

Pradeep Kumar Agarwal @ Pradip Agarwal vs The State Of JharkhandOpp. ... on 9 February, 2023

Author: Gautam Kumar Choudhary

Bench: Gautam Kumar Choudhary

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 598 of 2022
Pradeep Kumar Agarwal @ Pradip Agarwal.... .. Petitioner(s)
Versus
The State of JharkhandOpp. Party(s)
.....

CORAM :HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Petitioner(s) : Mr. R. S. Mazumdar, Sr. Advocate
Mr. Nishant Roy, Advocate
For the State : Mrs. P. Shrestha, SPP
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08/ 09.02.2023. The instant Cr. M. P. has been filed for quashing of the entire criminal proceeding initiated against the petitioner in connection with Argora P.S. Case No186 of 2020 registered for the offences punishable under Sections 273/34 of the Indian Penal Code read with Section 59(III) of Food Safety and Standards Act, 2006.

2. As per the case of the prosecution, a raid was conducted on 03.07.2020 at Harmu Housing Colony, House No.MIG H 1/26, Ranchi, wherein huge quantity of Pan Masala, Jarda and Om Umangwati Ayurvedic medicines were recovered. It is alleged that owner of the house, namely, Bhushan Prasad Lal supplied the Rent Agreement which would show that Ishan, son of Radheyshyam Prasad had entered into an agreement with him on 26.02.2019 and the rent was paid to him by Gunjan Verma. It is alleged that Ishan (A-2) was the CNF of Shekhar Pan Masala.

3. The Police after investigation found the case to be true and submitted charge-sheet and on the basis of which, cognizance of the offence has been taken.

4. It is submitted that Pradeep Kumar Agarwal @ Pradip Agarwal (petitioner) is Director of Shekhar Pan Masala.

5. It is further submitted that the petitioner received a Notice under Section 41(A) of Cr.P.C. dated 30.07.2021 and in pursuance thereto he immediately submitted his reply on 18.08.2021, but even then he is being harassed without examining the fact that he has not supplied Shikhar Pan Masala after the ban imposed by the Government of Jharkhand.

6. It is submitted that the Company has not been impleaded as party in the instant case and the petitioner/Director of the Company has been directly made an accused in this case.

7. It is submitted that the prohibitory order came into force with effect from 08.05.2020. However, it is submitted that this case is fit to be quashed in view of non-compliance of procedural requirement as per Section 42 of the Food Safety and Standards Act, 2006 and on similar facts passed in W.P.(Cr.) No.325 of 2021, the case was quashed by the Co-ordinate Bench of this Court.

8. Learned SPP for the State has vehemently opposed the prayer, but fairly conceded that with regard to the cognizance against the Director, but without impleading the Company, there appears some error.

9. The short question involved in the present case is whether the petitioner was the director of the company can be prosecuted without impleading the company or attributing specific acts against him?

Law settled by a Catena of decisions that a corporate entity is an artificial person which acts through its officers, directors, managing director/chairman etc. It is the cardinal principle of criminal jurisprudence that where there are allegations of vicarious liability, then there has to be sufficient evidence of the active role of each director. There has to be a specific act attributed to a director or the person allegedly in control of management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company. It has been held in *HDFC Securities Ltd Vs State of Maharashtra* 2017(1) JBCJ:

AIR 2017(SC) 61 :(2017) 1 SCC 640.

The Penal Code, 1860, does not provide for vicarious liability for any offence alleged to be committed by a company. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor e.g. the Negotiable Instruments Act, 1881. Further, reliance was made on *S.K. Alagh v. State of U.P.* [*S.K. Alagh v. State of U.P.*, (2008) 5 SCC 662 : (2008) 2 SCC (Cri) 686] , wherein at para 16, this Court observed that : (SCC p. 666) "16. The Penal Code, save and except some provisions specifically providing therefor, does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence."

Under the circumstance the criminal proceeding in its present form is not tenable against the petitioner. The entire criminal proceeding initiated against the petitioner in connection with Argora P.S. Case No186 of 2020 is quashed.

The instant Criminal miscellaneous petition is allowed.

(Gautam Kumar Choudhary, J.) Sandeep/