THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Reserved on : 10.05.2024
1. CRR-1604-2013 (O&M)
Pronounced on: 23.05.2024

Sukhwinder Singh Bhambri .....Petitioner

Versus

C.B.I., Chandigarh .....Respondent

2. CRR-1627-2013 (O&M)

Radhe Sham Aggarwal and another .....Petitioners

Versus

Central Bureau of Investigation, Chandigarh .....Respondent

3. CRR-1642-2013 (O&M)

Navinder Pal Chpra and others .....Petitioners

Versus

Central Bureau of Investigation .....Respondent

4. CRR-1665-2013 (O&M)

Ranjit Pal Chopra and another .....Petitioners

Versus

Central Bureau of Investigation .....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. A.P.S. Deol, Sr. Advocate with
Mr. Arun Kumar Goyat, Advocate,
Mr. Himmat Singh Deol, Advocate,
Mr. Vishal R. Lamba, Advocate,
Mr. Karan Kalia, Advocate and
Ms. Swati Katoch, Advocate
for the petitioner (in CRR-1604-2013).

Mr. R.K. Nehra, Sr. Advocate with
Mr. Anish Gupta, Advocate and

Mr. Amandeep Singh, Advocate
for the petitioners (in CRR-1642-2013).

Mr. Arun Kumar Goyat, Advocate as Amicus Curiae
for the petitioners (in CRR-1627-2013
and CRR-1665-2013).

Ms. Shubhra Singh, Special Public Prosecutor
for the respondent-CBI.

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MANJARI NEHRU KAUL, J.

1. This order shall dispose of above referred four petitions as similar questions of facts and law are involved in all the cases.

1(a). The petitioners-accused are challenging the judgments of conviction and orders of sentence dated 06.12.2010 passed by learned Special Magistrate, CBI, Patiala in case RC No.28(A) of 2001 under Sections 120-B of the IPC and the Essential Commodities Act, 1955 (hereinafter referred to as 'the Act') registered at Police Station CBI, ACB, Chandigarh, whereby they were convicted and sentenced to undergo RI for 01 year under Sections 3 and 7 of the Act read with Section 5(iii) of the Furnace Oil (Fixation of Ceiling Prices and Distribution) Order, 1974 (hereinafter referred to as '1974 Order'), and order dated 08.05.2013 passed by learned Special Judge, CBI, Punjab, Patiala vide which their appeals against their conviction, were dismissed.

Submissions on behalf of the petitioners

2. Mr. A.P.S. Deol, Sr. Advocate and Mr. R.K. Nehra, Sr. Advocate along with Mr. Arun Kumar Goyat, Advocate as Amicus

Curiae, appearing for the petitioners have challenged the impugned orders on the following grounds:-

2(a). that the learned Court erred in passing the impugned judgments and orders, following an exhaustive trial spanning nearly a decade, which resulted in the petitioners being convicted by the learned Special Magistrate, CBI, Patiala for offences under Sections 3 and 7 of the Act read with Section 5(iii) of the 1974 Order;

2(b). that the petitioners were arrayed in the instant case only in their capacity as the partners/directors of the firm/company, however, they had been convicted in the absence of any finding recorded by the learned Trial Court qua the conviction of their firm/company;

2(c). that Section 10 of the Act provides for offences committed by the companies, by placing principal liability on the company and vicarious liability on its behalf on the officers of the company. Once, the principal offender i.e. the firm/company had not been convicted in this case, the conviction of the petitioners which only arose out of their vicarious liability on behalf of the principal offender could not be sustained. Reliance has been placed on ***Aneeta Hada Vs. M/s Godfather Travels & Tours Pvt. Ltd. : 2012 (5) SCC 661; Hindustan Unilever Limited Vs. State of Madhya Pradesh : 2020 (10) SCC 751*** and ***S.K. Alagh Vs. State of U.P. : 2008 (5) SCC 662;***

