

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1380 OF 2010
Arising out of SLP (Crl.) No. 7739 of 2008State of NCT of Delhi
Through Prosecuting Officer,
Insecticides, Government of NCT,
Delhi

.. Appellant

Versus

Rajiv Khurana
Respondent

..

JUDGMENT

DALVEER BHANDARI, J.

1. Leave granted.

2. This appeal has been filed by the appellant State of National Capital Territory of Delhi against the judgment of the High Court of Delhi dated 2.1.2008 in Criminal Miscellaneous Case No. 2639 of 2006 whereby the High Court has quashed the summons issued by the trial court.

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3. The appellant submitted that the Company had specifically stated in its letter dated 19.1.2000 that respondent Rajiv Khurana was the Regional Technical Director handling the quality control in the company. The relevant portion of the said letter is reproduced as under:

"We shall be happy to cooperate with you in all such quality issues about our Mortem product range. Our quality control is handled by Mr. Rajeev Khurana, Regional Technical Director."

4. It is submitted that section 33 of the Insecticides Act, 1968 provides that:

"33. Offences by companies.-(1) Whenever an offence under this Act has been committed by a company, every person who at the time of 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

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deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation - For the purpose 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."

5. The appellant also submitted that the respondent was the person responsible for the quality of the product which has not been found conformed to the prescribed ISI specification. The appellant further submitted that the company communicated to the appellant that the respondent was responsible for the quality of the product. In this view of the matter, the High Court was not justified in allowing the petition filed by the respondent under section 482 of the Code of Criminal Procedure.

6. According to the respondent, under section 33 of the Insecticides Act, 1968 the liability cannot be fastened on the respondent. According to him, the offence, if any, was committed by the Company M/s. Reckitt & Colman of India Limited. The Company continues to face the prosecution but

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according to the facts of this case the respondent cannot be summoned by the court because he was not responsible or in charge of the affairs of the company. It was also submitted by

the respondent that it was the bounden duty of the Magistrate to ensure that the process was issued only against whom there were specific allegations in the complaint.

7. The respondent placed reliance on the judgment of this Court in S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla & Another (2005) 8 SCC 89.

8. The respondent further submitted that the complaint filed by the appellant before the trial court was sought to make the respondent vicariously liable under section 33 of the Insecticides Act, 1968 for the alleged offence under section 29 of the Act, whereas no role has been ascribed to the respondent by the appellant towards the commission of the alleged offence. It

was also submitted that the appellant has also failed to establish that the respondent was the Director or the Manager or the Secretary or any other officer of the company in any way responsible or in charge of the affairs of the company, to be vicariously liable for the alleged offence stated to have been

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committed by the company. The respondent submitted that in the absence of such specific averments, the learned Magistrate was not justified in issuing the summoning order against the respondent. It was also submitted that the provision of vicarious liability is an exception to the normal rule of criminal jurisprudence and no one is to be held criminally liable for an act of another. Such exception is carved out by specific insertion in statutes extending criminal liability to others.

9. According to the respondent, section 33(1) has three tests namely : (a) a person being in charge, (b) responsible for day to day affairs of the company; and (c) at the time when the offence was committed.

10. The respondent further submitted that mere naming a

person in the title of a complaint even as a partner of a firm (although under the Partnership Act, each partner is liable under section 25), does not satisfy the test of the deeming provision contained in section 141(1) of the Negotiable Instruments Act, 1881 which is para materia to section 33(1) of the Insecticides Act, 1968 as held by this court in Monaben

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Ketanbhai Shah & Another v. State of Gujarat & Others

(2004) 7 SCC 15. In the said case, this court observed as under:-

".....The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every partner knows about the transaction. The obligation of the appellants to prove that at the time the offence was committed they were not in charge of and were not responsible to the firm for the conduct of the business of the firm, would arise only when first the complainant makes necessary averments in the complaint and establishes that fact. The present case is of total absence of requisite averments in the complaint."

11. The respondent submitted that sub-section (2) of section 33 of the Insecticides Act, 1968 makes "other officers" liable, but that is essential liability not to the position and control of the company at the time of commission of the offence as in sub-section (1), but to the specific act of consent, connivance and negligence, which need to be met and in that sense distinguishable from sub-section (1) of section 33 of the Insecticides Act, 1968.

12. In Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Others (1983) 1 SCC 1, the Food Inspector,

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Municipal Corporation filed a complaint before the Metropolitan Magistrate against the respondents alleging commission of offence under Sections 5/7, Prevention of Food Adulteration Act as the sample of food article (Morton toffees) manufactured by the Company (respondent 5) had been found by the Public Analyst to be not of the prescribed standard. The Inspector

alleged in the complaint that the accused-respondents were Manager (respondent 1) and Directors (respondent 2 to 4) of the Company (respondent 5) "and as such they were incharge of and responsible for the conduct of business of accused 2 (the Company) at the time of sampling". Pursuant to the complaint the proceedings against the respondents were commenced. But the High Court quashed the proceedings against all the respondents under Section 482, Cr.P.C. on the ground that the complaint did not disclose any offence.

