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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.18039 of 2024
Date of decision: 13.11.2024

Maruti Prasad Panda ... Petitioner

Vs.

State of Punjab ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Reshabh Bajaj, Advocate,
for the petitioner.

Mr. Amandeep Singh Samra, AAG, Punjab,
for the respondent-State.

MANISHA BATRA, J. (Oral)

1. In this petition filed under Section 482 of the Code of Criminal Procedure (For short “Code”), the petitioner is seeking quashing of Criminal Complaint bearing No.COMA/47847 of 2023 titled as ‘State Vs. Rotesk Kumar and another’ and the order dated 04.03.2024 passed by the Court of learned Chief Judicial Magistrate, Ludhiana, whereby he was ordered to be summoned as additional accused.
2. Brief facts of the case for the purpose of disposal of instant petition are that the aforementioned complaint has been filed by the

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complainant-State through Food Safety Officer on the allegations that on 04.01.2023, the complainant along with other witnesses had inspected a house bearing No.6202/R-2, Agwar Khawaza Bajju, Near Prince Karyana Store, Jagraon wherein the accused Rotesch Kumar was found in possession of 16 litres of Nestle Shahi Ghee meant for sale for human consumption. After disclosing his identity, the complainant demanded a sample of ghee for analysing the same after giving requisite notice to the abovesaid accused who was also asked to disclose the details of the person who was responsible for conduct of business in the premises but he failed to produce any document in this regard. The complainant then purchased 4.1 litres ghee for analysis from Rotesch Kumar after making payment of an amount of Rs.2200/-. Samples were drawn from the same and were properly sealed. Spot memo was prepared. The sample was sent to Food Analyst, Kharar. As per the report received, the sample was unsafe and misleading. The designated officer granted opportunity to the accused Rotesch Kumar and Nestle India Ltd. to file appeal against the findings given by him. They were supplied copies of analysis report of the product. A complaint was registered. The petitioner and the co-accused were given an opportunity for reanalysis of the sample from Referral Food Laboratory but they failed to avail that opportunity. As the accused Rotesch Kumar being responsible for conduct of the business and Nestle India Limited being manufacturer had committed violation of

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Food Safety and Standards Act, 2006 (For short 'FSSA'), therefore action was sought to be taken against them by filing this complaint.

3. On presentation of the complaint in the Court, the learned Chief Judicial Magistrate, Ludhiana by dispensing with the requirement of recording preliminary evidence and by observing that there were sufficient grounds to proceed, issued process against the accused Rotesch Kumar and responsible person of Nestle India Ltd., for commission of offences punishable under Section 53 and 59 of FSSA.

4. Subsequently an application under Section 319 of the Code was filed by the complainant for summoning the present petitioner as an additional accused by taking a plea that he was the person in-charge and responsible for complying with the provisions of FSSA. The said application was allowed vide order dated 04.03.2024 and the present petitioner was ordered to be summoned. As such, feeling aggrieved, the present petition has been filed.

5. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law as while passing the same, the learned Magistrate ignored the fact that petitioner is merely posted as a Quality Manager with Nestle India Limited company and is only an employee thereof. The learned trial Court summoned him in his individual capacity without arraying the company as a party to the complaint. It is submitted that while passing the impugned order, the

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learned trial Court did not consider the mandate of Section 319 of the Code in a proper perspective and ignored that he has been sought to be held vicariously liable for an offence which was not even committed by his company.

6. It is further argued that criminal prosecution has been launched against him in an illegal and arbitrary manner. While filing the complaint, provisions of FSSA have not been complied with. He has been substituted for the accused No.2 in order to cover up the lapses in the sanction order dated 01.08.2023. There is undue and inordinate delay in lodging of the complaint which itself is time barred. With these broad submissions, it is urged that the impugned order is liable to be set aside and the petition deserves to be allowed. To fortify his argument, learned counsel for the petitioner placed reliance upon authorities cited as **Hindustan Unilever Limited v. The State of Madhya Pradesh**, 2021 (1) R.C.R. (Criminal) 137; **Mr P.V.G. Srinivasa Rao v. State of TS.**, 2023 (2) Andh LD (Criminal) 513; **Neeraj Shastri and another v. State of J&K and another**, CRMC No.291 of 2016 decided on 16.02.2023 passed by the High Court of Jammu and Kashmir; **Ravinder Kumar Agarwal v. State of Madhya Pradesh and others**, 2023 ILR (M.P.) 1515 and **Aneeta Hada v. M/s. Godfather Travels and Tours Pvt. Ltd.**, 2012 (5) SCC 661.

7. The respondent-State has filed reply by way of affidavit. It is

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submitted therein and learned State counsel has argued that the petition under Section 482 of the Code is not maintainable as the proper remedy for the petitioner was to file a revision petition. It is further argued that since Nestle India Limited is represented by the petitioner, hence, there was no need to array this company as an accused. It is further argued that the order passed by learned Magistrate is well reasoned. Proper sanction had been obtained for initiating prosecution. Therefore, it is urged that there is no merit in the petition and it is liable to be dismissed on the ground of maintainability as well as on merits.

8. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record.