2(d). that even otherwise the petitioners were charged for contravention of the 1974 Order, however, the same was rescinded by the Government of India vide Notification No.SO49C on 31.07.1998, therefore, restriction on the sale and control of furnace oil ceased to be in force at the time when the FIR in question was registered in August, 2001. Reliance has been placed upon ***State of UP Vs. Seth Jagmandar Dass : AIR 1954 SC 683 and Rayala Corporation Pvt. Ltd. Vs. Directorate of Enforcement : 1970 AIR SC 494***;

2(e). that the petitioners had faced the harrowing agony of protracted trial for more than 24 years and given the fact that they were first time offenders, a prayer has also been made before this Court to adopt a lenient view;

Learned senior counsel for the petitioner in CRR-1604-2013 has in addition to the above, also made the following submissions:-

2(f). that in fact the co-accused namely Harbans Singh, Supinder Kaur, Surinder Kaur, who were all attributed identical role as the petitioner i.e. of being the directors/partners of the company when the offence was allegedly committed had been acquitted by the learned Trial Court on the basis of conjectures and surmises. Nothing had been brought on record by the prosecution to either distinguish the petitioner's role from those who had been acquitted, or to show that he was in charge of the day to day affairs of the company. It is a matter of record that the prosecution had not even challenged the acquittal of the co-accused. It is evident that the petitioner has been convicted only because of his status as the director/partner of the company without anything to show that he was responsible for conducting the day to day activities or being responsible for the affairs of the company, which was against all cannons of settled law. Reliance has been placed on ***S.M.S. Pharmaceuticals Vs. Neeta Bhalla and another : 2005(8) SCC 89***.

2(g). that the petitioner had no involvement in the day to day operations of the Company and it is a matter of record that the Managers and Accountants were overseeing all the business transactions as well as purchases made by the Company, which also pointed to the petitioner's innocence.

Submissions of learned standing counsel for the CBI

3. Learned standing counsel for the respondent-CBI has advanced the following arguments:

3(a). that the learned CBI Court had passed a well reasoned order convicting the petitioners accused as it was based on a thorough examination of the evidence presented before the Court. Learned standing counsel further submitted that the crux of the matter pertained to allegations surrounding certain companies/firms who were obtaining furnace oil through fraudulent means. Specifically, the said companies/firms were engaging in illicit practices such as selling furnace oil in the black market. Investigation unearthed that the oil companies in question had supplied furnace oil to the companies/firms of the accused persons for their own consumption, however, the companies/firms violated the provisions outlined in the 1974 Order by further selling it on the black market to other firms;

3(b). that the allegations against the petitioners were serious, particularly in the light of their roles as directors/partners of the companies/firms, and being key figures in their companies/firms, the petitioners bore a level of responsibility commensurate with their position;

3(c). that no doubt the FIR in question came into existence only in 2001 i.e. after the 1974 Order had been rescinded, however, a preliminary enquiry had been initiated against the petitioners way back in the year 1998 following the directions from the High Court. Therefore, the submissions with respect to undue delay in initiating prosecution against the petitioners holds no merit;

3(d). that though it has not been disputed that there is no finding of conviction recorded by the learned Trial Court against the companies/firms even though their directors/partners have been convicted, however, this new argument had been introduced by the petitioners for the first time at the post conviction stage and had never been raised during the course of trial, therefore, it could not be entertained at such a belated stage.

4. I have heard learned counsel for the parties and perused the relevant material on record.

FINDINGS OF THE COURT

5. On examination of the material and evidence on record, it stands revealed that between 01.04.1996 and 31.03.1998, the furnace oil was a controlled item under the 1974 Order and the firms/companies of the petitioners allegedly sold it in the black market. For sake of brevity, the allegations against all the petitioners may be noticed as thus:

CRR-1604-2013

5(a). M/s Bhambri Steels had procured furnace oil from oil companies for its own consumption, however, it illegally sold 64 ICL of it to several firms including M/s Royal Steels Rolling Mills and M/s Guru Arjan Iron Steel and Rolling Mills, violating the 1974 Order issued under Section 3 of the Act.

