IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-32862-2016 (O&M)
Reserved on: 15th December, 2018
Decided on: 30th, January, 2019

Vasant Raj Pandit ..Petitioner

versus

The State of U.T., Chandigarh ..Respondent

CORAM: **HON'BLE MR JUSTICE RAMENDRA JAIN**

Present: Mr. T.S.Sangha Senior Advocate
with Mr. Suneet Kumar Advocate,
for the petitioner.

Ms. Ashima Mor, APP for U.T. Chandigarh

RAMENDRA JAIN, J.

1 By this common judgment, I shall dispose of all the following petitions bearing nos. CRM-M-31776, CRM-M-32862, CRM-M-32963, CRM-M-32971, CRM-M-32973, CRM-M-32977, CRM-M-32978, CRM-M-32980, CRM-M-32982, CRM-M-32991, CRM-M-32993, CRM-M-32994 and CRM-M-32995 of 2016 together as question of facts and law involved therein are identical in nature. However, for the sake of convenience, facts are being extracted from CRM-M-32862-2016.

2 Through this petition under section 482, Code of Criminal Procedure, the petitioner has laid challenge to the legality and validity of the impugned order dated 7.6.2016 (Annexure P-3) of the lower revisional court, setting aside order dated 02.12.2015 (Annexure P-2) of the trial court, whereby he was discharged of charges framed against him under sections 3 and 4 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (in short "PCMCS Act") and Section 420 IPC, arising out of FIR

No.280 dated 02.12.2002 registered under sections 3 and 4 of the PCMCS Act at Police Station Sector 26, Chandigarh, remanding the case to the trial court with the direction to decide the matter afresh, after considering various aspects of the case and evidence collected during investigation, in accordance with law; impugned order dated 6.8.2016 (Annexure P-4) of the trial court, framing charges against him under the aforementioned sections of the PCMCS Act and 420 IPC and charge-sheet dated 6.8.2016 (Annexure P-5).

3 The relevant facts necessary for disposal of this case are that on receipt of the complaint from Shri S.P. Negi, DGM (retired) RBI, FIR No.280 dated 2.12.2002 was registered against the petitioner under sections 3 and 4 of the PCMCS Act at Police Station, Sector 26, Chandigarh, averring that the petitioner was the sole proprietor of M/s Frontier Trading and a distributor of Japan Life. M/s Amway India Enterprise is carrying on business of selling its products, viz., tooth paste, wood polish etc. in Chandigarh, sponsoring a person into the plan on his obtaining an Amway business kit from the company for the purpose of starting its business. The sponsored person had to develop both customers and distributors to generate his income, which he derives from the profit earned from retail sales and commission. Thus, a sponsored member, at certain level, earns a huge and quick monthly income from the scheme of the company, thereby contravening provisions of Section 2(C) of the Banning Act. Likewise, marketing plan launched by Japan Life India, a company marketed by Frontier Trading, prescribes enrollment of minimum three business members against commission of 10% of the sale value of the product directly sold by him. With the increase in numbers of enrollment of

members under the sponsored person, the percentage of commission, at a certain level, goes higher and higher, attracting more and more members/customers, desirous of making quick or easy money under the plan of the company. Thus, the said schemes were Money Circulation Schemes defined under Section 2(C), banned under Section 3 of the Banning Act.

4. During the course of investigation, it transpired that petitioner Vasant Raj Pandit through his aforesaid proprietorship firm M/s Frontier Trading enrolled 37 members and misappropriated amount of Rs.38,15,231/-. Consequently, he was arrested and released on bail.

5 The trial court, initially, vide order dated 2.12.2015 (Annexure P-2) discharged the petitioner of charges, referred to above, including section 420 IPC, framed against him. Against this order, the State preferred revision. After remand, the trial court, vide order dated 06.08.2016 (Annexure P-4), framed charges under sections 3 and 4 of the PCMCS Act and section 420 IPC against the petitioner.

6 Learned counsel for the petitioner has assiduously argued that initially, the main FIR was registered on 2.12.2002 under Sections 3 and 4 of the PCMCS Act. Section 420 IPC was added later on with intent to revive the time barred action, inasmuch as limitation to take cognizance for launching prosecution under the aforesaid Act had expired in the year 2005. learned trial court, without affording an opportunity to the petitioner, committed a grave error in framing charges against the petitioner under sections 3 and 4 of the PCMCS Act and Section 420 IPC, the same day, in a mechanical manner, notwithstanding the fact that "Network Marketing Plan", "direct sale of goods" and services rendered by direct selling companies do not fall within the definition of the aforesaid Act, inasmuch

