

(2010) 07 CAL CK 0027

Calcutta High Court

Case No: C.R.R. No. 3197 of 2005 with C.R.A.N. No. 16 of 2010 and C.R.R. No. 20 of 2006
with C.R.A.N. No. 17 of 2010

M.S. Ramachandran and Others

APPELLANT

Vs

Sandip Meta

RESPONDENT

Date of Decision: July 23, 2010

Acts Referred:

- Air (Prevention and Control of Pollution) Act, 1981 - Section 40
- Companies Act, 1956 - Section 2, 2(24), 291, 5
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 14A
- Employees State Insurance Act, 1948 - Section 86A
- Income Tax Act, 1961 - Section 278B
- Minimum Wages Act, 1948 - Section 22C
- Negotiable Instruments Act, 1881 (NI) - Section 141, 141(1), 141(2)
- Payment of Bonus Act, 1965 - Section 29
- Standards of Weights and Measures (Enforcement) Act, 1985 - Section 33, 51, 61, 62
- Standards of Weights and Measures (Packaged Commodities) Rules, 1977 - Rule 2, 23, 26, 4, 6
- Standards of Weights and Measures Act, 1976 - Section 39, 63, 74
- Water (Prevention and Control of Pollution) Act, 1974 - Section 47

Citation: (2011) 1 CHN 112

Hon'ble Judges: Ashim Kumar Roy, J

Bench: Single Bench

Advocate: Joymalya Bagchi, for M.S. Yadav, for the Appellant; Swapan Kumar Mullick, for the Respondent

Judgement

Ashim Kumar Roy, J.

Both the criminal revisions, C.R.R. No. 3197 of 2005 as well as C.R.R. No. 20 of 2006 are taken up for hearing together as a common question of law arises in both the said criminal revisions for decision.

2. Invoking section 482 of the Code of Criminal Procedure, while in C.R.R. No. 3197 of 2005 the Petitioners have approached this Court for quashing of the Complaint Case No. C-773 of 2004, similarly in C.R.R. No. 20 of 2006 they have approached for quashing of the Complaint Case No. C-649 of 2004. Both the aforesaid complaint cases are pending before the learned Additional Chief Judicial Magistrate, Barrackpore. While the first impugned complaint relates to the offences punishable u/s 63 of the Standards of Weights and Measures Act, 1976 and under sections 51 and 61 of the Standards of Weights and Measures (Enforcement) Act, 1985 for alleged violation of section 39 of the Standards of Weights and Measures Act, 1976 read with Rule 26 of Standards of Weights and Measures (Packaged Commodities) Rules, 1977. The second complaint relates to the alleged offences punishable u/s 63 of the Standards of Weights and Measures Act, 1976 and u/s 51 of the Standards of Weights and Measures (Enforcement) Act, 1985 read with section 74 of the Standards of Weights and Measures Act 1976 and section 62 of the Standards of Weights and Measures (Enforcement) Act, 1985, and alleged violation of Rules 2(r), 4, 6, 8, 9 and 23 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 read with section 33 of the Standards of Weights and Measures (Enforcement) Act, 1985.

The principal ground on which the quashing has been sought for is this that there is no requisite averment in the complaints in terms of section 74 of the Standards of Weights and Measures Act, 1976 and section 62 of the Standards of Weights and Measures (Enforcement) Act, 1985.

3. Besides above the grounds on which the quashing has been sought for are as follows;

(a) The Petitioner No. 1 during his tenure as Chairman of Indian Oil Corporation was nominated by the Ministry of Petroleum and Natural Gas Commission, Government of India and was involved in dealing with the policy matters of Indian Oil Corporation Limited and was in no way connected with the running of day to day affairs of the Petitioners' company at any point of time.

(b) The Petitioner No. 2 being the General Manager (West Bengal) of Indian Oil Corporation Limited was also similarly involved in dealing with the policy matters, but was in no way concerned with the running of the day to day affairs of the Indian Oil Corporation at no point of time.

(c) Accepting the allegations as it is and to be true no offence as alleged or at all has been made out.

(d) The allegations are patently absurd and inherently improbable.

(e) If there is any violation for the same the distributor is responsible through whom retail sales are affected over which the Petitioners have no control.

(f) No materials has been placed before the learned Court below to show that the Petitioners were actually involved in running the day to day affairs of the Indian Oil Corporation Limited.

(g) It appears from the allegations made in the complaint that offence has been committed by the M/s. Freedom Services, the distributorship concern.

