

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 818 of 2004

M.S. RAMCHANDRAN & ORS.

VS.

SANDIP META & ANR.

For the Petitioners : Mr. Sandipan Ganguly, Sr. Adv.
Ms. Sharmistha Ghosh, Adv.
Mr. Anirban Dutta, Adv.
Mr. S. Bhattacharya, Adv.
Mr. Victor Chatterjee, Adv.

For the Opposite Parties : Mr. Swapan Banerjee, Adv.
Mr. Suman De, Adv.

Hearing concluded on : 10th November, 2022

Judgement on : 14th November, 2022

Siddhartha Roy Chowdhury, J.:

1. This proceeding stems out of an application under Section 482 of the Cr.P.C., 1973 at the instance of the petitioners seeking order to quash the proceeding arising out of Complaint Case No. 858 of 2003 (State vs. Susanta Kumar Mal and 3 others) pending before the learned Additional Chief Judicial Magistrate, Sealdah, under Section 63 of the Standards of Weights and Measures Act, 1976 and under Section 51 of the Standards of Weights and Measures (Enforcement) Act, 1985 read with Section 74 of the Standards of Weights Act, 1976 and Section 62

of the Standards of Weights and Measures (Enforcement) Act, 1985 and for alleged violation of Rules 2(r) 4, 8, 9 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 read with Section 33 of the Standards of Weights and Measures (Enforcement) Act, 1985, and order passed therein including the order dated 9th February, 2005.

2. Briefly stated, the Indian Oil Company is a government Company and petitioner no. 1 was the Chairman of Indian Oil Corporation having its corporate office at Scope Complex Core-2, 7 Industrial Area, Lodhi Road, New Delhi-100003 who was involved in framing broad policies and dealing with policy matters of the Company, having no concern with the day to day affairs of the Company at any material point of time.
3. Petitioner no. 2 was General Manager of I.O.C. and was involved in dealing with policy matters of I.O.C. within the State of West Bengal having no concern with the day to day affairs of the Company.
4. It is contended that sometime in the month of December, 2003 the opposite no. 1, Sri Sandip Meta, Inspector Legal Metrology (Enforcement Wing, Head Quarter, Kolkata) without any lawful authority filed a petition of complaint before the learned Additional Chief Judicial Magistrate, Sealdah stating, inter alia, that in course of Enforcement raid on 11th September, 2003 at about 11.44 a.m. said Mr. Meta entered into the premises of M/s Hindusthan Motor Stores owned by Mr. Susanta Kr. Mal situated at 178/2B, A.P.C. Road, P.S. Shyampukur, Kolkata-700004 and disclosed his identity to Sri

Susanta Kr. Mal and asked him to produce some packages manufactured by Indian Oil Corporation. Mr. Meta claimed to have found one package of 500 ml. “SERVO SUPER” multigrade containing declaration of sale price as MRP Rs. 51/- instead of Rs. 51/- (inclusive all taxes) which was an infraction to Rule 2(r) of the SWM (PC) Rules, 1977. Even there was no space to declare the quantity of the content as per Rule 8 of the SWM (PC) Rules, 1977. The month and year of the manufacturing was printed on the opposite side of the space earmarked for such declaration regarding batch number and for that ambiguity Rule 9 of SWM (PC) Rules, 1977, was violated. The package comes within the meaning of “False Package”. There was violation of Section 39 of SWM Act and various rules made thereunder which goaded him to initiate the proceeding.

5. According to the complainant the petitioners who have been arrayed as accused persons in the said Complaint case committed offence violating provision of Section 4 of the SWM (PC) Rules, 1977.
6. Learned A.C.J.M., Sealdah upon receipt of complaint was pleased to issue summon upon the petitioners calling upon them to surrender to the jurisdiction of the learned Magistrate by 4th February, 2004. The said order has been challenged before this Court as well.
7. From the attending facts of the case it is admitted that the petitioner no. 1 is Chairman of Indian Oil Corporation and petitioner no. 2 is the General Manager of the said Corporation.
8. Mr. Sandipan Ganguly, learned Senior Advocate for the petitioners submits that the petitioners being the Chairman and Managing

Director of the Company are no way concerned with the day to day activities of the Company which do not pertain policy matter of the Company.

9. The Chairman or the General Manager of the Company is not supposed to look into the day to day affairs of the Company and as such they cannot be saddled with any criminal liability in absence of any averment in the petition of complaint as to how and in what manner the petitioners were responsible for the so called infraction of Law and Rules.
10. It is adverted that vicarious liability of the petitioners cannot be imputed automatically in absence of any statutory provision to that effect.
11. Mr. Sandipan Ganguly, learned Senior Counsel further submits that the provision of Section 74 of the Standards of Weights and Measures (Packaged and Commodities Act) is in pari materia with the provision of Section 141 of the Negotiable Instruments Act and such statutory provision raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a Company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the petition of complaint are made so as to make accused therein vicariously liable for the offence committed by the Company. In this case no averment was made as to how and in what manner the petitioners were responsible

for the conduct of business of the Company which is an essential requirement to initiate a proceeding in terms of Section 74 of the SWM Act, 1976, without this averment in the petition of complaint such requirement cannot be said to be satisfied. To buttress his argument Mr. Ganguly placed his reliance upon a decision of Hon'ble Supreme Court pronounced in the case of **S.M.S. PHARMACEUTICALS LTD. VS. NEETA BHALLA & ANR.** reported in **(2005) 8 SCC 89**.