as it is strategy of the company to promote market for the purpose of selling its products. It is, in essence, not a money circulation scheme. The learned lower revisional court failed to appreciate that on the same set of allegations, the petitioner was acquitted by two courts, i.e., Chennai and Andhra Pradesh. As such, no useful purposes would be served, in case, trial is permitted to continue. The learned lower revisional court has wrongly and illegally recorded its finding in para 9 of the judgment that the petitioner is guilty of misappropriating the amount of Rs.38,15,231/-, ignoring the fact that it was not even contended by the prosecution at any stage. The learned trial court, while framing charges against the petitioner, also lost sight of the fact that the petitioner is not manufacturer of the products. Therefore, he could not have been charged under the offence of cheating, inasmuch as he imported mattresses through valid import-export licence granted by the Government of India vide certificate dated 25.4.2001 (Annexure P-22). The learned trial court also failed to appreciate that products of the petitioner, i.e., mattresses (sleeping system) had been patented by USA and South Korea. Even the Indian Institute of Magnetotherapy and the Government Nature Cure Hospital, have been using them and getting positive results, which is quite evident from letters dated 11.6.2001 and 26.3.2002 (Annexures P-20 and P-21) issued by the aforesaid Institutions respectively.

7 Learned counsel for the respondent-Union Territory, Chandigarh, refuting the submissions raised by learned counsel for the petitioner, contends that a large number of persons involved in the business were induced and cheated by adopting a peculiar method than that of ordinary one, introducing them with the quality and utility of their products (sleeping mattresses) to maintain their health and as such, the learned trial

court has rightly charge sheeted the petitioner of offences under the Act and the Indian Penal Code.

8 Having given thoughtful consideration to the submissions raised by both the sides, this court is of the view that the instant petition, being without any merit, fails and is dismissed for the reasons to follow:-

9 The question that arises for consideration is – whether offence under section 420 IPC can be added after 10 years, especially when limitation to take cognizance or to submit final report under section 173(2) Code of Criminal Procedure, for prosecuting the petitioner under sections 3 and 4 of the Act, in view of section 468(2)(c) of the Code of Criminal Procedure, had expired in the year 2005, i.e., after lapse of three years from the date of receipt of the complaint. According to the contention of learned counsel for the petitioner, a time barred criminal action cannot be revived by adding Section 420 IPC, while filing supplementary challans by the prosecution before the trial court.

10 A perusal of the record spells out that on the complaint of Shri S.P. Negi, DGM (retired) RBI, FIR No.280 dated 2.12.2002 was registered against the petitioner under sections 3 and 4 of the PCMCS Act at Police Station, Sector 26, Chandigarh. He, being the complainant, was not legally empowered to write a letter dated 5.2.2003 (Annexure P-10), to the petitioner in his official capacity. Besides this, the limitation to take cognizance or submit a final report under Section 173 (2) Code of Criminal Procedure for prosecuting the petitioner under the aforementioned Act had expired in the year 2005. The prosecution, with mala fide intention to revive time barred criminal action, deliberately added Section 420 IPC and submitted challan under section 173(2), Code of Criminal Procedure,

against the petitioner to face trial before the court. Therefore, in the facts and circumstances of the case, this court is of the considered opinion that a time barred criminal action is not liable to be revived.

11 So far as argument that introducing of "Network Marketing Plan", and direct sale of goods and services by the direct selling companies do not fall within the definition of the aforesaid PCMCS Act is concerned, a reference is hereby relevant to be made to letter dated 23.5.2002 (Annexure P-6) issued by the Government of India, Ministry of Consumer Affairs, Food & Public Distribution Department of Consumer Affairs, addressed to the petitioner pursuant to the information sought by him on the basis of observation of the Apex Court, in para no.3 of it, as to the point in issue, which reads as follows:-

> "2 XX XX XX XX
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> "3 The provisions of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 seek to ban the promotion or conduct of Prize Chits and Money Circulation Schemes. The Act provides for penalties for contravening its provisions and for other offences in connection with Prize Chits or Money Circulation Schemes including offences by companies. The provisions of this Act had come up for scrutiny before the Hon'ble Supreme Court who have ruled that the " Net Work Marketing Plan" and Direct Sale of Goods and Services by the Direct Selling Companies, do not fall within the mischief of the aforesaid Act. If the Direct Selling Companies do their activities lawfully then their activities would not attract any of the provisions of the Prize Chits Act of 1978. This was also the

opinion expressed by the former Chief Justice of India Shri A.S.Anand and Justice A.M.Ahmedi that the functioning of M/s Frontier Trading in its " Net Work Marketing Plan" does not amount to committing any offence under the Prize Chits and Money Circulation Schemes (Banning) Act, 1978."