(h) There was no averment in the petition of complaint that the Petitioners were in-charge and responsible for running the day to day business of the company.

(i) The learned Magistrate most arbitrarily and mechanically issued the process and set the criminal law into motion.

(j) There is no effectual foundation that the accused company Indian Oil Corporation Limited has actually made, manufactured, packed and sealed or caused to be packed or distributed, delivered or offered, exposed for sale the seized articles.

(k) The proceeding has been launched out of utter mala fide.

4. The learned Counsel appearing for the Petitioners in support of his contention relied on an unreported decision of this Hon'ble High Court relating to C.R.R. No. 2528 of 2005 in the case of M.S. Ramchandran and Anr. v. Sandip Meta and Anr. He has also relied on the following decisions, viz., (i) S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr., reported in 2005 SCC 1975, (ii) [K.K. Ahuja Vs. V.K. Vora and Another](#), .

Whereas the learned Counsel appearing on behalf of the State vehemently opposed the prayer for quashing and submitted when it is an admitted position the Petitioner No. 2 is the General Manager of the company even in absence of requisite averment in terms of section 74 of the Standards of Weights and Measures Act, 1976 and section 62 of the Standards of Weights and Measures (Enforcement) Act, 1985, being the General Manager he is very much liable to be prosecuted in connection with the aforesaid complaint case.

5. Before advertng to the rival contentions of the parties, I am of the opinion, it would be apposite to refer to the aforesaid decisions of the Hon'ble High Court in which the Apex Court dealt with the question of quashing of complaint on the score of absence of imputing vicarious liability on the officers of the company. In the case of S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr. (supra), a three Judges Bench of the Apex Court dealt with two issues;

(a) Whether for the purposes of section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfil the

requirements of the said section and it is not necessary to specifically state in the complaint that the person accused was in charge of, or responsible for, the conduct of the business of the company.

(b) Whether a Director of a company would be deemed to be in charge of, and responsible to, the company for conduct of the business of the company and, therefore, deemed to be guilty of the offence unless he proves to the contrary.

(c) Even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the Managing Directors or Joint Managing Director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against.

...and held as follows;

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 u/s 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-part (b) has to be in the negative. Merely being a Director of a company is not sufficient to make the person liable u/s 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 u/s 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered u/s 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. (para 19)

In the case of *K.K. Ahuja v. V.K. Vora and Anr.* (supra), the Apex Court dealt with the question, as to who can be said to be the persons in charge and to be persons "in charge of, and was responsible to the company for the business of the company" as referred in section 141 of the Negotiable Instruments Act, 1881 and held as follows;

"The words "every person who, at the time of the offence was committed, was in charge of, and was responsible for the conduct of the business of the company" occurs not only in section 141(1) of the Act but in several enactments dealing with offences by companies, to mention a few - section 278B of the Income Tax Act, 1961, section 22C of Minimum Wages Act, 1948, section 86A of the Employees State Insurance Act, 1948, section 14A of Employees' Provident Fund and Miscellaneous Provisions Act, 1952, section 29 of Payment of Bonus Act, 1965, section 40 of the Air (Prevention and Control of Pollution) Act, 1981 and section 47 of Water (Prevention and Control of Pollution) Act, 1974. But neither section 141(1) of the Act, nor the pari materia provisions in other enactments give any indication as to who are the persons responsible to the company, for the conduct of the business of the company. Therefore, we will have to fall back upon the provisions of Companies Act, 1956 which is the law relating to and regulating companies. Section 291 of the said Act provides that subject to the provisions of the Act, the Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorized to exercise and do. A company though a legal entity can act only through its Board of Directors. The settled position is that a Managing Director is prima facie in charge of and responsible for the company's business and affairs and can be prosecuted for offences by the company. But insofar as other Directors are concerned, they can be prosecuted only if they were in charge of and responsible for the conduct of the company's business. A combined reading of sections 5 and 291 of Companies Act, 1956 with the definitions in Clauses (24), (26), (30), (31), (45) of section 2 of that Act would show that the following persons are considered to be the persons who are responsible to the company for the conduct of the business of the company:

(a) the Managing Director/s;

(b) the whole-time Director/s;

(c) the Manager;

(d) the Secretary;

(e) any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act;

(f) any person charged by the Board with the responsibility of complying with that provision (and who has given his consent in that behalf to the Board); and