CRR-1627-2013

5(b). M/s Hari Om Steel Rolling Mills, Mandi Gobindgarh after procuring 564 KL of furnace oil from IOCL during the period between 1996 and 1998 had further sold 3.22 KL furnace oil to M/s Sanchika Steels, M/s Shiv Sarsvati Steel Mills, M/s Santosh Structures and M/s Jain Steel Industries in contravention of the 1974 Order.

CRR-1642-2013

5(c). M/s Lok Tilak Steel Rolling Mills, Mandi Gobindgarh which firm after procuring 104 KL of furnace oil in the year 1996 from IOCL Ambala, BPCL Ambala and BPCL Shakurbasti had further sold 86.46 KL of furnace oil to M/s Swastik Steel Works, M/s Jay Industries, M/s Saraswati Iron and Steel Rolling Mills, M/s Shiv Saraswati Iron and Steel Rolling Mill, M/s Ambika Steel Rolling Mill and M/s Baba Balak Nath Steel Pvt. Ltd. in contravention of the 1974 Order.

CRR-1665-2013

5(d). M/s Chopra Iron and Steel Rolling Mills, Mandi Gobindgarh, which firm after procuring 172 KL of furnace oil between the period 1996 and 1998 from IOCL Ambala, BPCL Ambala and BPCL Shakurbasti had further sold 72 KL furnace oil to M/s Bhelley Steel Rolling Mill, M/s Sri Ambica Steel Rolling Mill, M/s Swastic Steel Works, M/s Jay Industries, M/s V.B. Ispat Pvt. Ltd. in contravention of the 1974 Order.

5(e) Subsequently, FIR in question was registered wherein all the petitioners were arraigned as accused being the directors/partners of their companies/firms.

6. It was submitted by the petitioners that they had been arrayed in the case in their capacity as partners/directors of the firms/companies, however, they had been convicted without their firms/companies being convicted. It was further submitted that once the principal offender had not been convicted, their conviction which arose only out of the vicarious liability on behalf of the principal offender, was unsustainable in the eyes of law. Reliance in support was placed upon ***Aneeta Hada's case (supra)*** and ***Hindustan Unilever's case (supra)***. Learned counsel also further urged that the petitioners had now faced the harrowing agony of a protracted trial for more than 24 years and, therefore, a lenient view of be taken qua them.

7. Before proceeding further, it would be apposite to refer to Section 10 of the Act, which has been reproduced hereinbelow, as it outlines the liability for offences committed by companies. It has been provided that in case a company contravenes an order under Section 3 of the Act, every person responsible for the company's conduct at the time of the offence, **along with the company** would be deemed guilty.

> *"10. Offences by companies.—*
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> *(1) If the person contravening an order made under section 3 is a company, every person who, at the time the contravention was committed, was in charge of, and 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 contravention 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 if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(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.

Explanation.—

For the purposes of this section,—

(a) "company" means any body corporate, and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm."

7(a). Section 10 of the Act, which is a pari materia to Section 141 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act'), places principal liability for the offence on the company and thereof makes the person incharge for its affairs vicariously liable on its behalf.

8. In the landmark case of ***Aneeta Hada's case (supra)***, Hon'ble the Supreme Court clarified that prosecuting the directors/partners of a company without arraigning the company would be unsustainable in the eyes of law. Similarly, Hon'ble the Supreme Court in ***Dilip Hariramani Vs. Bank of Baroda : 2022 SCC OnLine SC 579*** reiterated that vicarious liability under Section 141 of the Act arises only when the company commits the offence as the primary

offender. This principle was re-affirmed by Hon'ble the Supreme Court subsequently in ***Sharad Kumar Sanghi Vs. Sangita Rane : (2015) 12 SCC 781*** and ***Hindustan Unilever's case (supra)***. The Apex Court also emphasized that the commission of an offence by the company is a prerequisite for vicarious liability of its officers.

