

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 1369 of 2006

M.S. RAMCHANDRAN & ORS.
VS.
STATE OF WEST BENGAL

For the Petitioners : Mr. Manwendra Singh Yadav, Adv.

For the Opposite Party : Mr. Bidyut Roy, Adv.

Hearing concluded on : 13th September, 2022

Judgement on : 15th September, 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 of quashing the proceeding arising out of Complaint Case No. C-71 of 2005 (State vs. I.B.P. Company Limited and 4 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 which 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 October, 2004 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 13th August, 2004 at about 11.45 a.m. said Mr. Meta entered into the premises of M/s Enclave Service Station and authorized dealer of accused Oil Company at 91A Bagmari Road, Maniktala and disclosed identity to one Sri Sudipta Dey, an employee of said Service Station, asked him to submit some packages manufactured by Indian Oil Corporation. It was claimed to have been found that one package of 500 ml. "LS ST" I.B.P. Red lubricant

containing declaration sale price as MRP Rs. 58/- instead of Rs. 58/- (inclusive all taxes) causing 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 by the side of the declaration regarding batch number and for that ambiguity Rule 9 of SWM (PC) Rules, 1977, was violated which goaded him to initiate a 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 was pleased to issue summon upon the petitioners on 19th February, 2005, calling upon them to surrender to the jurisdiction of the learned Magistrate by 22nd March, 2005. 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 petitioner no. 3 Indian Oil Corporation and petitioner no. 2 is the General Manager of the said Corporation.
8. Mr. Manwendra Singh Yadav, learned Advocate for the petitioners submits that the petitioners being the Chairman and Managing Director of the Company and the company itself are no way concerned with the day to day activities of the Company which does not pertain policy matter.
9. According to Mr. Yadav, learned Advocate for the petitioners that 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 petitioner was responsible in the matter of granting loan to the opposite party.

10. Mr. Yadav, learned Advocate for the petitioners further submits that vicarious liability of the petitioners cannot be imputed automatically in absence of any statutory provision to that effect.

11. Mr. Yadav, learned Advocate for the petitioners relying upon the judgement of Hon'ble Supreme Court (unreported) pronounced in Criminal Appeal No. 1129 of 2006, Subhankar Biswas vs. Sandeep Meta submits that Hon'ble Supreme Court in indentical 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.

12. 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."
13. Mr. Bidyut Roy, learned Advocate representing the State candidly submits that the petitioners should not have been saddled with any liability for the alleged violation of rule as they are not supposed to get involved with such day to day activities.
14. 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.
15. On careful perusal of the petition of complaint, I do not find anywhere in the petition demonstrating any nexus between the petitioners and alleged commission of offence or specific averment that such offence were committed with the consent or connivance with the petitioners or any such offence was attributable to the neglect on the part of the Chairman and General Manager of the Company.
16. In my opinion, if the criminal proceeding before the learned A.C.J.M., Sealdah being C-71 of 2005 if is allowed to continue against the petitioners it would be an abuse of process of law resulting into miscarriage of justice.

17. Under such facts and circumstances of the case I am of the view that 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. It is pertinent to mention here that admittedly I.B.P. Company Limited has been merged with I.O.C.
18. Thus the Revisional Application is disposed of.
19. Let a copy of the judgement be sent down to Additional Chief Judicial Magistrate, Sealdah, 24th South Parganas for information and necessary action.
20. Parties to act on server copy duly downloaded.
21. 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.)