(g) where any company does not have any of the officers specified in Clauses (a) to (c), any Director or Directors who may be specified by the Board in this behalf or where no Director is so specified, all the Directors. Section 141 uses the words "was in charge of, and was responsible to the company for the conduct of the business of the company". It is evident that a person who can be made vicariously liable under Sub-section (1) of section 141 is a person who is responsible to the company for the

conduct of the business of the company and in addition is also in charge of the business of the company. There may be many Directors and Secretaries who are not in charge of the business of the company at all. The meaning of the words "person in charge of the business of the company" was considered by this Court in [Girdhari Lal Gupta Vs. D.H. Mehta and Another](#), followed in [State of Karnataka Vs. Pratap Chand and Others](#), and [Smt. Katta Sujatha Vs. Fertilizers and Chem. Travancore Ltd. and Another](#), . This Court held that the words refer to a person who is in overall control of the day to day business of the company. This Court pointed out that a person may be a Director and thus belongs to the group of persons making the policy followed by the company, but yet may not be in charge of the business of the company; that a person may be a Manager who is in charge of the business but may not be in overall charge of the business; and that a person may be an officer who may be in charge of only some part of the business, (para 15)

Therefore, if a person does not meet the first requirement, that is being a person who is responsible to the company for the conduct of the business of the company, neither the question of his meeting the second requirement (being a person in charge of the business of the company), nor the question of such person being liable under Sub-section (1) of section 141 does not arise. To put it differently, to be vicariously liable under Sub-section (1) of section 141, a person should fulfill the "legal requirement" of being a person in law (under the statute governing companies) responsible to the company for the conduct of the business of the company and also fulfill the "factual requirement" of being a person in charge of the business of the company, (para 16)

Therefore, 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 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 (listed in para 14 above), 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 u/s 141(1) of the Act. (para 17)

It should, however, be kept in view that even an officer who was not in charge of and was responsible to the company for the conduct of the business of the company can be made liable under Sub-section (2) of section 141. For making a person liable u/s 141(2), the mechanical repetition of the requirements u/s 141(1) will be of no assistance, but there should be necessary averments in the complaint as to how and in what manner the accused was guilty of consent and connivance or negligence and therefore, responsible under Sub-section (2) of section 141 of the Act. (para 18)

Another aspect that requires to be noticed is that only a Director, Manager, Secretary or other officer can be made liable under Sub-section (2) of section 141. But under Sub-section (1) of section 141, it is theoretically possible to make even a person who is not a Director or officer, liable, as for example, a person falling under Clauses (e) and (f) of section 5 of the Companies Act, 1956. When in SMS Pharma (1), this Court observed that "conversely, a person not holding any office or designation in a company may be liable if he satisfied the requirement of being in charge of and responsible for conduct of the business of the company", this Court obviously had in mind, persons described in Clauses (e) and (f) of section 5 of the Companies Act. Be that as it may. (para 19)

...and finally summarized the position in paragraph 20;

The position u/s 141 of the Act can be summarized thus:

(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 Clause (e) and (f) of section 5 of 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 u/s 141(1). No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable u/s 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, be averring in the complainant their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence." (para 20)

In this connection this Court feels that it would be relevant to also refer another decision of the Hon"ble Supreme Court in the case of Municipal Corporation of Delhi v. Ram Kishan Rohatgi and Ors., reported in 1983 SCC 115, wherein the Apex Court held as follows;

Before going to the complainant, we might state that it is common ground that the complaint clearly contains the allegations regarding the visit of the Inspector to the shop of Respondent No. 6 (Madan Lal) and that the sample taken by him, which was sent to the Public Analyst, was manufactured by Upper Ganges Sugar Mills, Darayaganj, Delhi, having its registered office at Calcutta and that the Public Analyst found the samples to be adulterated. There is no dispute regarding these facts. The only point on which the controversy centers is as to whether or not on the allegations, the Manager as also the other Respondent Nos. 1 to 5 committed any offence. The main clause of the complaint which is the subject matter of the dispute is clause No. 5 which may be extracted thus:"

5. That the accused No. 3 is the Manager, of accused No. 2 and accused Nos. 4 to 7 are the Directors of accused No. 2 and as such they were in charge of and responsible for the conduct of business of accused No. 2 at the time of sampling." (Para 12)

According to this clause, accused No. 3 (Ramkishan) who is Respondent No. 1 in this appeal and accused Nos. 4-7 who are Respondent Nos. 2 to 4, were the Directors of the company, Respondent No. 5. So far as the Manager, Respondent No. 1, is concerned it was not and could not be reasonably argued that no case is made out against him because from the very nature of his duties, it is manifest that he must be in the knowledge about the affairs of the sale and manufacture of the disputed sample. It was, however, contended that there is no allegation whatsoever against the Directors, Respondent Nos. 2 to 4. (Para 13)