9. It would be relevant to reproduce the following observations made by Hon'ble the Supreme Court in ***Aneeta Hada's case (supra)*** while taking note of the earlier precedent on the issue:-

> *"34. Presently, we shall deal with the ratio laid down in the case of C.V. Parekh (supra). In the said case, a three-Judge Bench was interpreting Section 10 of the 1955 Act. The respondents, C.V. Parekh and another, were active participants in the management of the company. The trial court had convicted them on the ground the goods were disposed of at a price higher than the control price by Vallabhadas Thacker with the aid of Kamdar and the same could not have taken place without the knowledge of the partners of the firm. The High Court set aside the order of conviction on the ground that there was no material on the basis of which a finding could be recorded that the respondents knew about the disposal by Kamdar and Vallabhadas Thacker. A contention was raised before this Court on behalf of the State of Madras that the conviction could be made on the basis of Section 10 of the 1955 Act. The three-Judge Bench repelled the contention by stating thus :-*
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> *"Learned counsel for the appellant, however, sought conviction of the two respondents on the basis of section 10 of the Essential Commodities Act under which, if the person contravening an order made under Section 3 (which covers an order under the Iron and Steel Control Order, 1956), is a company, every person who, at the time the contravention was committed, was in charge of, and 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 contravention and shall be liable to be proceeded against and punished accordingly. It was urged that the two respondents were in charge of, and were responsible to, the Company for the conduct of the business of the Company and, consequently, they must*

be held responsible for the sale and for thus contravening the provisions of clause (5) of the Iron and Steel Control Order. This argument cannot be accepted, because it ignores the first condition for the applicability of Section 10 to the ef ect that the person contravening the order must be a company itself. In the present case, there is no finding either by the Magistrate or by the High Court that the sale in contravention of clause (5) of the Iron and Steel Control Order was made by the Company. In fact, the Company was not charged with the of ence at all. The liability of the persons in charge of the Company only arises when the contravention is by the Company itself. Since, in this case, there is no evidence and no finding that the Company contravened clause (5) of the Iron and Steel Control Order, the two respondents could not be held responsible. The actual contravention was by Kamdar and Vallabhadas Thacker and any contravention by them would not fasten responsibility on the respondents." (emphasis supplied) The aforesaid paragraph clearly lays down that the first condition is that the company should be held to be liable; a charge has to be framed; a finding has to be recorded, and the liability of the persons in charge of the company only arises when the contravention is by the company itself.......”

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42. We have referred to the aforesaid passages only to highlight that there has to be strict observance of the provisions regard being had to the legislative intendment because it deals with penal provisions and a penalty is not to be imposed affecting the rights of persons whether juristic entities or individuals, unless they are arrayed as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the company. The learned counsel for the respondents have vehemently urged that the use of the term "as well as" in the Section is of immense significance and, in its tentacle, it brings in the company as well as the director and/or other officers who are responsible for the acts of the company and, therefore, a prosecution against the directors or other officers is tenable even if the company is not arraigned as an accused. The words "as well as" have to be understood in the context. In Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others, (1987)1 SCC 424 it has been laid down that the entire statute must be

> *first read as a whole, then section by section, clause by clause, phrase by phrase and word by word. The same principle has been reiterated in Deewan Singh and others v. Rajendra Prasad Ardevi and others, (2007)10 SCC 528 and Sarabjit Rick Singh v. Union of India, (2008)2 SCC 417. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.*
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> *43. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh (supra) which is a three- Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal (supra) does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada (supra) is overruled with the qualifier as stated in paragraph 37. The decision in Modi Distilleries (supra) has to be treated to be restricted to its own facts as has been explained by us hereinabove."*

