

(2008) 02 DEL CK 0296

Delhi High Court

Case No: Criminal M.C. 3246 of 2003 and Criminal M.A. 4392 of 2003

Sanjeev Gupta

APPELLANT

Vs

State Government of N.C.T. of
Delhi

RESPONDENT

Date of Decision: Feb. 11, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Minimum Wages Act, 1948 - Section 22A, 22C
- Negotiable Instruments Act, 1881 (NI) - Section 138, 141, 142

Citation: (2008) 119 FLR 365 : (2009) 1 LLJ 731

Hon'ble Judges: Dr. S. Muralidhar, J

Bench: Single Bench

Advocate: Mohit Mathur and Shishir Mathur, for the Appellant; Pawan Behl, APP, for the Respondent

Judgement

S. Muralidhar, J.

This is a petition u/s 482 of the Code of Criminal Procedure, 1973 (CrPC) filed by the Petitioner seeking the quashing of a complaint Application No. SD/C1/Jan/2002 titled O.P. Arya v. Sanjeev Gupta pending in the Court of the learned Metropolitan Magistrate (MM), New Delhi for the offence u/s 22-A of the Minimum Wages Act, 1948 (Act).

2. The cause title of the complaint reads as under: 1. Name of the complainant. O.P. Arya and his address Minimum Wages Inspector, Office of Asst. Labour Commissioner, (Distt. South) Pushpa Bhawan, Pushp Vihar, 2. Name of the accused and his address: Sh. Sanjeev Gupta, (MD) Hindustan Coca Cola Mkt. (P) Ltd. A-22 MCIE, Mathura Road, N.D. 44.

3. Para 7 of the complaint reads as under:

That the above named accused person is responsible for the conduct of its business at the time of commission of offences.

4. The gist of the complaint is that on an inspection of the establishment on January 2, 2002 it was found that the accused had failed to produce the records of one of the employees Shri Baljit Singh and further several of the requirements of the Act were not complied with.

5. An order was passed by the learned MM on January 28, 2002 summoning the accused. The application filed subsequently for recalling of the summoning order was dismissed on July 31, 2003.

6. It is urged by Mr. Mathur, learned Counsel for the Petitioner points out that the, Petitioner is the only accused in the complaint. He submits that the wording of Section 22-C of the Act postulates that if a company is an accused then in addition to such company any person who at the time of commission of the offence was in charge of the affairs of the company or responsible to it for the conduct of its business can also be arrayed as an accused. In the absence of Hindustan Coca Cola Marketing Private Limited (Company) being arrayed as an accused, there is no question of the Petitioner in his capacity as Managing Director of the Company being arrayed as an accused. The Petitioner was in any event at the time of commission of the offence an Additional Director and his being arrayed as an accused not arise.

7. Mr. Behl, learned APP appearing for the State sought to suggest that in fact there were two accused in the matter and that the prosecution had forgotten to indicate the serial numbers of the accused in the cause title of the complaint. He, therefore, submitted that the complaint was maintainable as such.

8. This Court is unable to agree with the submissions of Mr. Behl. The cause title of the complaint even in the original does not indicate that there is more than one accused in the matter. Apart from there being no serial numbers indicated of the accused, there can be no doubt from the manner in which the name of the accused is depicted in the cause title of the complaint that there is only one accused which is the Petitioner in his capacity as Managing Director of the company.

9. Section 22(C) of the Act reads as under:

Section 22(C) Offence by Companies-

(1) If the person committing any offence under this Act is a Company, every person who at the time the offence was committed, was in charge of, and 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:

(2) Notwithstanding anything contained in Sub-section (1), where any 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 office of the company such director, manager, secretary, or other officer of the company shall also be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

10. The above provision is similar to Section 141 of the Negotiable Instruments Act, 1881 (NI Act). Explaining the requirement of the law in regard to the minimal averment in the complaint u/s 138 read with Section 142 NI Act, the Supreme Court in [S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another](#), held that where a company is an accused, then in order that the complaint can be maintained against a person who at the time of commission of the offence was in charge of the affairs of the company or responsible to it for the conduct of its business, there should be a specific averment in the complaint in this regard.

11. As far as the present complaint is concerned, the company has not been arrayed an accused, therefore the essential requirement for the applicability of Section 22-C of the Act is absent. In the circumstances, merely stating in para 7 of the complaint that the Petitioner was in charge of the affairs of the company would be relevant at all. Para 7 of the complaint might have been sufficient if the Company had been made an accused. However, as in the present complaint, if the only accused is the petitioner in his capacity as Managing Director then the complaint would have to contain a specific averment connecting the Petitioner here with the offence committed. The complaint when read as a whole does not even prima facie make out a case against the petitioner for the offence under the Act.

12. In the circumstances, the Petition is allowed. The complaint, being Application No. SD/C1/Jan/2002 titled O.P. Arya v. Sanjeev Gupta u/s 22-A of the Act and all the proceedings consequent thereto are hereby quashed.

The Petition and the pending application stand disposed with no orders as to costs.