

24.06.2021

Item no.25

Ct. No.34

CHC

C.R.R. No.3602 of 1997

(Through video Conference)

In Re: An application under Section 482 of the Code of Criminal Procedure, 1973.

AND

In the matter of:-

Mr. M. A. Pathan

... petitioner

Mr. Sandipan Ganguly,

Mr. Anirban Datta,

Mr. Victor Chatterjee,

Ms. Sharmistha Ghosh,

Mr. Swarbhanu Bhattacharya

...for the petitioner

Mr. Saswata Gopal Mukherji, Ld. P.P.

Ms. Faria Hossain,

Ms. Baisali Basu

...for the State

Learned advocate for the State has submitted a report which reflect that the concerned officer of Phoolbagan Police Station has effected service on the Deputy Controller (Enforcement Wing) of Legal Metrology Department, Central Laboratory.

In spite of service none appears on behalf of the Department of Legal Metrology. The issue raised by the petitioner is on a question of law.

Mr. Sandipan Ganguly, learned advocate appearing for the petitioner submits that the complaint case was initiated for

alleged commission of offences punishable under Sections 33 and 62 of Standards of Weights and Measures (Enforcement) Act, 1985 (hereinafter referred to as the said “Act”) and Rule 26 of Standards of Weights and Measures (Packaged Commodities) Rules, 1977.

Learned advocate draws attention to the fact that the petitioner at the relevant point of time was Chairman of M/s. Indian Oil Corporation Limited and the prosecution has only implicated the Chairman and the Chief Area Manager without implicating the company as a party.

Learned advocate draws the attention of this Court to paragraph 7 of the complaint and the relevant provisions of the statute.

Section 62 of the said Act provides for offences by companies which states as follows:-

“Section 62(1)- If the person committing an offence under this Act is a company, 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, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any 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.”

Learned advocate thereafter submits that the said provisions are in pari materia to the provisions of Section 141 of the Negotiable Instruments Act and draws the attention of this Court to the interpretation made by the Hon’ble Supreme Court and followed in a number of judgements of this Court.

In **Aneeta Hada vs. Godfather Travels and Tours Private Limited** reported in **(2012) 5 Supreme Court Cases 661** it has been held:

“**58.** Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the company” appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in **C.V. Parekh** which is a three-Judge Bench decision. Thus, the view expressed in *Sheoratan Agarwal* does not correctly lay down the law and, accordingly, is hereby overruled. The decision in *Anil Hada* is overruled with the qualifier as stated in para 51. The decision in *Modi Distillery* has to be treated to be restricted to its own facts as has been explained by us hereinabove.”

The said principle was followed in ***Himanshu vs. Shivamurthy & anr.*** reported in **(2019) 3 Supreme Court Cases 797**, ***Shri Arun Jyoti vs. The State of West Bengal & anr.*** reported in **2014 SCC OnLine Cal 6100**, ***Subhankar Biswas vs. Sandeep Meta*** reported in **(2011) 15 Supreme Court Cases 541**.

I have considered the principle set out by the Hon’ble Apex Court and I find that the present petition of complaint deviates from the principles which have been set out by the Hon’ble Apex Court. The Indian Oil Corporation Limited being a company was not implicated as an accused in the instant case and only the Chairman and Chief Area Manager has been implicated who were responsible officers of the Company and were acting for and on behalf of the company.

Section 62 of the said Act makes it clear that responsibility of the officers would arise only when the company has committed

offence. That being the settled position of law, I am of the view that the learned SDJM, Serampore, Hooghly while taking cognizance of the offence ignored the salutary principles and directed for issuance of process. The order of cognizance as such is bad in law and the subsequent stages of the proceedings are without any authority being devoid of adhering to the necessary principles of law. The proceedings were initiated in the year 1997, as such, I am of the view that further remanding the matter back for clarification will not suffice any useful purpose.

Accordingly, the proceedings being C No.199 of 1997 pending before the then SDJM, Srerampore, Hooghly, under Sections 33 and 62 of the Standard Weights and Measures (Enforcement) Act, 1985, read with Rule 26 of Standard Weights and Measures (Package Commodity) Rules, 1977 are quashed.

C.R.R.3602 of 1997 is hereby allowed. All pending applications are disposed of.

Department is directed to communicate this order to the learned A.C.J.M., Serampore, Hooghly within a fortnight from date.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)