

CASE NO.:
Appeal (crl.) 743 of 2004

PETITIONER:
State of Punjab

RESPONDENT:
Kasturi Lal and Ors.

DATE OF JUDGMENT: 28/07/2004

BENCH:
S.N. VARIAVA & ARIJIT PASAYAT

JUDGMENT:
J U D G M E N T

(Arising out of SLP(Crl.) No.4360/2003)

ARIJIT PASAYAT, J

Leave granted.

The State of Punjab questions legality of the judgment rendered by a learned Single Judge of the Punjab and Haryana High Court in Criminal Revision No.326 of 1998. A petition was filed under Section 401/482 of the Code of Criminal Procedure, 1973 (in short the 'Code') questioning correctness of the order passed by learned Special Judge, Sangrur framing charges against the present respondents and one Prem Mohan Tiwari for alleged violation of the provisions contained in Section 7 (1) (a) (ii) of the Essential Commodities Act, 1955 (in short the 'Act').

Charge was framed by learned Special Judge by order dated 16.9.1997 holding that there was infringement of the provisions of Vegetable Oil Products Control Order, 1947 (in short the 'Control Order') as amended under Section 3(1) of the Act. Samples of the vegetable oil product were drawn from the premises of M/s Sangrur Vanaspati Mills Ltd. on 29.4.1992 and on analysis the sample was found to contain 78% of solvent mustard oil as against the permitted limit of 20%. A challan under Section 173 of the Code was filed in the Court of Special Judge, Sangrur and the present respondents and aforesaid Prem Mohan Tiwari were arrayed as accused persons. While the accused Prem Mohan Tiwari was the Production Manager of the company, others were Directors of the company. Before the Special Judge, the accused persons opposed framing of charge on various grounds. Their main plank of the argument was that since Prem Mohan Tiwari was nominated by the company to be in charge and responsible to the company for conduct of the business, no one else could be arrayed as accused. The plea did not find acceptance and the learned Special Judge framed the charge against the accused persons in terms of Section 7(1)(a)(ii) of the Act. The accused persons filed the Criminal Revision and Criminal Misc. No. 16907-M of 1998 was also filed to quash the challan under Section 173 of the Code which was taken up along with the Criminal Revision. As noted above, by the judgment which is impugned in the present appeal the High Court came to hold that it was only Prem Mohan Tiwari who was to face trial and charge so far as the others are concerned to be quashed. It was held that there was no definite material to show that they were in charge of running of business and/or responsible therefor.

According to the learned counsel for the State of Punjab the view

taken by the High Court is erroneous. At the stage of framing charge all that was required to be found out was whether there was any material to proceed against the accused persons. That being the position, the High Court ought not to have threadbare examined as to whether the complainant established about the present respondents being connected with and responsible for running of business for contravention of the statutory provisions.

In response, learned counsel for the respondents submitted that there was no material to show that any of them was in charge of and/or responsible to the company for the conduct of the business. That being so, the High Court was justified in its view.

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 \026 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."

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\026charge 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.

The above position was highlighted in Sheoratan Agarwal and Anr. V. State of Madhya Pradesh (1984 (4) SCC 352).

The scope for interference with an order framing charge in terms of Section 482 of the Code is extremely limited.

Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the Section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice. While exercising powers under the Section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the Section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complainant, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

In *R.P. Kapur v. State of Punjab* (AIR 1960 SC 866), this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings.

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence

adduced clearly or manifestly fails to prove the charge.

In State of Haryana v. Bhajan Lal (1992 Supp (1) SCC 335) the categories were enumerated as follows:

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of a Magistrate as contemplated under S. 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

Somewhat similar provision is contained in Section 141 of Negotiable Instruments Act, 1881 (in short N.I. Act). The scope and ambit of the said provision has been examined by this Court in several cases. A three Judge Bench in Rajlakshmi Mills v. Shakti Bhakoo (2002) 8 SCC 236 held as follows:-

"The appellant had filed a criminal complaint against the respondent as well as her brother-in-law Anoop Bhakoo under Section 138 of the Negotiable Instruments Act because of dishonour of a cheque which had been issued by M/s Sutlez Knitwears of which Anoop Bhakoo and the respondent were partners. Against the summoning order passed by the Magistrate, the respondent filed a petition under Section 482 Cr.P.C. after the respondent's application for discharge was unsuccessful.

The High Court invoked the provisions of Section 141 of the Negotiation Instruments Act and came to the conclusion that as the respondent was not in charge or responsible for the conduct of the business, therefore the order summoning her was bad in law.

We are of the opinion that at the stage of summoning when evidence was yet to be led by the parties, the High Court could not on an assumption of facts come to a finding of fact that the respondent was not responsible for the conduct of the business. On this ground alone, these appeals are allowed and the impugned decision of the High Court is set aside."

Above being the position, we are of the view that the High Court was not justified in quashing the charge framed so far as the present respondents are concerned. We make it clear that we are not expressing any opinion on the merits of the case. It goes without saying that the trial Court shall consider the evidence and materials to be placed by the parties in the proper perspective and in accordance with law. The appeal is allowed to the extent indicated above.

JUDIS