

30.11.2022
Item No. 20
BR

CRR 3550 of 2007
With
CRAN 4 of 2010

**In the matter of : Amarjit Singh Bhatia &
Ors.**

Mr. Sourav Chatterjee,
Mr. Bimalendu Das,
Mr. Shomrik Das For the petitioners

Mr. N.P.Agarwal,
Mr. Pratick Bose ... for the State

This revisional application under Section 482 of Cr P C is directed to quash the proceeding being CR Case No. 68 of 2007 pending before the learned Chief Judicial Magistrate, Paschim Medinipur together with the order passed in the said proceeding from time to time including the orders passed on 1st February, 2007, 13th March, 2007, 18th April, 2004 and 5th June, 2007.

Briefly stated Inspector of Legal Metrology, Midnapore Sadar, Unit No. 132 filed a petition of complaint before the learned Chief Judicial Magistrate against these officers of Bharat Petroleum Corporation Ltd. (hereinafter referred to as the BPCL) stating , inter alia, that on 25th November, 2006 the complainant received information that on 27th September, 2006 a letter by fax authored by Mr. P.M.Jha , the Territory Coordinator (Retail) , Kolkata of M/s. BPCL disclosing , inter alia that on 1st June, 2006 Mr. Partha Chanda , Senior Manager, Quality

Control Cell (East) , Mr. V. Darlong, Executive Sales (Retail) all of M/s. BPCL Haldia and Calcutta held inspection and detected short delivery as well as unauthorised fitting in dispensing units runs by M/s MSGC Kundu dealer of BPCL at Battala Chowk , Medinipur and thereby terminating the said dealership so far as enjoyed by M/s. MSGC Kundu without intimating anything instantly about such offenses to the concerned authority which ought to have been done within seven days as per requirement of Section 61 of the Standards of Weights and Measures (ENF) Act, 1985. It is further adverted that short delivery of any article in any transaction (in trade and commerce) contravened Section 39 (2) (1) of the aforesaid Act which is punishable offense. According to the complainant the Officer-in-Charge of BPCL committed offense within the meaning of Section 61 and 62 of the said Act by not intimating the complainant incidentally about the offense allegedly committed by the dealership. By terminating a dealership the officials of BPCL held the said errant dealer to avoid legal bindings as such learned Chief Judicial Magistrate registered a petition of complaint and he was pleased to take cognisance .

Mr. Sourav Chatterjee, learned counsel representing the petitioner drawing my attention to the provision of Section 61 and 62 of the Standards of Weights and Measures (ENF) Act submits that the employer should be saddled with criminal liability within the meaning of Section 61 for abetting an offense under the said Act . Here the BPCL being the employer has not been impleaded as an accused.

Section 62 of the said Act speaks about offense by companies, sub-Section 1 of Section 62

says that if the person committing an offense under this Act is a company, every person who, at the time the offense was committed, was in charge of, and was responsible for conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offense and shall be liable to be proceeded against and punished accordingly, provided that if he proves that the offense was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offense the provision of Sub-section 1 shall not be made applicable”.

From the attending facts of the case, particularly the letter dated 25th September, 2006 it appears that one of the accused persons who is the petitioner no. 5 before this Court, informed the complainant about the mischief committed by dealer M/s. MSGC Kundu which was unveiled in course of an inspection on 1st of June, 2006 short delivery as well as unauthorised fitting in dispensing pump was detected and the company then and there terminated the dealership. But fact remains that the Territory Coordinator (Retail), Mr. P.M.Jha did not inform the matter to the complainant within seven days from the date of detection of mischief committed by the dealer and the action that was taken by the BPCL.

The petition of complaint, in my humble opinion is not maintainable in absence of company being impleaded as one of the accused persons. According to the complainant the proviso appended to Sub-section 1 of Section 61 cannot be extended to the accused persons because the incident was not brought to the notice of the complainant within seven days. The company, as it is appearing from the

attending facts of the case took steps against the erring dealer and terminated the dealership which cannot be termed as extending certain protection or making any escape route for the erring dealer to avoid penal action under Section 39 (2) (1) of SW and M (ENF.) Act., 1985 only failure on the part of the accused persons to intimate the complainant about the mischief committed by the dealer. The accused persons should not be saddled with any criminal liability, particularly in the backdrop of the fact that in no time company took drastic action against the dealer by terminating the dealership. That apart, in the petition of complaint it has not been stated as to how these accused persons were responsible in day to day business of the company.

Under such circumstances, I am not inclined to subscribe to the pedantic view taken by the complainant in bringing the criminal proceeding against the Officers of BPCL who are petitioners before this Court for their failure to intimate the complainant within seven days. The complaint would have been appreciated, had there been no action on the part of the company or its officials against the erring dealer.

In my humble opinion learned Chief Judicial Magistrate has also failed to exercise jurisdiction vested upon the learned trial Court in its proper spirit. The proceeding, if it is allowed to remain in force would amount to, not only the abuse of process of law, but miscarriage of justice as well. Invoking the jurisdiction under Section 482 of the Cr P C, I am inclined to quash the proceeding pending before the learned Chief Judicial Magistrate, Purba Medinipur.

Let a copy of the order be sent to the learned trial Court for information and necessary action. Application if any stands disposed of.

All parties are to act on the server copy of this order duly downloaded.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Siddhartha Roy Chowdhury, J.)