10. Adverting to the present case, the petitioner who were the directors/partners of their respective companies/firms were accused of offences committed by their companies/firms. Although their respective companies/firms were charge sheeted in the instant case, however, the learned Trial Court did not convict the companies/firms i.e. the principal offenders, on whose behalf its directors/partners could be held

liable. Despite an issue being framed as to whether the accused had committed the offence, and which of the accused had committed the offence, admittedly as has also not been disputed by the learned Standing Counsel for the CBI, no finding or formal expression of guilt stands recorded against the companies/firms. In the light of the settled law, the petitioners, who were the directors/partners of their companies/firms could not be thus held vicariously liable in the absence of positive determination of the principal offenders i.e. the companies/firms.

11. It would be relevant to refer to the observations of Hon'ble the Supreme Court in ***Hindustan Unilever's case (supra)***, wherein though the complaint was initially filed against the company along with its officials, however, only the nominated person thereof was held liable and no finding of conviction was recorded against the company, Hon'ble the Supreme Court had observed as under:-

> *"22. Clause (a) of Sub-Section (1) of Section 17 of the Act makes the person nominated to be in charge of and responsible to the company for the conduct of business and the company shall be guilty of the offences under clause (b) of Sub-Section (1) of Section 17 of the Act. Therefore, there is no material distinction between Section 141 of the NI Act and Section 17 of the Act which makes the Company as well as the Nominated Person to be held guilty of the offences and/or liable to be proceeded and punished accordingly. Clauses (a) and (b) are not in the alternative but conjoint. Therefore, in the absence of the Company, the Nominated Person cannot be convicted or vice versa.* ***Since the Company was not convicted by the trial court, we find that the finding of the High Court to revisit the judgment will be unfair to the appellant/Nominated Person who has been facing trial for more than last 30 years. Therefore, the order of remand to the trial court to fill up the lacuna is not a fair option exercised by the High Court as the failure of the***

> ***trial court to convict the Company renders the entire conviction of the Nominated Person as unsustainable."***

12. In the present case the petitioners have faced a prolonged trial for over two decades. The petitioners have suffered the stigma associated with their implication in a criminal proceeding and borne the the brunt of it on their reputation for the last 24 years which indicates the hardship faced by them. Therefore, a patent error is manifest in the judgment, that is of convicting the petitioners without the conviction of their companies/firms and it cannot be rectified at this advanced stage; rather would have the effect of vitiating the criminal proceedings against the petitioners. On this ground alone, the petitioners deserve to be acquitted of the charges framed against them.

13. Furthermore, in CRR-1604-2013 it appears that on the same set of allegations, the other three directors/partners have been acquitted by the learned Trial Court while the petitioner had been convicted without there being any specific evidence to prove that he was incharge of the affairs of the firm. It appears that the other similarly placed accused director/partners have been acquitted by the learned Trial Court on moralistic grounds citing certain societal realities. Even if the learned Trial Court was inclined to take a compassionate view against the other accused, who stand acquitted by it, the disparate treatment afforded to the petitioner by it ought to have been supported by some evidence and material on record. It would be pertinent to observe that the status of a person vis-a-vis the company/firm does not

determine his/her liability rather it is the role played by such person which is the determinative factor. A person cannot be held vicariously liable merely because he happens to be the director/partner of a company/firm moreso, in the absence of any material on record to show that he was in fact incharge and responsible for the affairs of the company at the time of the commission of the offence. Admittedly, it has not even been disputed by the CBI that the other three accused namely Harbans Singh, Supinder Kaur and Surinder Kaur, who have been acquitted by the learned Trial Court are identically placed with the petitioner and furthermore the CBI admittedly did not challenge their acquittal.

14. In the circumstances, all the petitions are hereby allowed. The impugned orders are set aside and the petitioners are acquitted of all the charges framed against them.

15. Pending applications, if any, stand disposed of.

23.05.2024 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No