

# Dispute Resolution Hotline

July 04, 2011

## ROVING ENQUIRY AGAINST SENIOR MANAGEMENT NOT PERMISSIBLE IN CRIMINAL PROSECUTIONS

### INTRODUCTION

The Supreme Court ("SC") in the case of Subhankar Biswas ("Appellant") vs. Sandeep Meta ("Respondent")<sup>1</sup> held that in cases of offences committed by companies, no roving/fishing enquiry (enquiries solely for the sake of it without any specific allegations) was permissible unless specific details of persons engaged in day-to-day affairs was furnished by the prosecution.

### FACTS OF THE CASE

The present criminal appeal stems from a complaint filed under Section 19 of the Standards of Weights and Measures Act, 1976 ("Act"). The complaint dealt with allegations pertaining to violation of Rules 2, 4, 6, 8, 9 & 23 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 ("Rules"). The appellant in the instant case filed application for compounding of offences and the same were directed in his favor by the appropriate authorities.

It was alleged, that the company ("Company") in which Appellant was the Deputy General Manager was involved in several offences under the Act over a period of time and the Appellant was prosecuted along with Chairman of the Company. Separate applications for quashing of the proceedings were filed by the Appellant, and the Chairman of the Company before the Calcutta High Court ("Calcutta HC"). The applications clearly stated that the complaint did not specify the persons responsible for the day-to-day affairs of the Company and merely reiterated the provisions of Section 74 of the Act.

The complaint stated that companies having committed the offence under the Act, all the persons in charge of the Company at that time were responsible for the offences and liable for punishment as per the provisions of the Act.

The Calcutta HC by its order dated March 24, 2005 allowed the application and quashed the proceedings qua the Chairman stating that no specific averments were made regarding the role of the Chairman, and no proof was obtainable to show that he was responsible for the day-to-day affairs of the Company but did not quash the proceedings against the Appellant. Thus, the Appellant approached the SC against the said order.

### APPELLANT'S SUBMISSIONS

It was the submission of the Appellant that allegations against both the Chairman of the Company and the Appellant being identical and no distinction being made by the Calcutta HC, similar order should have followed for the Appellant as well.

### RESPONDENT'S SUBMISSIONS

The Respondent contended that the identity of person's involved in day-to-day affairs of the Company was a matter of evidence and the same needed to be proved in a trial.

### DECISION AND RATIONALE

The SC held that no distinction existed between the cases of the Chairman of the Company and the Appellant herein. The SC allowed the appeal setting aside the order of the Calcutta HC to the extent it went against the Appellant as no distinction was established in the said matter. The SC further stated that no roving enquiry is permissible in such cases and the obligation rests on the prosecution to provide details of persons responsible in the commission of offence for proceeding with trial. The proceedings against the Appellant were quashed.

### ANALYSIS

This judgment clarifies the fact that cases of the chairman and the manager stand on the same footing and in the absence of specific allegations against persons responsible for the day-to-day affairs of the Company the same may not be proceeded in a trial. The burden of proof rests on the prosecution and enquiry may not be permissible on the basis of vague allegations. Unless the specific facts and allegations are spelled out with respect to the day-to-day affairs, no Enquiry would be permissible in criminal trials. The judgment is a step in the positive direction to do away with frivolous litigation against senior managers and executives of the Company in criminal proceedings.

- Payel Chatterjee, Vyapak Desai & Vivek Kathpalia

1 2011 (5) SCALE 137

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