

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) No. 156/2021
CrIM Nos. 496/2021, 878/2021

Reserved on: 28.02.2023
Pronounced on :10.03.2023

Reema Arora and Ors

.....Petitioner(s)

Through: Mr. Areeb Kawoosa, Adv.
with Mr. Aatir Kawoosa, Adv.

V/s

Department of Agriculture th. Law Enforce Inspector (Fertilizer) namely
Noor Mohammad Bhat

..... Respondent(s)

Through: Mr. Faheem Nisar Shah, GA.

CORAM:

Hon'ble Mr. Justice Rajesh Sekhri, Judge.

JUDGMENT

- 1) The petitioners have invoked inherent jurisdiction of this Court under Section 482 of Code of Criminal Procedure, 1973 (Cr.PC, for short) for quashment of the complaint titled 'Department of Agriculture Vs. Reema Arora and others' and the cognizance order dated 04.09.2020 passed by the court of learned Judicial Magistrate, 1st Class, (Munisff), Chadoora, Budgam (trial court, for short).

- 2) The case set out by the petitioners is that they are employees of M/s Agro Care Organic Farm Private Limited Company involved in manufacturing of fertilizers, including Bio Fertilizers such as Vermicompost (soil food). Petitioner No. 2/accused No. 2 in the complaint, sent an intimation to the respondents for taking samples of Vermicompost from Batch No. AOF/105 received on 28.02.2016. It is allegation of the petitioners that the respondent did not take the sample for analysis in accordance with the procedure provided by Fertilizers Control Order, 1985 (hereinafter referred as “FCO of 1985”). Thereafter respondent seized the fertilizer from godowns of the Company i.e, M/s Agro Care Organic Farm Private Limited Company located at Nowgam Bypass, Srinagar alleging that same was not according to the specifications of FCO of 1985. Consequently, the complaint came to be filed by the respondents against the petitioners under Clause 19(a) of the FCO, 1985 read with section 7 of the Essential Commodities Act, 1955 (EC Act for short) and impugned cognizance was taken by learned trial court.
- 3) The petitioners have questioned the complaint filed by the respondent and consequent cognizance taken by learned trial court primarily on the ground that respondent had filed a similar complaint with respect to same Batch of vermicompost i.e, Batch No. AOF/105 manufactured and distributed by same Company i.e, M/s Agro Care Organic Farm Private Limited, pending disposal in the court of Judge Small Causes, Srinagar.

It is also submission of the petitioners that petitioner No. 1/accused No. 1 is also same in both the complaints. It is contention of the petitioners that a person cannot be prosecuted twice for the same offence and two trials pertaining to same occurrence/offence is not permissible under law.

- 4) The petitioners have also assailed the impugned complaint and the impugned order of cognizance on the ground that in the absence of company being an accused in the complaint, they cannot be prosecuted and held liable in their individual capacity in terms of Section 10 of EC Act. According to the petitioners, they cannot be held responsible for the acts of the Company as there is nothing in the complaint to show that they were incharge and responsible for the conduct of the business of the company.
- 5) Per contra, respondent in its objections has failed to respond to the predominant grounds of challenge urged in the memo of petition.
- 6) Having heard rival contention of the parties, I have given my thoughtful consideration to the facts and circumstances emanating from the pleadings and the record as also the law governing the field.
- 7) Learned counsel for the petitioner while reiterating the grounds urged in the memo of petition has relied upon *Krishna Lal Chawla Vs. State of UP [(2021) 5 SCC 435]*, *Sharad Kumar Sanghi Vs. Sangita Rane [(2015) 12*

SCC 781], Himanshu Vs. B. Shivamurthy[(2019) 3 SCC 797], AneetaHada Vs. Godfather Travels and Tours Pvt. Ltd [(2012) 5 SCC 661], MaksudSaiyad Vs. State of Gujarat [(2008) 5 SCC 668], Sushil Sethi and others Vs. State of Arunachal Pradesh and others [AIR 2020 SC 765], Sandeep Singh and Others Vs. Nisar Ahmad Dar [CRM(M) No. 263 of 2020 decided on 21.05.2022], and State of Karnataka Vs. Pratap Chand and Others [1981 SCC (2) 335].

