IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36015 of 2022

Arising Out of PS. Case No.-1 Year-2009 Thana- MUZFFARPUR COMPLAINT CASE District- Muzaffarpur

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Lakhpat Rai Agarwal @ Lakhpat Ram Agarwal, S/O-Late Shivlal Agarwal, Resident of M-285, Grater Kailash, P.S.-Grater Kailash, District- South Delhi, Delhi.

... ... Petitioner

Versus

1. The State of Bihar
2. The Deputy Agriculture Officer (Plant Protection), Muzaffarpur. Bihar.

... ... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Mohit Agarwal, Advocate Mr. Ashok Poddar, Advocate
For the State	:	Mr. Parmeshwar Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 11-07-2023

Heard Sri Mohit Agrawal and Sri Ashok Poddar, learned counsel for the petitioner and Sri Parmeshwar Mehta, learned counsel for the State.

2. This application has been filed for quashing of the order dated 05.03.2022 passed by learned Additional Sessions Judge, IX, Muzaffarpur, in Criminal Revision No.246 of 2010, by which the learned Court below has rejected the Revision Application filed by the petitioner and affirmed the order dated 22.12.2009 passed by learned S.D.J.M., East, Muzaffarpur, in Complaint Case No.01 of 2009 whereby and whereunder the learned Magistrate has taken cognizance against the petitioner for the offence under Section 29 of the Insecticides Act, 1968, under Section 420 of the Indian Penal Code and under Section 7 of the Essential Commodities Act, 1955.

3. As per the complaint case, on 23.02.2008, M/S. Krishi Rasayan Exports Private Limited having its production unit at Bela Industrial Area, MIG, Muzaffarpur was inspected and sample of insecticide was collected for testing and sent for examination at State Pesticide Testing Laboratory, Mithapur, Patna. A report was received in the office of the opposite party no.2 wherein it was reported that the said insecticide was found misbranded. Thereafter, a show-cause notice was issued to the Company. A reply to the show-cause has been filed by the company wherein it has been requested to get the sample of insecticide re-examined at Central Insecticide Laboratory, Faridabad, Haryana. Accordingly, the sample of insecticide was sent for re-examination at the Central Insecticide Laboratory, Faridabad, Haryana. A report dated 17.04.2009 was received in the office of the opposite party no.2 in which it has been reported that the sample of insecticide was found misbranded. Again, a show-cause was issued to the company but no reply was filed by the company. After being satisfied with the materials on record, the competent authority accorded permission to initiate prosecution against the company. Accordingly, the present complaint case has been filed.

4. Learned counsel for the petitioner submits that the allegations made in the complaint petition against the petitioner do not constitute any offence as the petitioner has not been attached with the company in any manner on the date of inspection. He further submits that from perusal of the complaint petition, it appears that the petitioner has been made accused with an allegation that he was holding the post of the Director of M/S. Krishi Rasayan Exports Private Limited (hereinafter to be referred as “the Company") but the real fact is that on the date of inspection i.e. on 23.02.2008 the petitioner was not holding the post of Director of the said company rather he had retired/resigned from the said company on 12.08.1997 itself and another person was inducted in the said company in place of the petitioner on the same day and in this regard Form-32 was also filed in the office of the Registrar of the Companies on 12.08.1997, which is evident from Annexure-2 annexed with the application.

5. Learned counsel for the petitioner further submits that the petitioner after having resigned from the company on 12.08.1997 was not connected with the Company in any manner and therefore, he cannot be held responsible or accountable for the conduct of the business of the company. The company was inspected after more than 10 years of the retirement/resignation of the petitioner from the post of the Director of the company. He further submits that the petitioner has not been made as an accused in personal capacity but it has been mentioned in the complaint petition that being the Director of the company he was the person in-charge for the conduct of the business of the said company.

6. Learned counsel for the petitioner also submits that the company was granted license for manufacture of different insecticides and the same was extended time to time. The license of manufacture was issued in Form-V under the provisions of Rule- 9(3) of the Insecticides Rules, 1971 wherein it has been specifically mentioned in para-2 that the company is granted license to manufacture 151 insecticides listed below, in the premises situated at Bela Industrial Area, MIG, Muzaffarpur, Bihar under the direction and supervision of the Expert Staff. A renewed license in the name of the company was issued by the licensing authority on 14.05.2007. Therefore, it is clear that the Expert Staff is responsible and accountable for any defect or omission found in the manufactured products i.e. insecticides, if any.

