

(1985) 11 DEL CK 0032

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 1070 of 1985

A.R. Mehta

APPELLANT

Vs

Delhi Administration

RESPONDENT

Date of Decision : 14-11-1985

Acts Referred:

Citation : (1986) 29 DLT 284 : (1986) 10 DRJ 79

Hon'ble Judges : G.R. Luthra, J

Bench : Single Bench

Advocate : Randhir Jain, for the Appellant;

Judgement

G.R. Luthra, J.

(1) The present petition is directed against an order dated September 10, 1985 of Shri G.P. Mittal, Metropolitan Magistrate, Delhi, inter alia, directing the presence of the present petitioners to face the accusation in respect of commission of an offence punishable u/s 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the "Act").

(2) For the purpose of securing the presence of the petitioner, the learned magistrate directed the issuance of warrants of arrest bailable in the sum of Rs. 2000.00 .

(3) The prosecution was started on the filing of a complaint by Shri S.K. Verma, Senior Prosecutor, Department of Prevention of Food Adulteration, Delhi. A copy of that complaint has been attached with the present petition as Annexure "A". The allegations, as contained in the petition, are briefly as follows.

(4) On 25th November 1982 at about 1.45 p.m. Shri S K Nagpal, Food Inspector purchased a sample of Soya Milk Powder Anusoy Brand for analysis under the provisions of the Act and the Rules made there under. The purchase was made from the premises of M/s B.L. & Co , 50/1, Yusaf Sarai, New Delhi through Bhim Singh, accused No. 1. On analysis, the said sample was found to be adulterated.

(5) The aforesaid article was supplied by Messrs. Anuradha Industries, Bombay vide their bill No. 1821 dated 12th October 1982. The said company was impleaded as accused No. 3. Accused Nos. 4 to 10 were the partners of that company and, Therefore, they were also to be proceeded against.

(6) M/S. Bi-O-Cure situated opposite Vijay Foundry at P. Vidhana, Surat (accused No. 11) was sought to be proceeded against because the said company manufactured the milk. Accused No. 12 to 22 were, according to the prosecution, partners of the firm M/s. Bi-O-Cure and hence the proceedings were sought to be taken against them also.

(7) Accused No. 4 to 10 brought a petition in this High Court which was decided on 23rd May 1984 by Jagdish Chandra. J. The judgment of Jagdish Chandra, J. is reported as 1984 (2) FAC17 The proceedings against the said accused No. 4 to 10 were quashed on the ground that there was no allegation that those partners were in charge of and responsible for the conduct of the business of their firm so as to make them criminally liable for the acts of the firm M/s. Anuradha Industries u/s 17 of the Act. On the same grounds, the present petitioners have come up and they allege that criminal liability could not be vicariously fastened on them u/s 17 of the Act for the conduct of business by accused No. 11 i.e. M/s. Bi-O-Cure.

(8) Shri R.P. Lao was representing Delhi Administration on the last date of hearing and today's date was fixed with his consent. Today none is present on behalf of Delhi Administration. I have heard the learned counsel for the petitioner.

(9) In the complaint there is no allegation at all that the present petitioners or any of them was in charge of or responsible for the conduct of the business of M/s. Bi-O-Cure. In such circumstances it was held by a division bench of this court (in which I was a party) in Municipal Corporation of Delhi v. S.K. Jain and others, 1984 (2) Fac 289 that the accused could not be proceeded against and they were entitled to be discharged. In fact, in this very case, Jagdish Chandra, J. held the same view as far as accused No. 4 to 10 are concerned.

(10) Under the above circumstances I quash the proceedings as against accused No. 12 to 22 including the petitioners. The net result is that the case will proceed against accused No. 1 to 3 and 11 only. The order of the learned magistrate summoning accused No. 12 to 22 is hereby set aside and the learned magistrate will proceed only against accused No. 1 to 3 and 11 who are Bhim Singh, M/s. B.L.& Co., M/s. Anuradha Industries and M/s. Bi-O-Cure respectively.

(11) A copy of this order shall be sent to the learned trial magistrate concerned for information and necessary action.

(12) Criminal Misc. (Main) 1070 of 1985 stands disposed of.