HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 13957 OF 2023

BETWEEN:

SRI SOMASHEKAR L.,
S/O A.N.LINGAIAH,
AGED ABOUT 46 YEARS,
R/AT NO. 22, 'UNNATI',
HONEY GARDEN,
OFF KANAKPURA MAIN ROAD,
MALLASANDRA,
BENGALURU – 560 062.

…PETITIONER

(BY SRI SANGAMESH R.B., ADVOCATE)

Digitally signed by SANJEEVINI J KARISHETTY
Location: High Court of Karnataka

AND:

1. STATE OF KARNATAKA
   THROUGH ITS PRINCIPAL SECRETARY
   DEPARTMENT OF AGRICULTURE,
   M.S.BUILDING,
   BENGALURU - 01

   REPRESENTED BY ITS SPP
   HIGH COURT BUILDING
   BENGALURU – 560 001.

2. DY. DIRECTOR OF AGRICULTURE
   OFFICE OF THE DY. DIRECTOR,

D-303, ZILLA PANCHAYAT BHAVAN,
RAMNAGARA DISTRICT – 562 159
RAMNAGARA.

…RESPONDENTS

(BY SRI CHANNAPPA ERAPPA, HCGP FOR R-1;
R2 SERVED AND UNREPRESENTED)

THIS CRL.P IS FILED U/S 482 OF CR.P.C., PRAYING TO 1) QUASH THE PROCEEDINGS IN PRIVATE COMPLAINT PCR NO.30/2023 DATED 23.02.2023, ALLEGING OFFENCES P/U/S 7, 8, 19(a) AND 19(b) OF "FCO 1985" AND U/S 3, 7 AND 8 OF ESSENTIAL COMMODITIES ACT, 1955, AND WHICH WAS LATER REGISTERED AS C.C.NO.377/2023, DATED 25.03.2023 ON THE FILE OF LEARNED PRINCIPAL CIVIL JUDGE AND JMFC, KANAKAPURA (ANNEXURE-A); 2) SET ASIDE THE ORDER OF TAKING COGNIZANCE BY LEARNED PRINCIPAL CIVIL JUDGE AND JMFC, KANAKAPURA DATED 28.02.2023 AGAINST THE PETITIONER ON THE ALLEGED OFFENCES P/U/S 7, 8, 19(a) AND 19(b) OF "FCO 1985" AND U/S 3, 7 AND 8 OF "ESSENTIAL COMMODITIES ACT, 1955", AND WHICH WAS LATER REGISTERED AS C.C.NO.377/2023, DATED 25.03.2023 ON THE FILE OF LEARNED PRINCIPAL CIVIL JUDGE AND JMFC, KANAKAPURA (ANNEXURE-B).

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**

ORAL ORDER

The petitioner is before this Court seeking the following prayers:

> "i) Pass an order so as to quash the proceedings in private complaint PCR No:30/2023 dated 23.02.2023, alleging offences under section 7, 8, 19(a) & 19 (b) of "FCO 1985" and under section 3, 7& 8 of Essential Commodities Act-1955, and which was later registered as CC No:377/23, dated 25.03.2023 on the file of learned Principal Civil Judge & JMFC, Kanakapura(**Annexure-A**).
>
> ii) Pass an order so as to set aside the order of taking cognizance by learned Principal Civil Judge & JMFC, Kanakapura dated 28.02.2023 against the petitioner on the alleged offences punishable under Section 7, 8, 19(a) 19 (b) of "FCO 1985" and under Section 3, 7, 8 of "EC Act, 1955" and which was later registered as CC No: 377/23, dated 25.03.2023 on the file of learned Principal Civil Judge & JMFC, Kanakapura (**Annexure-B**).
>
> iii) Issue such other direction as this Hon'ble court may deems fit, under the facts and circumstances of the case, in the interest of justice and equity."

2. Facts, in brief, germane are as follows:

The petitioner is the Director of a Company by the name Disha Chemicals India Pvt. Ltd. ('Company' for short). The Company is into the business of 100% water-soluble fertilizers. A license is obtained by the Company from the Department of

Agriculture on 20-09-2017 to run the said business. The petitioner is said to have resigned as a Director on 24-04-2019. The subject seizure of the fertilizer happens on 09-11-2023, long after the petitioner's resignation as a Director from the Company. The proceedings are now instituted of a confiscated stock stating that it has caused loss to the State Exchequer, by filing a complaint for the offences punishable under Clauses 7, 8, 19(a) and 19 (b) of the Fertilizer (Control) Order, 1985 ('Control Order' for short) read with Sections 3, 7 and 8 of the Essential Commodities Act, 1955 ('Act' for short), arraigning the petitioner as the sole accused. A case is registered in C.C.No.377 of 2023 before the concerned Court. The petitioner is now knocking at the doors of this Court, challenging these proceedings, by filing the subject petition.