7. Learned counsel for the petitioner further submits that from reading of Section-33 of the Insecticides Act, 1968 it would be clear that the person who at the time of commission of offence was either in-charge or was responsible for the conduct of the business of the said company would be deemed to be guilty for the offence. He further submits that after the report of the sample was made available, the Director, Agriculture-cum-Controller of Insecticide, Government of Bihar, issued an order dated 17.07.2009 by which he banned sale of two products namely, Fervelate 0.4% DP and Trizophos 40% EC of the said company. Against the said order, the company preferred an appeal before the Secretary, Department of Agriculture, Government of Bihar, Patna and the appellate authority vide order dated 21.12.2011 allowed the appeal and the order of ban on sale of said insecticides was set aside by holding that the sampling and testing of the said insecticides were not done by adhering to the proper procedure as prescribed under the Insecticides Act, 1968. Thus, the very foundation of lodging of the complaint case had vanished by the order of the appellate authority.

8. Learned counsel for the petitioner has invited the attention of this Court to letter dated 27.11.2002 issued by the President of Pesticides Manufacturers & Formulators Association of India, by which it has been informed that the Additional Secretary, Ministry of Agriculture, Government of India, vide its letter dated 01.05.2002 requested all the Directors of Agriculture not to include the name of the Chairman-cum-Managing Director in the case filed by Insecticide Inspector and the name should be deleted for the legal cases in the matter of Insecticides Act and Rules. He further submits that the complainant without examining the record of the case has wrongly designated the petitioner to be the Proprietor-cum-Chairman of the company for the period in question ignoring the fact that the petitioner was not the Chairman of the said company.

9. Learned counsel for the petitioner further submits that the opposite party no.2 has only taken consent for prosecution against the company and not against the petitioner and therefore, the order taking cognizance against the petitioner is bad in law. He further submits that Section 2-A of the Essential Commodities Act, 1968 provides that the essential commodity means a commodity specified in the Schedule but insecticide does not find place in the Schedule provided in the Act and therefore, insecticides are not an essential commodity and the provisions of the Essential Commodities Act, 1955 does not apply in the present case.

10. By making the aforesaid submissions, learned counsel for the petitioner submits that the order taking cognizance against the petitioner is bad in law and fit to be quashed.

11. Learned counsel for the State has relied upon the averments made in the counter affidavit filed by the State. The basic argument of learned counsel for the State is that the sample of the petitioner's company has failed and therefore, after sanction, the prosecution has been launched. He further submits that there is no illegality and infirmity in the order passed by the Revisional Court as the Revisional Court has taken into consideration the fact that the grounds taken by the petitioner are not fit to be considered. The grounds of the defence can be taken only at the stage of trial when both the sides will be afforded opportunity to raise and meet the grounds. He also submits that the sanction for prosecution has already been accorded by the competent authority which itself shows that prior to lodging the case, all legal formalities have been followed.

12. By making the aforesaid submissions, learned counsel for the State submits that this Court may not interfere with the impugned order and dismiss this application.

13. I have considered the submissions of the parties and also perused the materials on record. The first submission made by learned counsel for the petitioner is that on the date of inspection of the company i.e. on 23.02.2008 the petitioner was not holding the post of Director of the said company rather he had retired/resigned from the said company on 12.08.1997 itself and therefore, the prosecution of the petitioner is illegal in view of Section- 33 of the Insecticides Act, 1968 as at the time of inspection the petitioner was not the in-charge of the said company.

14. From the record, it appears that the company was inspected on 23.02.2008 and the complaint was filed on 08.12.2009 whereas, the petitioner had resigned/retired from the post of Director of the said Company on 12.08.1997 i.e. more than 10 years before the inspection of the company. It will be useful to quote Section- 33 of the Insecticides Act, 1968, which reads as under:-

> ***"33. Offences by companies****:- (1) Whenever an offence under this Act has been committed*

by a company, every person who at the time the offence was committed, was in charge of, or 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 such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an 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."

15. From reading of the aforesaid section, it appears that it is only the person, who at the time of offence, was in-charge or was responsible to the company for the conduct of the business of the company, shall be deemed to have been guilty of the offence. In the present case, the petitioner has annexed Form-32 as Annexure-2 to this application, which indicates that the petitioner had resigned from the Directorship of the Company on 12.08.1997 and new Director of the said company was inducted on the same day.

