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SC ON CRIMINAL PROCEEDINGS AGAINST COMPANY DIRECTORS & OFFICERS

A. Introduction:

1. The Supreme Court (“SC”), in the case of *Dayle De’Souza*,¹ while quashing the summoning order and proceedings against Dayle De’Souza (“Appellant”), directed in its judgment of 29th October 2021, that the onus of proof under the proviso to Section 22C(1) of the Minimum Wages Act, 1948 (“Act”), that deals with Offences by Companies, only shifts when the prosecution has discharged its burden under the main section.
2. Also, it observed that courts should refrain from issuing summons, which itself is a judicial proceeding in a routine and mechanical manner without the application of mind to see if a *prima facie* case for taking cognizance is made out.

B. Brief Facts:

1. Appellant is the director of Writer Safeguards Pvt. Ltd. (the “WSPL”).
2. WSPL had entered into an agreement with NCR Corporation India Pvt. Ltd for maintenance of ATMs of State Bank of India (“SBI”). The Labour Enforcement Officer (C) (“Complainant”), upon inspection of one of the ATMs of SBI, issued notice to the Appellant alleging non-compliance with the Sections 21(4), 22, 25(2) and 26(5) of the Act and the Minimum Wages (Central) Rules, 1950 (“Rules”).
3. Eventually, complaint was filed before the jurisdictional court arraying two individuals as accused *viz.*: Dayle De-Souza and Vinod Singh, the Madhya Pradesh head of WSPL. The Company is not arrayed as an accused in the complaint and not summoned to stand trial.
4. Appellant filed pleaded² to quash the proceedings. This was dismissed by the High Court of Madhya Pradesh (“HC”) for lack of merit.
5. Aggrieved by the order of the HC, the Appellant preferred appeal before SC challenging the legality and correctness of the dismissal of the quashing proceeding.

C. Reasoning and Judgment:

1. The proviso to Section 22C(1) of the Act, which is in the nature of an exception, provides that a person who is liable under the sub-section shall not be punished if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

¹ *Dayle De’Souza V. Government of India through Deputy Chief Labour Commissioner (C) and Another*: MANU/SC/1016/2021. Also available at https://main.sci.gov.in/supremecourt/2020/17576/17576_2020_46_1501_30986_Judgement_29-Oct-2021.pdf.

² Under Section 482 of CrPC.

2. SC placed reliance on the *S.M.S Pharmaceuticals*³ and *Aneeta Hada*⁴ cases where it was held that the onus to satisfy the requirement to take benefits of the proviso is on the accused, but it does not displace or extricate the initial burden or onus on the prosecution to first establish the requirement. The proviso being an exception, there cannot be a justification or ground to initiate prosecution without first satisfying the conditions under section 22C(1). Proviso that places the onus to prove the exception on the accused does not reverse the onus under the main provision, which remains on the prosecution.
3. Emphasising on ratio in the *Anil Hada*⁵ judgment, the SC held that company has not been made an accused by the Complainant or even summoned to be tried for the offence by the Magistrate. The sub-section imposes vicarious liability by way of deeming fiction, which presupposes and requires the commission of the offence by company, as it is a separate juristic entity. In terms of the ratio, company being a juristic person cannot be imprisoned, but it can be subjected to fine, which in itself is a punishment. Every punishment has adverse consequences and therefore, the prosecution of company is mandatory.
4. The SC emphatically held that: “*The proviso (to Section 22C(1)) being an exception cannot be made a justification or a ground to launch and initiate prosecution without the satisfaction of conditions under sub-section (1) of Section 22C of the Act. The proviso that places the onus to prove the exception 2 (2012) 5 SCC 661 on the accused, does not reverse the onus under the main provision, namely Section 22C(1) of the Act, which remains on the prosecution and not on the person being prosecuted.*”⁶
5. In respect of the prosecuting officers, the SC held that: “*...it is necessary that the discretion conferred on the authorities is applied fairly and judiciously avoiding specious, unanticipated or unreasonable results. The intent, objective and purpose of the enactment should guide the exercise of discretion, as the presumption is that the makers did not anticipate anomalous or unworkable consequences. The intention should not be to target and penalise an unintentional defaulter who is in essence law-abiding.*”⁷
6. Court must ensure it does not issue summons in mechanical and routine manner. If done so, the entire purpose of laying down a detailed procedure under Criminal Procedure Code, 1973⁸ (“CrPC”) gets frustrated.
7. The Magistrate must apply his mind to see whether, on the basis of the allegations made and the evidence, a *prima facie* case for taking cognizance and summoning the accused is made out or not.
8. Consequently, SC allowed the appeal quashing the summons and the proceeding against the Appellant.

D. Conclusion:

This landmark judgment makes clear that the prosecution and the magistrate have responsibilities under law before summoning officers of companies and before fastening vicarious liability on them of alleged offence against company. This can be usefully relied by companies when their directors and officers are wrongly arraigned by prosecuting officers alleging non-compliance with applicable laws.

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³ *S.M.S. Pharmaceuticals Ltd. V. Neeta Bhalla and Another* : (2005) 8 SCC 89.

⁴ *Aneeta Hada V. Godfather Travels and Tours Private Limited* : (2012) 5 SCC 661.

⁵ *Anil Hada V. Indian Acrylic Ltd.* : (2000) 1 SCC 1.

⁶ Paragraph 11 of the Judgment.

⁷ Paragraph 39 of the Judgment.

⁸ Chapter XV of CrPC.