

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 266 OF 2009
(Arising out of SLP (Crl.) No. 2119 of 2007)

State (Govt. of NCT of Delhi) ..Appellant

Versus

D.A.M. Prabhu and Anr. ..
Respondents

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Delhi High Court quashing the order passed by learned Special Judge under the Essential Commodities Act, 1955 (in short the 'Act').

3. Background facts as noted by the High Court are as follows:

On 23.01.1988, a complaint was lodged by the Enforcement Inspector with the Station House Officer of Police Station Moti Nagar, New Delhi, alleging that Swatanta Bharat Mills had, by declaring and stamping wrong fibre compositions for the cloth, contravened the provisions of the Textile Commissioner's notification dated 23.11.1981 and clause 17 of the Textile (Control) Order, 1986 rendering themselves liable for penal action for violation of the order made under Section 3 of the Act punishable under Section 7 thereof. On 11.02.1988, an FIR was registered on the basis of the said complaint. On 06.05.1988, the charge sheet was filed in court, but there was only one accused, namely, A.K. Rohtagi, who was shown in Column No.4 for the offence, inter-alia, under section 7 of the said Act. On that date, the Court passed the following order:

“New challan filed today. It be checked and registered.
Accused person be summoned for 09.06. 1988.”

Thereafter, the accused A.K. Rohtagi appeared and was released on bail. On 4.12.1990, a supplementary challan was filed and the court passed the following order:-

“Supplementary challan filed today. It be checked and registered. Accused be summoned for 18.12.1990 as main case is already fixed for 18.12.1990.”

In the supplementary charge sheet, the said A.K. Rohatgi was again shown in Column No.4. However, in Column No.2, the respondents along with R.C Kesar and Lala Bansidhar were shown in Column No.2. It appears that on 18.02.1991, respondent No.2 V.K. Malhotra appeared in court and on 22.02.1991, the court passed the following order: -

“V.K. Malhotra mentioned in column No.2 is not required for the time being. He is being discharged.

Only the accused persons mentioned in Column No.3/4 of the challan u/s 173 of Cr.P.C. was to be summoned and not those mentioned in Column No.2 of that report.”

On 24.04.1991, the earlier charge-sheet and the supplementary charges sheet were consolidated and the court observed that summons were issued to some of the accused and that the predecessor court by order dated 22.02.1991 had mentioned that these persons may not be summoned for the time being. Thereafter, the court directed that the matter should come up for arguments on 04.06.1991 on the question whether the persons named in

Column No.2. be summoned as accused. In the order dated 11.2.1994, it is recorded as under:

“It appears that in the supplementary challan, four accused were placed in Column No.2 and have not been summoned so far probably on the presumption that they have not been sent up for trial by the police. However, a perusal of the final report in the supplementary challan would show that the police has specifically mentioned that there was a violation of Clause 17 of the Textile Control Order, 1986 by Swantantra Bharat Mills which is a company by virtue of Section 10 of the Act and the Managing Director, General Manager, Executive Director (Textile) and Supervisors, Folding Division are liable and should be summoned.”

Accordingly, the court came to the view that the respondents alongwith other two mentioned in Column No.2, namely, R.C. Kesar and Lala Bansidhar be also summoned.

The basic stand before the High Court was that the deeming provision of Section 10 of the Act cannot be applied to the facts of the case.

The High Court found that Swatantra Bharat Mills was nothing but a unit of the body corporate known as DCM Ltd. But it cannot be called to be an association of individuals. So holding, the proceedings so far as the respondents are concerned were quashed.

4. Learned counsel for the appellant-State submitted that true scope and ambit of Explanation appended to Section 10 has not been kept in view.

5. Learned counsel for the respondents on the other hand supported the judgment. Additionally, it is submitted that the infraction as alleged is of a very minor nature and, therefore, continuance of the proceedings shall not be appropriate.

6. To appreciate rival submissions it would be necessary to take note of Section 10 of the Act. The said provision reads as follows:

“(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, 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 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.”

7. In Dulichand Laxminarayan v. Commissioner of Income Tax, Nagpur (1956 SCR 154) it was inter-alia observed that the expression ‘person’ has not been defined and applying the definition under the General Clauses Act, 1872 (in short the ‘General Clauses Act’) body of individuals can be covered under the expression ‘person’. Sub-Section (42) of Section 3 of the General Clauses Act has been statutorily incorporated by way of an Explanation under Section 10.

8. The section appears to our mind to be plain enough. If the contravention of the order made under Section 3 is by a company, the persons who may be held guilty and punished are (1) the company itself, (2) 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 whom, for short, we shall describe as the person-in-charge of the company, and (3) any director, manager, secretary or other officer of the company with whose consent or connivance or because of neglect attributable to whom the offence has been committed, whom, for short, we shall describe as an officer of the company. Any one or more or all of them may be prosecuted and punished. The company alone may be prosecuted. The person-in-charge only may be prosecuted. The conniving officer may individually be prosecuted. One, some or all may be prosecuted. There is no statutory compulsion that the person-in-charge or an officer of the company may not be prosecuted unless he be ranged alongside the company itself. Section 10 indicates the persons who may be prosecuted where the contravention is made by the company. It does not lay down any condition that the person-in-charge or an officer of the company may not be separately prosecuted if the company itself is not prosecuted. Each or any of them may be separately prosecuted or along with the company. Section 10 lists the person who may be held guilty and punished when it is a company that contravenes an order made under Section 3 of the Essential Commodities Act. Naturally, before the person in-charge or an officer of the company is held guilty in that capacity it must be established

that there has been a contravention of the order by the company.

9. The above position was highlighted in Sheoratan Agarwal and Anr. V. State of Madhya Pradesh (1984 (4) SCC 352) and State of Punjab v. Kasturi Lal and Ors. (2004 (12) SCC 195)

10. Added to that, the threshold interference does not appear to be in order. The stand as taken by the respondents was essentially the defence which is to be considered at the time of trial. The impugned judgment is unsupportable and is set aside.

11. The appeal is allowed.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(ASOK KUMAR GANGULY)

New Delhi,
February 11, 2009