16. In the case of ***Anita Malhotra vs. Apparel Export Promotion Council*** reported in ***(2012) 1 SCC 520*** the Hon'ble Supreme Court in paragraph nos.16, 17, 20, 21 and 23 has held as under:-

> *"16. A reading of the above provisions make it clear that there is a statutory requirement under Section 159 of the Companies Act that every Company having a share capital shall have to file with the Registrar of Companies an annual return which include details of the existing Directors. The provisions of the Companies Act require the annual return to be made available by a company for inspection (S. 163) as well as Section 610 which entitles any person to inspect documents kept by the Registrar of Companies. The High Court committed an error in ignoring Section 74 of the Indian Evidence Act, 1872. Sub-section (1) of Section 74 refers to public documents and sub-section(2) provides that public documents include "public records kept in any State of private documents". A conjoint reading of*

Sections 159, 163 and 610(3) of the Companies Act, 1956 read with sub-section (2) of Section 74 of the Indian Evidence Act, 1872 make it clear that a certified copy of annual return is a public document and the contrary conclusion arrived at by the High Court cannot be sustained.

17. The Annual Return dated 30.09.1999 which provides the details about the existing Directors clearly show that the appellant was not a Director at the relevant time. Had the High Court considered the contents of the certified copy of the annual return dated 30.09.1999 filed by the Company which clearly shows that the appellant herein (A3) has not been shown as Director of the Company, it could have quashed the criminal proceedings insofar as A3 is concerned.

20. As rightly stated so, though it is not proper for the High Court to consider the defence of the accused or conduct a roving enquiry in respect of merit of the accusation, but if on the face of the document which is beyond suspicion or doubt placed by the accused and if it is considered that the accusation against her cannot stand, in such a matter, in order to prevent injustice or abuse of process, it is incumbent on the High Court to look into those document/documents which have a bearing on the matter even at the initial stage and grant relief to the person concerned by exercising jurisdiction under

Section 482 of the Code.

21. *Inasmuch as the certified copy of the annual return dated 30.09.1999 is a public document, more particularly, in view of the provisions of the Companies Act, 1956 read with Section 74(2) of the Indian Evidence Act, 1872, we hold that the appellant has validly resigned from the Directorship of the Company even in the year 1998 and she cannot be held responsible for the dishonour of the cheques issued in the year 2004.*

23. *In the light of the above discussion and of the fact that the appellant has established that she had resigned from the Company as a Director in 1998, well before the relevant date, namely, in the year 2004, when the cheques were issued, the High Court, in the light of the acceptable materials such as certified copy of annual return dated 30.09.1999 and Form 32 ought to have exercised its jurisdiction under Section 482 and quashed the criminal proceedings. We are unable to accept the reasoning of the High Court and we are satisfied that the appellant has made out a case for quashing the criminal proceedings. Consequently, the criminal complaint No.993/1 of 2005 on the file of ACMM, New Delhi, insofar as the appellant herein (A3) is quashed and the appeal is allowed."*

17. In the present case also, the petitioner has established that he had resigned from the post of the Director of the company on 12.08.1997, well before the relevant date i.e. 23.02.2008 when the company was said to have been inspected and in view of unimpeachable document i.e. Form-32, it can safely be concluded that the petitioner was not the In-charge of the affairs of the company on the date of inspection which is requirement under Section- 33 of the Insecticides Act, 1968. Therefore, in the opinion of this Court, the prosecution of the petitioner is an abuse of the process of the Court and is fit to be quashed.

18. So far as the other grounds raised by the petitioner are concerned, the same are not required to be gone into as the petitioner can succeed on the first ground raised by him.

19. In view of the aforesaid discussions, this application is allowed. Accordingly, the Complaint Case No. 01 of 2009 registered for the offences under Section 29 of the Insecticides Act, 1968, under Section 420 of the Indian Penal Code and under Section 7 of the Essential Commodities Act, 1955 and all consequential proceedings arising out of the aforesaid Complaint Case including the order dated 05.03.2022 passed by learned Additional Sessions Judge, IX, Muzaffarpur, in Criminal Revision No.246 of 2010 and order dated 22.12.2009 passed by learned S.D.J.M., East, Muzaffarpur are quashed with respect to the present petitioner only.

(Sandeep Kumar, J)

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AFR/NAFR	A.F.R.
CAV DATE	N/A.
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