12. Mr. Swapan Banerjee, learned Counsel representing the Opposite Party No. 1 refuting such contention submits that Chairman and the General Manger cannot escape their liability as they run the Company and it was their obligation to run the Corporation without violating the law of the land. The infraction of statutory provision of SWM Act and Rules made thereunder caused by the Indian Oil Corporation is sufficient to saddle both the petitioners with the vicarious liability. Mr. Banerjee further argued that this is the second offence committed by Indian Oil Corporation. Therefore, there is every reason to take the petitioners into task to prevent such violation of statutory provision in the interest of public at large.

13. Hon'ble Supreme Court in **S.M.S. PHARMACEUTICALS LTD. VS. NEETA BHALLA & ANR.** reported in **(2005) 8 SCC 89** held:-

"19. In view of the above discussion, our answers to the questions posed in the reference are as under:

(a) It is necessary to specifically aver in a complaint under [Section 141](#) that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This

averment is an essential requirement of [Section 141](#) and has to be made in a complaint. Without this averment being made in a complaint, the requirements of [Section 141](#) cannot be said to be satisfied.

(b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under [Section 141](#) of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of [Section 141](#) is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to Question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under [Section 141](#) of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under [Section 141](#). So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub- section (2) of [Section 141](#)."

Upon careful perusal of the petition of complaint I do not find any material demonstrating nexus between the petitioners and the alleged commission of offence. There is no whisper regarding the role played by the petitioners to indicate that they were in-charge of and responsible

to the Corporation relating to its day to day affairs when the alleged offence took place.

14. In this regard we can also profitably use the judgement of Hon'ble Supreme Court (unreported) pronounced in Criminal Appeal No. 1129 of 2006, Subhankar Biswas vs. Sandeep Meta wherein Hon'ble Supreme Court in identical situation was pleased to set aside the proceeding with the following observation:-

“Therefore in the absence of any specific averment regarding the role played by petitioner no. 1 M.B. Lal, who is the Chairman of the Corporation and there is nothing to indicate that he was in charge of and responsible to the Corporation relating to its day-to-day affairs of the Corporation at the time of commission of the alleged offence, the present application deserves to be allowed in part and the proceeding against the said petitioner no. 1 M.B. Lal is to be quashed.”

The appeal was directed against an order, rejecting the application under Section 482 of Cr.P.C. by a Co-ordinate Bench of this Court. In this case at hand also the allegation has been leveled against the Chairman and General Manager of the Company.

15. I have perused the judgement of Hon'ble Supreme Court wherein it has further been held:-

“It has to be borne in mind that in prosecutions in such like cases no roving enquiry is permissible and an obligation rests on the prosecution to give details so that the trial can proceed against them. We therefore of the opinion that the appeal qua the present appellant ought to succeed.”

16. Hon'ble Supreme Court in **SUBHANKAR BISWAS VS. SANDEEP META** reported in **(2011) 15 SCC 541** held:-

"5. After hearing both sides the High Court by its order of 24th March 2005 quashed the proceedings qua the Chairman Mr. H.B. Lal with the following observations:

"Therefore in the absence of any specific averment regarding the role played by Petitioner No. 1 M.B. Lal, who is the Chairman of the Corporation and there is nothing to indicate that he was in charge of and responsible to the Corporation relating to its day-to-day affairs of the Corporation at the time of commission of the alleged offence, the present application deserves to be allowed in part and the proceeding against the said Petitioner No. 1 M.B. Lal is to be quashed."

6. Today, before us, Mr. Pradeep Ghosh, the learned senior counsel for the Appellant, has argued that the allegations against the Chairman of the Company and the Appellant before us were identical and there was no distinction whatsoever between the two and the High Court having quashed the proceedings against the Chairman, a similar order ought to have followed for the Appellant as well.

7. Mr. Avijit Bhattacharjee, the learned Counsel for the Respondent-State, has however pointed out that the question as to the identity of the person(s) in charge of the day-to-day affairs of the Company was a matter of evidence and it was therefore imperative that the trial goes on.

8. We have considered the arguments advanced by the learned Counsel for the parties. We find absolutely no distinction between the case of the Chairman and the Appellant and the High Court has not brought out any distinction between the two. It has to be borne in mind that in

prosecutions in such like cases no roving enquiry is permissible and an obligation rests on the prosecution to give details so that (sic regarding) the persons responsible so that the trial can proceed against them. We are therefore of the opinion that the appeal qua the present Appellant ought to succeed.

9. We accordingly allow these appeals; set aside the order of the High Court insofar it goes against the Appellant and direct that the proceedings against the Appellant shall also stand quashed in all cases.”

17. It goes without saying that the Chairman or General Manager of the Company cannot be imputed automatically in absence of any statutory provision to that effect. They cannot be saddled with vicarious liability in absence of mandate of law.
18. In my opinion, if the criminal proceeding before the learned A.C.J.M., Sealdah being 858 of 2003 is allowed to continue against the petitioners it would be an abuse of process of law resulting into miscarriage of justice.
19. In my view it is a fit case to invoke the inherent power conferred under Section 482 of the Cr.P.C. to quash the proceeding as against the petitioners, which I accordingly do.
20. Thus the Revisional Application is disposed of.
21. Let a copy of the judgement be sent down to Additional Chief Judicial Magistrate, Sealdah, South 24 Parganas for information and necessary action.
22. Parties to act on server copy duly downloaded.

23. Urgent Photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)