3. Heard Sri Sangamesh R B, learned counsel appearing for the petitioner and Sri Channappa Erappa, learned High Court Government Pleader appearing for the respondent No.1.

4. The learned counsel for the petitioner would reiterate the grounds set out in the petition and would contend that the

procurement, distribution and seizure of the stock have all happened one year after the petitioner resigned as Director of the Company and the Company had suffered losses during COVID-19. The leftover stock was shifted to a different godown on 20-09-2020 after the expiry of the licence, where the seizure of the stock has happened. The complaint was also filed without arraigning the Company as an accused. Under Section 10 of the Act the petitioner cannot be held vicariously liable of the contraventions of the Act or the Control Order, without arraigning the Company as an accused. Therefore, the petitioner cannot be held liable for the offences punishable under the Act or under the Order.

5. The learned High Court Government Pleader would refute the submissions contending that the concerned Court has registered a case in C.C.No.377 of 2023 against the petitioner and the proceedings are pending before the concerned Court and would submit that it is for the petitioner to come out clean in a trial and accordingly, seeks dismissal of the petition.

6. The afore-narrated facts are not in dispute. The petitioner being the Director of the Company between 11-09-2013 till the date of his resignation in the year 2019 is a matter of record. The petitioner has appended statutory documents depicting the resignation of the petitioner. The stock that is subject matter of the present *lis* was seized after the resignation of the petitioner. The respondent Authority conducts a search of the premises of the petitioner and finds certain leftover stock and initiates proceedings under the Act and the Control Order. The complaint so filed does not arraign the Company as an accused. The allegation is against the Company. The complaint without at the outset making the Company as a party/accused to the proceedings would not be maintainable in the light of Section 10 of the Act.

7. Section 10 of the Act reads as follows:

> **"10. Offences by companies**.—(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."
>
> (Emphasis supplied)

Perusal of Section 10 of the Act makes it evident that wherever contravention is by a Company, then every person who, at the time the contravention was committed, who 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. Therefore, since the petitioner is being made liable on account of him being the Director of the Company in question, until and unless

the Company is arraigned as an accused, the petitioner cannot be held responsible.

8. Section 10 of the Act is in *pari materia* with Section 141 of the Negotiable Instruments Act, 1881 which is interpreted by the Apex Court in the case of in the case of **ANEETA HADA v. GODFATHER TRAVELS & TOURS PVT. LTD.[1],** which reads as follows:

> "…… …… ……
>
> **53.** It is to be borne in mind that **Section 141 of the Act is concerned with the offences by the company. It makes the other persons vicariously liable for commission of an offence on the part of the company. As has been stated by us earlier, the vicarious liability gets attracted when the condition precedent laid down in Section 141 of the Act stands satisfied.** There can be no dispute that as the liability is penal in nature, a strict construction of the provision would be necessitous and, in a way, the warrant.
>
> …… …… ……
>
> **56.** 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

[1] (2012) 5 SCC 661

> 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.
>
> …… …… ……
>
> **59.** 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 drag-net 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* [(1970) 3 SCC 491 : 1971 SCC (Cri) 97] which is a three-Judge Bench decision. Thus, the view expressed in *Sheoratan Agarwal* [(1984) 4 SCC 352 : 1984 SCC (Cri) 620] does not correctly lay down the law and, accordingly, is hereby overruled. The decision in *Anil Hada* [(2000) 1 SCC 1 : 2001 SCC (Cri) 174] is overruled with the qualifier as stated in para 51. The decision in *Modi Distillery* [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] has to be treated to be restricted to its own facts as has been explained by us hereinabove."

(Emphasis supplied)

9. In the light of the aforesaid observations, the petitioner resigning from the post of the Director of the Company during 2019 itself and the stock being seized in the year 2022, being not in dispute, dragging the petitioner into the web of these proceedings would undoubtedly become an abuse of the process of the law. In that light, the petition deserves to succeed.

10. For the aforesaid reasons, the following:

ORDER

(i) Criminal Petition is **allowed.**

(ii) Impugned proceedings pending against the petitioner in C.C.No.377 of 2023 before the Principal Civil Judge and JMFC., Kanakapura stand quashed.

(iii) Liberty is reserved to the 1st respondent/State to act in accordance with law, in the event the Company is now being manned by some other person.

Consequently, I.A.No.1 of 2023 also stands disposed.

Sd/-
(M.NAGAPRASANNA)
JUDGE

bkp
List No.: 2 Sl No.: 31