

## Sham Sundar & Ors vs State Of Haryana on 21 August, 1989

**Equivalent citations: 1989 AIR 1982, 1989 SCR (3) 886, AIR 1989 SUPREME COURT 1982, 1989 (4) SCC 630, (1989) 2 ALL WC 1121, (1989) 2 GUJ LH 587, 1989 SCC (CRI) 783, (1989) 3 JT 523 (SC), (1989) 3 CRIMES 347, (1990) 1 CURLJ(CCR) 103, (1990) 1 MAHLR 696, (1990) 1 CRILC 405, (1990) 2 FAC 120, (1990) 1 APLJ 12, (1990) 1 BLJ 593, (1990) 1 EFR 1, (1990) EASTCRIC 416, 1990 APLJ(CRI) 51, (1990) MADLW(CRI) 4, (1990) 67 COMCAS 1, (1990) SCCRIR 370**

**Author: K.J. Shetty**

**Bench: K.J. Shetty, S.R. Pandian**

PETITIONER:

SHAM SUNDAR & ORS.

Vs.

RESPONDENT:

STATE OF HARYANA

DATE OF JUDGMENT 21/08/1989

BENCH:

SHETTY, K.J. (J)

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SHETTY, K.J. (J)

PANDIAN, S.R. (J)

CITATION:

1989 AIR 1982                      1989 SCR (3) 886

1989 SCC (4) 630                JT 1989 (3) 523

1989 SCALE (2) 446

ACT:

Haryana Rice Procurement (Levy) Order, 1979: Contravention of by partnership firm--Prosecution of all partners--Maintainability of.

Essential Commodities Act, 1955: ss. 7 & 10--Contravention of Haryana Rice Procurement (Levy) Order, 1979 by partnership firm--Liability for--Held, no vicarious liability in criminal law unless statute so specifies.

HEADNOTE:

The short supply of levy rice to the State Government by licensed millers is a contravention of the Haryana Rice Procurement (Levy) Order, 1979 made under s. 3 of the Essential Commodities Act, 1955. The said contravention is punishable under s. 7 of the Act. Under s. 10(1) of the Act a person is deemed to be guilty of contravention of such an order, if he was in charge of and was responsible to the company for the conduct of its business. Under the proviso thereto, a person is, however, not 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. Under explanation (a) to the section the term "company" includes a firm or other association of individuals.

The appellants, partners of a firm running a rice mill, were convicted for contravention of the provisions of the procurement order read with s. 7 of the Act, and sentenced to rigorous imprisonment and fine. The High Court confirmed the conviction and sentence.

In this appeal by special leave, it was contended for the appellants that there was no evidence adduced by the prosecution that they were in charge of the business of the firm when the offence was committed and in the absence of any such evidence the conviction could not be sustained. Partly allowing the appeal,

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HELD: 1. There is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 of the Essential Commodities Act does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not. [890C]

2.1 The obligation for the accused to prove under the proviso to s. 10(1) that the offence took place without his knowledge or that he exercised all due diligence to prevent such offence, arises only when the prosecution establishes that the requisite condition mentioned in sub-s. 1 that the partner was responsible for carrying on the business and was during the relevant time in charge of the business, is satisfied. [890E]

2.2 In the instant case PW 1 had deposed that the statement regarding purchase of paddy and supply of levy rice was signed by appellant No. 3 as partner on behalf of the firm. There is no other evidence on record to indicate that other partners were also conducting the business of the firm when the offence was committed. [890G-891A]

The conviction and sentence of appellant No. 3 are, therefore, maintained. The conviction and sentence of appellant Nos. 1, 2 and 4 are set aside. They are acquitted from all the charges. [891C]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 524 of 1989.

From the Judgment and Order dated 25.5.1989 of the Punjab and Haryana High Court in Criminal Appeal No. 175 of 1986.

M.C. Bhandare, (N.P.) and Gopal K. Bansal for the Appellants.

Mahabir Singh for the Respondent.

The Judgment of the Court was delivered by K. JAGANNATHA SHETTY, J. We grant special leave and proceed to dispose of this appeal.

On June 28, 1980 the appellants formed a partnership firm for the purpose of running a rice mill in the name and style of M/s Panna Lal Prem Nath Rice Mills at Shahput. They have been convicted by the Presiding Officer of the Special Court, Karnal by judgment dated March 10, 1986 for contravention of the provisions of the Haryana Rice Procurement (Levy) Order, 1979, read with section 7 of the Essential Commodities Act. They were sentenced to six months' rigorous imprisonment and a fine of Rs.2,000 each. The High Court of Punjab and Haryana has confirmed that conviction and sentence.

They now appeal against conviction.