- 8) A pristine question of law which arises for consideration, is whether employees of a company alone can be prosecuted and held liable without arraignment of the company as an accused.
- 9) It is settled proposition of law that one cannot draw a presumption that Managing Director of a Company or the Directors or officers or employees for that matter are responsible for all acts committed by or on behalf of the company. It all depends upon the respective roles assigned to the officers or employees of a company.
- 10) Companies are charged with mensrea offences, thus they require guilty mind as the said offences are not strict liability offences. The thrust of this legal position is that it is the “human agency” in the accused companies who can be held responsible.

11) This principle has been reiterated by *Lord Denning in Bolton (H.L)*

(Engg.) Co. Ltd. V. T. J. Graham & Sons in the following words:

“A company may in many ways be likened to a human body. They have a brain and a nerve centre which controls what they do. They also have hands which hold the tools and act in accordance with the directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company, and control what they do. The state of mind of these managers is the state of mind of the company and is treated by the law as such. So you will find that in case where the law requires personal fault as a condition or liability in tort, the fault of the manager will be the personal fault of the company.....”

12) It may also be appropriate to notice the observations made by Hon'ble Supreme Court in the case of *Annetta Hada* (supra) in the following passage:

“32. We have referred to the aforesaid authorities to highlight that the company can have criminal liability and further, if a group of persons that guide the business of the companies have the criminal intent, that would be imputed to the body corporate. In this backdrop, [Section 141](#) of the Act has to be understood. The said provision clearly stipulates that when a person which is a company

commits an offence, then certain categories of persons in charge as well as the company would be deemed to be liable for the offences under Section 138. Thus, the statutory intendment is absolutely plain.. As is perceptible, the provision makes the functionaries and the companies to be liable and that is by deeming fiction. A deeming fiction has its own signification.

- 13) It is therefore clear from the afore extracted case law that if a group of persons, responsible for the business of the company, commit an offence, the criminal intent of the said group of persons is imputed to the company and Directors/Proprietors of the said company are “alter ego” of the company.
- 14) A Similar view has been taken by Hon’ble Supreme court in *Maksud Saiyed* (supra) is as under:

“Allegations contained in the complaint petition, as noticed by the learned Magistrate, may give rise to tortuous liability on the part of Dena Bank. Principal allegations were made against the bank. Who had acted on behalf of the bank was not disclosed. The acts of omission and commission on the part of the bank, if any, by withholding export bills of the bank may give rise to a statutory violation on its part but the respondents were not personally liable therefore.

- 15) Identical view has been reiterated in *Sunil Bharti Mittal's case; AIR 2015 SC 923*, which reads as below:

“37 No doubt, a corporate entity is an artificial person which acts through its officers, directors, managing director, chairman etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

38. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

- 16) Hon'ble Supreme Court in Mrs. *Anita Malhotra V/s Appareil Export Promotion Council; (AIR 2012 SC 31)* also opined as below:

“15 This Court has repeatedly held that in case of a Director, complaint should specifically spell out how and in what manner the Director was in charge of or was responsible to the accused Company for conduct

of its business and mere bad statement that he or she was in charge of and was responsible to the company for the conduct of its business is not sufficient.....”

- 17) From the afore extracted case law, the legal intendment is clear that when the company is an offender, vicarious liability of its directors can be imputed in terms of the provisions of a statute, making it a deeming fiction.
- 18) It is trite that when law requires a particular thing to be done in a particular manner, it must be done in that fashion only and in none other. There is no provision in the Penal Code to attach vicarious liability on Managing Director or Directors or employees of a Company
- 19) Reverting to the present case, it is an admitted position on the face of the record that the respondent/complainant received intimation on 29.02.2020 from M/s Agri Care Organic Farms Private Limited Company Ludhiana and on receipt of the said intimation, the respondent/complainant visited the godown of the said company at Pahroo, Nowgam on 02.03.2020 and took one sample of Vermicompost (soil food) bearing Batch No. AOF/105 out of the stock which as per the laboratory report was not according to specification of the FCO of 1985. It is pertinent to underline that as per the complaint, respondent/complainant served a show cause notice to the said accused company i.e, M/s Agri Care Organic Farms Private Limited. A bare perusal of the complaint would reveal that there is nothing to suggest that

the petitioners/accused persons, at any point of time, were responsible for the acts committed on behalf of the Company. There is nothing to indicate that petitioners are responsible for the business of the company. No doubt, the company being a corporate entity performs its functions through its officers including Chairman, Managing Director, Directors etc. However, it is trite position of criminal jurisprudence that no vicarious liability can be attached to said officers unless statute specifically provides so.

