.2012 vide DD No.61B. He has not been heard of since the said date. The complaint was filed before the Ld. Adjudicating Officer/

Additional District Magistrate (North-East), Govt. of NCT of Delhi against Sh. Ram Kumar Goel (FBO-cum-proprietor) only on 12.07.2012.

8. On the basis of re-appreciation of the material from the trial court record, there is no dispute that the sample of “4kg Rice” was lifted on 26.08.2011 at about 4 pm from the possession of Sh. Ram Kumar Goel (FBO-cum-proprietor), M/s Goel Provision Store, L-103A, Dilshad Garden, Delhi-110095 by paying price of Rs.160/-. Cognizance was taken against him and summons were accordingly issued to the only respondent as per the memo of parties of the complaint dated 08.11.2012. It is not in dispute that Sh. Ram Kumar Goel (FBO-cum-proprietor) is still untraceable. ***None of the document shows the presence of the appellant at the time of taking sample meaning thereby he was having no concern with the said purchase of sample of “Rice” which alleged to have taken place in his absence. As per the criminal jurisprudence criminal liability for the offence committed by a person would not be transferable to any other person under any circumstances. No notice was personally served either at the time of raiding or before the filing of the complaint to the appellant. Merely, presence of the appellant at the shop after the missing of his father at the time of ascertaining his financial status much after the commission of the offence cannot make him liable for the prosecution of the offence alleged to have been committed by his father. Since the appellant was not in possession of food articles for sale at the relevant time, therefore, the provisions of Rule 3.1.1(3) of Food Safety & Standards (Packaging & Labelling) Regulation, 2011 are not attracted. Offence committed, if any, was on the part of Sh. Ram Kumar Goel (FBO-cum-proprietor) who has not been heard since quite long time and consequently, proceedings against him were required to be dropped and hence, no criminal liability of the appellant being the son of Sh. Ram Kumar Goel can be fastened. I, therefore, find every justification to interfere in the impugned order which deserves to be set aside. Appellant succeeds and the order dated 16.11.2014 is set aside by allowing the appeal***

with the direction to the Ld. Adjudicating Officer/ Additional District Magistrate to refund the amount of penalty of Rs.35,000/- to the appellant ... ”. (emphasis supplied)

6. The submission of Ms. Kapoor, learned ASC is that, firstly, the respondent had deposited the amount of Rs.50,000/- imposed as penalty in the first round without demur, and only thereafter preferred an appeal. She submits that having so deposited the penalty without demur, the respondent was estopped from preferring a further appeal. She further submits that after the proprietor Ram Kumar Goel had gone missing, it was the respondent who was running the business. It was he who produced the relevant records of the business in the proceedings. Thus, the penalty could be imposed upon the respondent since violation of the Food Safety and Standards Act (the Act) was found in respect of the business of Goel Provision Store, and it was not relevant as to who was the proprietor on the date of the inspection.

7. Ms. Kapoor further submits that it is a case of imposition of fine on the vendor, and it is not a case of the respondent being directed to undergo a sentence and, therefore, such an order could be passed against the respondent even though he was not the proprietor on the date of inspection when the violation of the provisions of the Act was found, and he was not the accused in the complaint as originally filed. She has placed reliance on Section 51 of the Act, which states that any person, who – whether by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is sub-standard, shall be liable to a penalty which may extend to five lakh rupees.

8. Having heard Ms. Kapoor and perused the impugned judgment, and the other documents placed on record, I find no merit the present leave petition. Merely because the respondent may have deposited the penalty earlier imposed without demur, it does not impinge on the statutory right of appeal available to a person who is aggrieved by an order passed under the Act. There is no estoppel against the statute. The Act does not provide that if the penalty imposed is paid, the right of appeal shall stand forfeited.

9. The submission that it was the respondent who was carrying on the business after the father went missing and, therefore, he is liable to pay the penalty also has no merit. The business was being run by Ram Kumar Goel as a proprietary concern. It was he who was responsible for the compliance of the provisions of the Act. Merely because the respondent happens to be his son, the liability cannot be saddled upon him. It is well settled that a proprietary concern is no different from the proprietor himself. Pertinently, the raid was conducted on 26.08.2011, whereas the proprietor Ram Kumar Goel went missing on 18.08.2012. The proceedings being penal in nature could not have continued in the absence of Ram Kumar Goel. Even though the respondent may have subsequently been running the said business, the liability incurred in the past – on account of violation of the provisions of the Act, cannot be fastened upon the respondent, since the said liability was personal of the proprietor Ram Kumar Goel. No complaint was initiated against the respondent. He was never noticed or summoned as and accused. Thus, he could not have been penalised.

10. The submission that it is only a fine which is being imposed upon the business, and it is not a sentence of imprisonment which has been passed

against the respondent, also has no merit for the aforesaid reasons.

11. The impugned order shows that there was no evidence to show that the respondent had any role to play in the business as on the date of the inspection. Reliance placed on Section 51 of the Act is also misplaced. The language used in the said section is “*any person who whether by himself or by any other person on his behalf manufactures for sale*”. It is not the case of the State that the respondent was carrying on the said business through his father. It also cannot be said that the father was carrying on the business through his son i.e. the respondent.

12. For all the aforesaid reasons, I find no merit in the present petition. Dismissed.

VIPIN SANGHI, J

DECEMBER 20, 2016

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