13. In State of Haryana v. Brij Lal Mittal & Others (1998) 5 SCC 343, it was held that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises if at the material time he was incharge of and was also responsible to the company for the conduct of its

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business. Simply because a person is a director of the company it does not necessarily mean that he fulfils both the above requirements so as to make him liable. Conversely, without being a director a person can be incharge of and responsible to the company for the conduct of its business. From the complaint in question we, however, find that except a bald statement that the respondents were directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were incharge of the company and also responsible to the company for the conduct of its business

14. K.P.G. Nair v. Jindal Menthol India Ltd. (2001) 10 SCC 218 was a case of this court under the Negotiable Instruments Act, 1881 and it was found that the allegations in the complaint did not either in express words or with reference to the allegations contained therein make out a case that at the time of commission of the offence the appellant was in charge of and was responsible to the company for the conduct of its business. It was held that the requirements of Section 141 of the

Negotiable Instruments Act, 1881 were not met and the complaint against the accused was quashed. The same view has

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been taken in Katta Sujatha (Smt.) v. Fertilizers & Chemicals Travancore Ltd. & Another (2002) 7 SCC 655.

15. The respondent placed reliance on the case of S.M.S. Pharmaceuticals Ltd. (supra), wherein this Court has held as under:

"19. In view of the above discussion, our answers to the questions posed in the reference are as under:

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to Question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in

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charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141."

16. In Sabitha Ramamurthy and Another v. R.B.S. Channabasavaradhya (2006) 10 SCC 581 this court held there was absence of requisite averments in the complaint not containing any statement that the appellants were in charge of

the business of the company at the material time. The statement of witness also did not specifically allege that the appellants were in charge of the business of the company. This Court held that requirement of section 141 of the Negotiable Instruments Act was not complied with and the complaint was liable to be quashed.

17. In K.K. Ahuja v. V.K. Vora and Another (2009) 10 SCC 48, this court observed that the averment in a complaint that an accused is a director and that he is in charge of and is responsible to the company for the conduct of the business of the company, duly affirmed in the sworn statement, may be sufficient for the purpose of issuing summons to him. But if the

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accused is not one of the persons who falls under the category of 'persons who are responsible to the company for the conduct of the business of the company', then merely by stating that 'he was in charge of the business of the company' or by stating that 'he was in charge of the day to day management of the company' or by stating that he was in charge of, and was responsible to the company for the conduct of the business of the company', he cannot be made vicariously liable under Section 141(1) of the Act.

18. The ratio of all these cases is that the complainant is required to state in the complaint how a Director who is sought to be made an accused, was in charge of the business of the company or responsible for the conduct of company's business. Every Director need not be and is not in charge of the business of the company. If that is the position with regard to a Director, it is needless to emphasise that in the case of non-Director officers, there is all the more necessary to state what were his duties and responsibilities in the conduct of business of the company and how and in what manner he is responsible or liable.

19. In K.K. Ahuja's case (supra) the court summarized the position under section 141 of the Act as under:-

(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix "Managing" to the word "Director" makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.

(iii) In the case of a Director, secretary or manager [as defined in Section 2(24) of the Companies Act] or a person referred to in clauses (e) and (f) of Section 5 of the Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under Section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.

(iv) Other officers of a company cannot be made liable under sub-section (1) of Section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue

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and dishonour of the cheque, disclosing consent, connivance or negligence.

20. The court further observed that the trauma, harassment and hardship of the criminal proceedings in such cases may be more serious than the ultimate punishment, it is not proper to subject all and sundry to be impleaded as accused in a complaint against a company, even when the requirements of section 138 read with section 141 of the Act are not fulfilled.

21. The legal position which emerges from a series of judgments is clear and consistent that it is imperative to specifically aver in the complaint that the accused was in charge of and was responsible for the conduct of business of the company. Unless clear averments are specifically incorporated in the complaint, the respondent cannot be compelled to face the rigmarole of a criminal trial.

22. In view of clear legal position, we do not find any infirmity in the impugned judgment. This appeal being devoid of any merit is accordingly dismissed.

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.....J.
(Dalveer Bhandari)

.....J.
(K. S. Radhakrishnan)

New Delhi;
July 30, 2010

ITEM NO.1A
(For Judgment)

COURT NO.4

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO. 1380 OF 2010
(Arising out of SLP(Crl.) No.7739/2008)

STATE OF NCT OF DELHI

Petitioner(s)

VERSUS

RAJIV KHURANA

Respondent(s)

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Date: 30/07/2010

This matter was called on for pronouncement of judgment today.

For Petitioner(s) Ms. Sadhana Sandhu,Adv.
Mr. Anil Katiyar,Adv.
Mr. D.S. Mahra,Adv.

For Respondent(s) Mr. Ashwani Kumar,Adv.

Hon'ble Mr. Justice Dalveer Bhandari pronounced the judgment of the Bench comprising of His Lordship and Hon'ble Mr. Justice K.S. Radhakrishnan.

Leave granted.

The appeal being devoid of any merit is dismissed in terms of the signed judgment.

(A.S. BISHT)
COURT MASTER

(NEERU BALA VIJ)
COURT MASTER

(Reportable signed judgment is placed on the file)