20) Section 10 of the EC Act which deals with offences by companies reads thus:

“Section 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 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 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”

21) Section 10 of the EC Act clearly postulates that when a company commits an offence, every person who, at the time contravention was committed was in charge of, and was responsible to, the company for the conduct of the business as well as the company, are deemed to be guilty of contravention and shall be liable for prosecution. Proviso to Section 1 of Section 10 of EC Act further clarifies that nothing in sub section 1 shall render any such person liable to any punishment if he proves that contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention. Therefore, if an officer of a company has perpetrated an offence on behalf of the company, he can be made an accused and prosecuted along with the company, provided there is sufficient evidence of his active role coupled with criminal intent on his part. As already discussed,

the complaint filed by the respondent/complaint in the trial court nowhere spells out as to how and in what manner the petitioners/accused were incharge of or were responsible to the accused company i.e, M/s Agri Care Organic Farms Private Limited for conduct of its business. Viewed thus, the complaint filed in the trial court is nothing but an abuse of process of law.

22) Be that as it may, the respondent had already filed a similar complaint with respect to same Batch of Vermicompost i.e, Batch No. AOF/105, manufactured and distributed by the same company i.e, M/s Agri Care Organic Farms Private Limited, which was pending disposal at the time of institution of the present petition. During the course of arguments, learned counsel for the petitioners has produced a copy of the order rendered by court of Judge Small Causes, Srinagar, vide which petitioner No. 1 and one Jawahar Ahmad Wani have been acquitted on the ground of non arraignment of the company as an accused in the complaint. Therefore, the complaint filed in the trial court, after the institution of the earlier complaint, in which petitioner No. 1 has already been acquitted is also hit by the Doctrine of Double Jeopardy ingrained under sub Section 1 of Section 300 Cr.PC and Article 20 of the Constitution of India which provides that no person can be prosecuted and punished twice for the same offence. Reliance placed by learned counsel for the petitioner on *Krishna Lal Chawla and others Vs. State of UP and another [(2021) 5 SCC 435]*, is well founded. Relevant observation is extracted for the facility of reference:

“6. The grave implications of allowing such misuse may be understood better in light of the following exposition by this Court in Amitbhai Anilchandra Shah V. CBI and anr. (2013) 6 SCC 348:

“37. This Court has consistently laid down the law on the issue interpreting the Code, that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. In T. T. Antony [(2001) 6 SCC 181: 2001 SCC (Crl) 1048], this Court has categorically held that registration of second FIR (which is not a cross case) is violative of Article 21 of the Constitution.....” (emphasis supplied).

Article 21 of the Constitution guarantees that the right to life and liberty shall not be taken away except by due process of law. Permitting multiple complaints by the same party in respect of the same incident, whether it involves a cognizable or private complaint offence, will lead to the accused being entangled in numerous criminal proceedings. As such, he would be forced to keep surrendering his liability and precious time before the police and the Courts, as and when required in each case, as this Court has held in Amitbhai Anilchandra Shah (Supra) such an absurd and mischievous

interpretation of the provision of the Cr. PC will not stand the test of constitutional scrutiny, and therefore cannot be adopted by us.

7. The implication of such successive FIRs on an individual's rights under Article 21 of the Constitution has been elaborated further in T. T. Antony (supra)

"27. A just balance between the fundamental rights of the citizens under Article 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub Section (8) of Section 173 Cr.PC empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narang case [Ram Lal Narang V. State (Delhi Admn.), (1979) 2 SCC 322: 1979 SCC (Crl) 479] it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences consequent upon filing of successive FIRs whether before or

*after filling the final report under Section
173 (2) Cr. PC.*

- 23) It is thus clear from the law enunciated by Hon'ble Supreme Court that multiple complaints by same complainant against same accused or set of accused persons with respect to same offence, involving cognizable or private complaint offences, will lead to abuse of process of law and takes away fundamental right to life and liberty of an individual guaranteed under Article 21 of the Constitution of India.
- 24) Having regard to what has been observed and discussed hereinabove, the present petition is allowed and the impugned complaint as also impugned order dated 04.09.2020 passed by the trial court are quashed and consequently, the petitioners are discharged.

(RAJESH SEKHRI)
JUDGE

SRINAGAR
10.03.2023
"Aasif"

Whether the judgment is reportable? Yes/No