12 That apart, Shri V.Sreenivasa Prasad, Minister of State, Ministry of Consumer Affairs, Food and Public Distribution made a statement on 20.12.2002, in Parliament in reply to Unstarred Question No.4875 with respect to Direct Selling by Frontier Trading that a letter dated 8.4.2003 (Annexure P-8) issued by Government of India, Ministry of Consumer Affairs, Food and public Distribution, Department of Consumer Affairs, that agencies involved in the sale of goods through direct/multilevel marketing do not fall under the provisions of the Prize Chit and Money Circulation Scheme (Banning) Act, 1978.

13 Besides this, one more important factor, clinching the matter in issue, is that the prosecution, while submitting challan under section 173 (2), Code of Criminal Procedure, attached sales tax statement, income tax statement, invoice-cum-delivery challan and receipt (Annexure P-11 to P-14), respectively and other relevant documents pertaining to import of the goods legally for sale in India, which show transparency of the business and legitimate conduct of the petitioner, thereby attracting no offence under the aforementioned Act as has been held by the Hon'ble Supreme Court in para no.3 of the letter referred to above that "......If the Direct Selling Companies do their activities lawfully, then their activities would not attract any of the provisions of the Prize Chits Act of 1978".

14. The petitioner is engaged in carrying on its legitimate/lawful

business and commercial activity. It is not a money circulation scheme as defined in Section 2(c) of the Act. Therefore, the petitioner cannot be held liable to be prosecuted for the said offence.

15 Referring to acquittal of the petitioner (s) on the same set of allegations, learned counsel for the petitioner draws the attention of this court to the judgments rendered by the Chief Metropolitan Magistrate, Egmore, Chennai in CC No.11774/2003 titled The Inspector of Police Central Crime Branch, Egmore, Chennai versus Vasanthraj Pandit and 86 others, decided on 17.09.2004 and the Chief Judicial Magistrate at Nalgonda in Calendar Case No.2 of 2007 (in Cr.No.105 of 2002 of Nalgonda-1 Town P.S.) titled Complainant S.H.O.P.S. Nalgonda-1 Town, vs. Vasant Raj Pandit, decided on 14.9.2015.

16 Coming to the adding of Section 420 IPC, to revive cause of action and period of limitation, the prosecution was required to prove the offence of alleged cheating and forgery i.e., the element of deception, and misrepresentation, as enumerated therein, which are completely missing in the instant case. The FIR was registered on the statements of the customers/complainants, 37 in number, who have no-where stated in their statements that they were cheated or similar products shown to them were actually not supplied to them. A perusal of the statements of the complainants/customers shows that the products (sleeping mattresses) purchased by them did not give desired result, inasmuch as they were proved to be non-curing of back-ache disease to maintain their health. In fact, the prosecution picked up such complainants/customers, who could not build up their business on account of their inability to sell products of the company in the market. They even did not use the sleeping mattresses

allegedly purchased by them. After the purchase of the magnetic mattresses, the complainants/customers did not show any interest to build up their business which, in facts, requires strenuous and persistent efforts to enroll new members under them so as to sell their products and earn profits on the basis of points, in accordance with the ratio fixed in the plan of the company.

17 In fact, this business, on the face of it, is a smart one, for those distributors, who are, in reality, keen to gain extra monetary benefits by joining new distributors and selling their qualitative products in the market, enabling them to earn points assigned to each product and determine their incentives on the basis thereof. This business is so transparent that seminars are organised by the company under the able guidance of their highly experienced distributors, who give tips of the business as to how to carry it on, to new entrant distributors, desirous of flourishing their business and with their able assistance, they earn extra-incentives on the strength of their ability by not finding fault with the products being costly or not good for health.

18 Only on the basis of statements of the complainants/customers, who were idle and indolent, bearing in mind to earn easy money without doing hard work in their life, tried to lower down the reputation of the company stating that the price of the magnetic bed was higher and could not be sold in the market. It was not the compulsion, but it was their own choice to be an independent representative. Anybody can become independent representative. It is not a money circulation scheme. Rather, the entire concept of the company is based on selling products directly in the market through distributors or sub-distributors. Only a small percentage of persons

see the demonstration of the products and evaluate the utility thereof and buy the same. None of the customers made any complaint regarding utility of the magnetic bed, except the complainants/customers, who were interested to defame and harm the reputation of the company, picked up by the prosecution to strengthen its case, had stated that they were non-curable. Except bald allegations, no documentary evidence has been produced, contrary to their version. The factum of medicinal value of the magnetic bed is further fortified from letter dated 11.6.2001 (Annexure P-20) issued by the Indian Institute of Magnetotherapy affiliated to Medicinal Alternative (Almaata-1962), the contents of which, read as follows:-