9. So far as the question of maintainability of the petition is concerned, no doubt, an order passed under Section 319 of the Code is revisable order and for challenging such an order, a revision under Section 397 of the Code is to be filed. However, it is also well settled proposition of law that inherent power of the High Court under Section 482 of the Code does not stand repealed when the revisional power under Section 397 overlaps. In **Raj Kapoor and others v. State (Delhi Administration) and others**, AIR 1980 (Supreme Court) 258, it was observed that nothing in the Code, not even Section 397 affected the amplitude of the inherent power preserved in so many terms by the

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language of Section 482. There was no total ban on the exercise of inherent power where abuse of process of the Court or extraordinary situation excites the jurisdiction of the Court. Reference can also be made to **Madhu Limaye v. State of Maharashtra**, AIR 1978, Supreme Court 47, wherein it was observed by Hon'ble Supreme Court that in case, the impugned order brings about a situation which is an abuse of process of Court or for the purpose of securing the ends of justice, interference by High Court is necessary, it can exercise its inherent powers to quash an interlocutory order. Reference can also be made to **Prabhu Chawla v. State of Rajasthan and another**, 2016 (4) R.C.R. (Criminal) 270, wherein it was observed that availability of remedy under Section 397 of Code would not make a petition under Section 482 of the Code to be not maintainable. Reference can also be made to **R.P. Kapur v. State of Punjab**, AIR 1960 Supreme Court 866 and **Som Mittal v. Govt. of Karnataka**, 2008 (2) RCR (Criminal) 92, wherein it was observed that only because a revision petition is maintainable, is not a ground by itself to constitute a bar for entertaining an application under Section 482 of the Code. In view of the above discussed position of law, it is explicit that there is no total ban on the exercise of inherent power of this Court under Section 482 of the Code irrespective of the fact that the remedy under Section 397 of Code thereof is also available.

10. Now reverting to the facts of the case. The complainant in this

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case was filed by the respondent originally against Rotesh Kumar son of Mange Ram and responsible person of Nestle India Limited, Ludhiana. During the pendency of the complaint, the respondent filed an application for including the name of the petitioner as responsible person of Nestle India Limited, Ludhiana and for issuing notice against him. Vide order dated 10.08.2023, process had already been issued against Rotesh Kumar and responsible person of Nestle India Limited for commission of offences punishable under Sections 53 and 59 of FSSA. The learned Magistrate on receipt of the application by the complainant straightaway proceeded to issue notice to the present petitioner.

11. The question that arises for consideration is as to whether the present petitioner could be arraigned as an accused or summoned as such without impleading the company i.e. Nestle India Limited as a party to the complaint. The plea as taken by the respondent is that since Nestle India Limited had been prosecuted through its responsible person, therefore, there was no need to implead the company individually as an accused and since the petitioner is Quality Manager of the company hence, he was liable to be prosecuted being responsible for affairs of the company. In **Hindustan Unilever Limited's** case (Supra), the company that was manufacturing a particular brand of ghee that was found to be adulterated, was not prosecuted and the complaint was filed against the directors of the company as well as another company from the godown of

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which the sample of ghee was taken. It was observed that in the absence of company, nominated person could not be convicted or vice versa. In **Mr P.V.G. Srinivasa Rao's** case (Supra), prosecution was launched against the employee of the company who was operating the business without arraying the company as an accused. It was observed that no prosecution initiated against any employee or manager or person incharge of company would sustain unless, the company was made as an accused. In **Neeraj Shastri and another's** case (Supra), it was observed that without impleading the firm as an accused, the criminal prosecution against the partners of the manufacturing firm could not proceed. In **Ravinder Kumar Agarwal's** case (supra), prosecution was launched against the director of the company under the provisions of FSSA without impleading the company. It was observed by High Court of Madhya Pradesh that the directors could not be prosecuted in isolation where company had not been made an accused. In **Aneeta Hada's** case (supra), the Hon'ble Supreme Court while dealing with the provisions of Section 141 of Negotiable Instruments Act which are pari materia with the provisions of Section 66 of FSSA, had observed that directors could not be prosecuted without the company being arrayed as accused and for prosecuting a director, arraigning of company as an accused was imperative. On a perusal of record, it is revealed that in the complaint filed by the respondent (Annexure P-1), Nestle India Limited had not

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been arrayed as an accused and simply responsible person of this company, who was manufacturer of the adulterated product was arraigned. By passing the order dated 04.03.2024, the learned Magistrate simply on the asking of respondent-complainant included the name of the present petitioner who is posted as Quality Manager in the company as responsible person and as accused. In view of the ratio of law as laid down in the above authorities, it is clear that since Nestle India Limited had not been arraigned as accused though its prosecution was necessary before initiating any action as against its employee/responsible person or person responsible for conducting business and affairs of the company, therefore, the present petitioner could not be made as an accused. More so, there is no allegation in the complaint as to the role of the petitioner in committing the alleged offence. Since the arraigning of Nestle India Limited as an accused was imperative but it had not been made so, therefore, in the considered opinion of this Court, the impugned order whereby the name of the petitioner had been included as an accused in the complaint and process was issued against him was not sustainable and is liable to be set aside. As per the discussion as made above, the petition is allowed and the proceedings initiated against the petitioner are hereby quashed by holding that without making the company as prime accused, the petitioner could not be made as such.

12. It is, however, clarified that observations made hereinabove

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shall not be construed as an expression of opinion on the merits of the case.

13.11.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No