The facts which gave rise to the charge, in so far as material, were these: In 1984, the firm purchased 5373 quintals 69 kgs. and 400 gms of common paddy from the market. By the rate of conversion of paddy into rice an average 3582.49 quintals of rice should have been obtained from that much of quantity of paddy. As per levy rules the firm ought to have supplied 3224.21 quintals of rice to the Government but the firm failed to supply it. Instead it supplied only 1510 quintals of rice. There was thus a short supply of 1714.17 quintals of levy rice to the Government. On another occasion the firm purchased 2353.79 quintals of superfine paddy out of which 1566.62 quintals of rice could be obtained. From that, the firm gave the Government 933.89 quintals of rice as against 1174.96 quintals. Here again there was a short supply of 241.07 quintals of superfine levy rice.

The short supply of levy rice is a contravention of the Haryana Rice Procurement (Levy) Order 1979 and punishable under section 7 of the Essential Commodities Act. All the partners of the firm were charge-sheeted and put to trial for the said offence. They were also convicted and sentenced as earlier stated.

Counsel for the appellants urged that there is no evidence adduced by the prosecution that the appellants were in charge of the business of the firm when the offence was committed and in the absence of any such evidence the conviction could not be sustained. Counsel rested his submission on the text of section 10 of the Essential Commodities Act. This section provides:

"10. Offences by companies--(1) If the person contravening an order made under section 3 is a company, every person who, at the time of contravention 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 contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section 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 con-

tained in sub-section 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 purposes 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.

From explanation to section 10 it will be seen that the company includes a firm and other association of persons. Section 10 provides that the person shall be deemed to be guilty of contravention of an order made under section 3 if he was in charge of and was responsible to the firm for the conduct of the business of the firm. What is of importance to note is, that the person who was entrusted with the business of the firm and was responsible to the firm for the conduct of the business, could alone be prosecuted for the offence complained of.

Counsel for the State, however, relied upon the legal liability of partners and he argued that it would be for the accused partners to prove that the offence was committed without their knowledge or in spite of exercising due diligence on their part. He relied upon the proviso to sub-section (1) of section 10. It is true that under the Indian Partnership Act, 1932, a 'firm' or 'partnership' is not a legal entity but is merely an association of persons agreed to carry on business. It is only a collective name for individuals, carrying on business in partnership. The essential characteristic of a firm is that each partner is a representative of other partners. Each of the partners is an agent as well as a principal. He is an agent in so far as he can bind the other partners by his acts within the scope of the partnership agreement. He is a principal to the extent that he is bound by acts of other partners. In fact every partner is liable for an act of the firm. Section 2(a) of the Partnership Act defines an "act of a firm" to mean any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm.

But we are concerned with a criminal liability under penal provision and not a civil liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not.

It is, therefore, necessary to add an emphatic note of caution in this regard. More often it is common that some of the partners of a firm may not even be knowing of what is going on day to day in the firm. There may be partners, better known as sleeping partners who are not required to take part in the business of the firm. There may be ladies and minors who were admitted for the benefits of partnership. They may not know anything about the business of the firm. It would be a travesty of justice to prosecute all partners and ask them to prove under the proviso to sub-section (1) that the offence was committed without their knowledge. It is significant to note that the obligation for the accused to prove under the proviso that the offence took place without his knowledge or that he exercised all due diligence to prevent such offence arises only when the prosecution establishes that the requisite condition mentioned in sub-section (1) is established. The requisite condition is that the partner was responsible for carrying on the business and was during the relevant time in charge of the business. In the absence of any such proof, no partner could be convicted. We, therefore, reject the contention urged by counsel for the State.

We have perused the evidence of the prosecution. Santlal Inspector, Food and Civil Supplies (PW 1) has deposed that the accused were partners of the firm. He has stated that the statement Ex. P. 8 regarding purchase of paddy and supply of levy rice was signed by Lajpat Rai as partner on behalf of the firm. The rest of his statement relates to the short supply of levy rice, and it does not indicate that other partners were also conducting the business during the relevant time. The statement of PW-3 who investigated the case does not indicate anything further. He has seized the relevant docu-

ments like stock register and recovery memo and arrested all the four accused. These documents do not indicate even remotely that all the partners were doing the business of the firm. There is no other evidence on record on this aspect. With these tit-bits, it is impossible to hold that when the offence was committed all the partners were conducting the business of the firm. However, Lajpat Rai accused No. 3 cannot escape the liability. The material on record indicates that he was conducting the business of the firm and in fact, he has signed the statement Ex. P. 8 on behalf of the firm. His conviction cannot therefore be disturbed. But the conviction of other partners is absolutely uncalled for.

In the result we allow the appeal, set aside the conviction and sentence of appellant Nos. 1, 2 and 4 and acquit them from all the charges. The conviction and sentence of appellant No. 3, however, are maintained.

P.S.S.

Appeal allowed.