

T. J. Stephen & Others

Vs

M/s. Parle Bottling Co. (P) Ltd. & Others

Criminal Appeal No. 175 of 1988

(Ranganath Misra, M.M. Dutt JJ)

22.03.1988

ORDER

1. Special leave granted.

2. This appeal is by special leave. The appellant who is Deputy Chief Controller of Imports and Exports filed a complaint in the Court of Chief Metropolitan Magistrate, Bombay alleging commission of offence under Section 5 of the Imports and Exports (Control) Act, 1947 by the respondents 1 and 2. The said case got transferred to the Court of the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Estate, Bombay and was numbered as 82/S of 1983. The respondent 1 is a private limited company with its registered office at Bombay and the respondent 2 is its Managing Director. To this complaint proviso (a) a Section 200 of the Code of Criminal Procedure was applicable. Therefore, cognizance was taken of the offence alleged without examining the appellant. On January 17, 1983 an application was filed on behalf of the two accused persons for recall of the summonses and dismissal of the complaint. On May 12, 1983 the learned Magistrate dismissed the petition. The order of the learned Magistrate was assailed before the High Court and on September 2, 1983, the High Court dismissed it. Then the matter was brought to this Court by filing an application for special leave on December 12, 1983; this Court dismissed the leave application. The case set down for trial after charges were framed. An application was made to the trial court at this stage to discharge the Managing Director, respondent 2 in exercise of inherent powers by contending that the company was prepared to admit its guilt and may be appropriately penalised and the Managing Director against whom there was no allegation of any criminal conduct should be discharged. The learned Magistrate by a reasoned order dated February 17, 1986, dismissed the application and directed that the trial should proceed against both. That order was assailed by the respondents before the Bombay High Court by filing a criminal writ petition. The High Court by its order dated July 10, 1986, which is impugned in this appeal, held :

On perusal of the averments it is seen that at the time the learned trial judge issued processes against the petitioners accused, the Department and the State had merely filed a complaint case along with list of witnesses and documents. None of the statements of witnesses or copies of documents were produced before the trial Judge. The complainant's verification statement is also not recorded. As such the order of issuance of process is clearly a result of non-application of mind by the trial judge. Such order would mean that merely on filing a complaint the process could be issued. It would be unjust to the accused if process is issued against him by the Magistrate without first satisfying himself about the nature of the case and whether there exists sufficient grounds for proceeding with the case. Since this is not done, then in the instant case the process issued against petitioner 2 (Managing Director) is

liable to be quashed on this ground alone. Without short-circuiting the other grounds it must be pointed out that perusal of the complaint and in particular page 23 of the complaint shows that the prosecution intends to charge petitioner 2 as the principal offender along with the petitioner 1 company. That is not possible for the simple reason that offence under Section 5 of the Imports and Exports (Control) Act is done principally by the licensee (company in this case) and/or by the abettor to the offence. There are no allegations in the complaint that the petitioner 2 either aided or abetted in the contravention of licence conditions by the petitioner 1 company. As such on this ground also the process issued against petitioner 2 is liable to be and is quashed and set aside.

The criticism advanced by the learned Judge against the trying magistrate is wholly untenable and is perhaps applicable to the learned Judge. If reference had been made to Section 200 Proviso (a) of the Code of Criminal Procedure, what has been advanced as the most impressive ground for quashing the proceedings against the respondent 2 could not at all have been accepted. The learned Judge obviously has not cared to look into the procedural law applicable to the factual situation before him. The learned Judge also lost sight of the fact that similar objections had once been raised and his High Court had refused to entertain the same and the order of the High Court had been upheld here by dismissing the special leave petition. The portion we have extracted from the order of the High Court suggests that the learned Judges wanted to draw a distinction between then and now by saying that the records of investigation had not then been available. Records of investigation are not evidence in this case and a complaint could not be quashed by referring to the investigation records particularly when the petition of the complainant did allege facts which prima facie show commission of an offence. The learned Judge did note the fact that the licensee was a company but lost sight of the fact that a company by itself could not act. Obviously the company has to act through someone. In the petition of the complainant there was clear allegation that the Managing Director had committed the offence acting on behalf of the licensee. If the complainant's petition had been properly scrutinized the second ground advanced in the impugned order for quashing the proceedings against the Managing Director could not have been utilised in the impugned order. Both the grounds are wholly untenable and, therefore, the order of the High Court has got to be reversed. We allow the appeal and vacate the order of the High Court.

3. Once the order of the High Court is vacated the order of the learned Magistrate would revive and the prosecution as directed by the learned Magistrate has now to continue. The petition of the complainant at page 21 of the paper-book shows that the offence was committed between 1967 and 1969 which is some 20 years back. While we have no sympathy for the respondent 2 and we are clearly of the opinion that he has no equity in his favour and the delay after the complaint had been filed has been mostly on account of his mala fide move, we do not think it would be in the interest of justice to allow a prosecution to start 20 years after the offence has been committed. If we could convict the respondent 2 in accordance with law, we would have been prepared to do so taking the facts of the case and conduct of the respondent into consideration but that would not be possible within the framework of the law of procedure. We, therefore, do not propose to allow the learned Magistrate to proceed with the trial of the case at this belated stage.

4. We accordingly directed the case to be closed against respondent 2 without further delay. Ordinarily, in a criminal case of this type there would have been no order for costs. But keeping in view the background of the case, the manner in which the respondent 2 has behaved and the fact that he is squarely responsible for delaying the proceedings by reiterating the same contention twice over, we are of the definite opinion that the respondent 2 should be made to suffer exemplary costs.

We accordingly direct that he shall be called upon to pay a sum of Rs. 10,000 by way of costs and the said amount is to be deposited in the trial court within one month hence failing which the trial court shall have a direction to recover the same as fine and pay the amount to the complainant. Compliance shall be reported to the registry of this Court.

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