> " The Japan Life Total Sleeping System is a medical device that uses Magnetotherapy as one of its forms of Alternative Medical Treatment and maintenance of good health.
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> Every single cell in the human body has a magnetic field of its own. While using the Total Sleeping System the human body receives a magnetic "Shower Effect" from all 3 components, i.e., the health pad, the health pillow and goose down comforter, which are fitted with bipolar magnets. This "Shower Effect" improves the functioning of the nervous system and stimulates both cellular activity and blood circulation. This magnetic "Shower Effect" also avoids clotting of blood, removes excess calcium cholestrol and other deposits from the blood. Magnetic waves pass through the cells and tissues and secondary currents are produced. These currents produce impacting heat that reduce pain, stiffness and swelling. Magnetotherapy regulates all the natural systems working in the body namely circulatory

nervous, respiratory, digestive, and genito-urinary. The Japan Life Total sleeping system also stimulates muscles memory.

Japan Life Total Sleeping System is a medical device sanctioned by the Health Ministries of Japan, Korea, Thailand and also the Ministry of Health Govt. of Maharastra. Japan Life India Corporation has worked closely with exports in the fields of medicine human science and technology. Tests carried out over the past 20 years in Japan, Europe, the USA and Korea have shown that magnets of the right strength, when applied to key acupressure points on the body have highly beneficial results"

Similar is the report (Annexure P-21) sent by Dr. T Krishna Murthy, N.D. Superintendent, Government Nature Cure Hospital Begumpet, Hyderabad vide letter dated 26.3.2002, which reads as under:-

" This is to certify that we have been treating in-patients of the above hospital with the Magnetic Acupressure Treatment Instruments (Japan Life Total Sleeping System) imported by Frontier Trading since June, 2001. The results that have been seen in the treatment of-

a. Mental Retardation

b. Pyelonephritis

c. Diabetes Mellitus

d. Gastric – Carcinoid Tumours

e. Myeloradiculopathy

proves that gives beneficial results for chronic deformed cases and can be within the framework of "Magnetotherapy" be called a “Medical Device” in alternate systems of medicines.”

19 No adverse material has been brought on the record on the basis of which, it could be determined that there was any allurement on the part of the company or the magnetic bed was ineffective on the health point of view, to constitute an offence of cheating against it or its functionaries by not providing original products to the distributors to sell them in the market. It is a transparent and lawful business. In the considered opinion of this court, this court does not find any deception or misrepresentation, which is essential for making out an offence under section 420 IPC against the petitioner.

20 It is also not the case of the prosecution that despite making payment of the magnetic bed by the complainants/customers, the same quality, as was shown, was actually not supplied to them. They were made aware of its use and utility, inasmuch as it has medicinal value. After considering the utility of sleeping mattresses, they built up an idea to purchase them with a view to keep them away from back-ache disease, but making no efforts at their ends, they could not join new members, earn incentives, and got the case registered against the petitioner being non-curable.

21 On these bald allegations from this angle, in my considered opinion, offence under section 420 IPC of cheating and forgery is not made out in any manner. The contention of the learned counsel appearing for the Union Territory, Chandigarh that it was a money circulation scheme and there was allurement on the part of the company by organising seminars or otherwise, with the sole motive to attract more customers for joining and selling its products to it showing them a path of green pasture, so as to make

them millionaires in a night, does not find force and is repelled being bereft of merit.

22 Undoubtedly, the petitioner is the proprietor of firm M/s Frontier Trading, selling products in the brand name labelled under "Japan Life India", a company marketed by it. Therefore, he was liable to be prosecuted in his personal capacity under PCMCS Act and Section 420 IPC. However, the contention raised by learned counsel for the respondent has been vehemently opposed by the other side submitting that firm M/s Frontier Trading, was not impleaded as a party to the lis. Therefore, the petitioner, in the absence of the company being arrayed as a party, cannot be prosecuted in his personal capacity, finds favour of this court.

23 In view of the discussion made above, all these petitions referred to above, succeed and are allowed qua the petitioner only. Impugned order dated 7.6.2016 (Annexure P-3) of the lower revisional court, setting aside order dated 02.12.2015 (Annexure P-2) of the trial court, discharging him of charges under sections 3 and 4 the PCMCS Act and Section 420 IPC, arising out of FIR No.280 dated 02.12.2002 registered at Police Station Sector 26, Chandigarh; impugned order dated 6.8.2016 (Annexure P-4) of the trial court, framing charges against him under the aforementioned sections of the PCMCS Act and 420 IPC and charge-sheet dated 6.8.2016 (Annexure P-5) are set aside.

30th , January, 2019 (RAMENDRA JAIN)
VK JUDGE

1. Whether speaking/reasoned Yes/No
2. Whether Reportable Yes/No