IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 5TH DAY OF OCTOBER, 2023

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 102522 OF 2023

BETWEEN:

1. SRI. RAMAPPA SIDDAPPA SHINDHE,
   AGE. 49 YEARS, OCC. SECRETARY OF PKPS,
   NERLI, TQ. NERLI-591340, TQ. HUKKERI,
   DIST. BELAGAVI.

2. SRI. S.G. BABU,
   AGE. 33 YEARS, OCC. JFR (JUNIOR FIELD
   REPRESENTATIVE), KRIBKO,
   R/O. BELAGAVI-590001.

... PETITIONERS

(BY SRI. BALAGOUDA A. PATIL, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
DEPARTMENT OF AGRICULTURE,
R/BY THE ASSISTANT DIRECTOR
OF AGRICULTURE & INSPECTOR,
HUKKERI-591309, DIST. BELAGAVI,
R/BY ADDL. SPP HIGH COURT OF KARNATAKA,
DHARWAD BENCH.

... RESPONDENT

(BY SRI. V.S. KALASURMATH, HCGP)

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THIS CRIMINAL PETITION IS FILED U/SEC. 482 OF CR.P.C. SEEKING TO EXERCISE INHERENT POWERS U/SEC. 482 OF CR.P.C. EXAMINE THE RECORDS AND QUASH THE TAKING COGNIZANCE IN C.C.NO.472/2021 DATED 06.08.2021 ARISING OUT OF PRIVATE COMPLAINT NO.159/2021, FOR THE OFFENCE P/U/SEC. 3 AND 7 ESSENTIAL COMMODITIES ACT 1955 AND VIOLATION OF CLAUSE 2(9) OF THE FERTILIZERS (CONTROL) ORDER 1985, PENDING BEFORE THE PRINCIPAL CIVIL JUDGE AND JMFC SANKESHWAR, AS AGAINST THE PETITIONERS/ACCUSED NO. 1 AND 2 ARE CONCERNED.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioners are before this Court calling in question the proceedings in C.C. No.472/2021 registered for the offences punishable under Sections 3 and 7 of the Essentials Commodities Act, 1955 and violation of clause 2(9) of the Fertilizers (Control) Order 1985.

Learned counsel for the petitioners submits that the issue in the *lis* stands covered by the judgment rendered by this Court in the case of ***The Manager TAPCMS Ltd and another vs. The State of Karnataka and another*** in Crl.P. No.100519/2023, disposed off on 23.03.2023, wherein the identical issues have been raised and have been answered in favour of the petitioner therein. This Court has held as follows:

> *8. Admittedly, the charges leveled against the petitioners are that they have violated sections 3 and 7 of E.C. Act and Clause 19 of the Fertilizer (Control) Order, 1985.*

9. Section 10 of E.C. Act deals with the offence by Companies and it reads as follows:

10. Offences by companies.— *(1) If the person contravening an order made under section 3 is a company, every person who, at the time the 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 shall 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 contained in sub-section (1), 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.

10. Perusal of Section 10 of the E.C. Act, 1955 makes it evident that wherever contravention is by a Company, then every person who, at the time the 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. Therefore, petitioner is being made liable on account of he being an employee of Company in question and therefore, until and unless the company is arraigned as accused, the petitioner cannot be held responsible.

11. In fact, the Hon'ble Apex Court in ***Aneeta Hada Vs. Godfather Travels and Tours Private Limited***[1] *while considering the offence committed by the company has held as follows:*

"53. *It is to be borne in mind that Section 141 of the Act is concerned with the offences by the company. It makes the other persons vicariously*

[1] (2012) 5 SCC 661

liable for commission of an offence on the part of the company. As has been stated by us earlier, the vicarious liability gets attracted when the condition precedent laid down in Section 141 of the Act stands satisfied. There can be no dispute that as the liability is penal in nature, a strict construction of the provision would be necessitous and, in a way, the warrant.

… … …

56. *We have referred to the aforesaid passages only to highlight that there has to be strict observance of the provisions regard being had to the legislative intendment because it deals with penal provisions and a penalty is not to be imposed affecting the rights of persons, whether juristic entities or individuals, unless they are arrayed as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the company. The learned counsel for the respondents have vehemently urged that the use of the term "as well as" in the section is of immense significance and, in its tentacle, it brings in the company as well as the Director and/or other officers who are responsible for the acts of the company and, therefore, a prosecution against*

the Directors or other officers is tenable even if the company is not arraigned as an accused. The words "as well as" have to be understood in the context.

59. *In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh [(1970) 3 SCC 491 : 1971 SCC (Cri) 97] which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal [(1984) 4 SCC 352 : 1984 SCC (Cri) 620] does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada [(2000) 1 SCC 1 : 2001 SCC (Cri) 174] is overruled with the qualifier as stated in para 51. The decision in Modi Distillery [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] has to be treated to be restricted to its own facts as has been explained by us hereinabove."*

12. In the light of the above judgment and having regard to the fact that the company is not arraigned as accused, I am of

the considered opinion that the complaint is not tenable as against the petitioner No.1 and 2 and therefore, the proceedings are liable to be quashed insofar as the petitioners are concerned."

Learned AGA would not dispute the position of law as is observed in the aforesaid case referred supra.

Therefore, for the reasons rendered therein, the subject petition also deserves to be succeed.

For the aforesaid reasons, the following:

ORDER

(i) The petition is allowed.

(ii) The impugned proceedings in C.C. No.472/2021 qua the petitioners stands quashed.

Sd/-
JUDGE

Rsh / ct: bck
List No.: 1 Sl No.: 154