Reliance has been placed on the words "as such" in order to argue that because the complaint does not attribute any criminal responsibility to accused Nos. 4 to 7 except that they were in charge of and responsible for the conduct of the business of the company. It is true that there is no clear averment of the fact that the Directors were really in charge of the manufacture and responsible for the conduct of business but the words "as such" indicate that the complaint has merely presumed that the-Directors of the company must be guilty because they are holding a particular office. This argument found favour with the High Court which quashed the proceedings against the Directors as also against the Manager, Respondent No. 1." (Para 14)

So far as the Manager is concerned, we are satisfied that from the very nature of his duties it can be safely inferred that he would undoubtedly be vicariously liable for the offence; vicarious liability being an incident of an offence under the Act. So far as the Directors are concerned, there is not even a whisper nor a shred of evidence nor

anything to show, apart from the presumption drawn by the complainant, that there is any act committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable. In these circumstances, therefore, we find ourselves in complete agreement with the argument of the High Court that no case against the Directors (accused Nos. 4 to 7) has been made out ex facie on the allegations made in the complaint and the proceedings against them were rightly quashed."(Para 15)

We, however, do not agree that even accused No. 3, Respondent No. 1, who is Manager of the Company and therefore directly in charge of its affairs, could fall in the same category as the Directors. Hence, we would set aside that part of the Judgment of the High Court which quashes the proceedings against the Manager, Respondent No. 1 (Ram Kishan Rohtagi)." (Para 16)

6. So far as the grounds on which the Petitioners sought for quashing of the case, viz., the Petitioner No. 2 being the General Manager was only involved in dealing with policy matters and no way involved in running the day to day affairs of the company and it is the distributor through whom the retail sales are affected are responsible for such violation over whom the Petitioner had no control are pure question of facts are essentially their defence and as such the same cannot be taken into consideration to decide the question whether on the basis of the same the complaint can be quashed or not.

7. However, having gone through the petition of complaint, I find in both the cases in the cause title the Petitioner Nos. 1 and 2 have been described as the Chairman and the General Manager, whereas in the body of the complaint only averment was to the effect so far as they are concerned are as follows;

That the persons accused Nos. 3 and 6 committing these offences are companies so every persons including accused Nos. 4, 5 and 7 as well as the companies themselves are liable to be proceeded against as per section 74 of the Standards of Weights and Measures Act, 1976 and section 62 of the Standards of Weights and Measures (Enforcement) Act, 1985. In the petition of complaint in first case the Petitioner No. 1 has been described as accused No. 3 and the Petitioner No. 2 as accused No. 4, while in the second case the Petitioner No. 1 has been described as accused No. 5 and the Petitioner No. 2 as accused No. 4.

8. Having gone through the impugned complaint I have no doubt the requisite averment so far as the Petitioner No. 1 M.S. Ramchandran is concerned is clearly absent, as such the aforesaid two complaint cases so far as Petitioner No. 1 is concerned is not at all tenable and liable to be quashed. So far as the Petitioner No. 2 is concerned not only in the petition of complaint he has been described as the General Manager of the Indian Oil Corporation Limited, but also in this criminal revision moved before this Court at his behest the Petitioner No. 2 has described himself as the General Manager, West Bengal of Indian Oil Corporation Limited.

Therefore, it is the admitted case of the Petitioner that he is the General Manager, West Bengal of Indian Oil Corporation Limited. He being the General Manager of the company by very nature of his duty it can always be prima facie inferred that being the General Manager he is in charge and responsible to the accused company for carrying on its day to day business. Therefore, there is a prima facie case so far as the Petitioner No. 2 is concerned that he is vicariously liable for the offences committed by the accused company of which he is the General Manager. Hence, even in absence of requisite averment in the petition of complaints, the question of quashing of the case against him does not at all arise. In the result, while both the criminal revisions so far as the Petitioner No. 1 is concerned succeeds and the criminal case against him stands quashed, but both the aforesaid criminal revisions so far as the Petitioner No. 2 is concerned stands dismissed for the reasons stated hereinabove.

In view of disposal of the main criminal revisional applications, the application for extension of interim order being CRAN No. 16 of 2010 and CRAN No. 17 of 2010 become infructuous and accordingly stands disposed of.

Criminal Section is directed to deliver urgent photostat certified copy of this Judgment to the parties, if applied for, as early as possible.