

(1978) 07 AHC CK 0060

In the Allahabad High Court

Case No : Criminal Misc. Case No. 4103 of 1977

Babu Lal Mathura Prasad and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 05-07-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245, 313, 315, 351, 351(1)
Prevention of Food Adulteration (Amendment) Act, 1976 — Section 16, 17, 17(1),
17(2), 20A

Citation : (1978) ACR 309

Hon'ble Judges : P.N. Goel, J

Bench : Single Bench

Advocate : Tej Pal, for the Appellant;

Final Decision : Dismissed

Judgement

P.N Goel, J.—This is an application u/s 482 Code of Criminal Procedure.

2. The facts giving rise to this application may be stated at some length; on 29th of December 1975 Sri Sita Ram, Food inspector, Nagar Palika, Chitrakoot Dham, Karwi district Banda opposit party No. 2, took sample of Arhar Dal from Raja Ram, son of Sunder Lal, Baldauganj, Karwi. The pulse was found adulterated. Consequently a complaint was filed against Raja Ram under Sections 7 and 16 of the Prevention of Food Adulteration Act. The food Inspector tried to ascertain from Raja Ram from where he had purchased/obtained the Arhar Dal. Raja Ram did not make any disclosure. During the trial before the Judicial Magistrate, Karwi, Raja Ram gave out in his statement u/s 313 Code of Criminal Procedure that he had purchased the Arhar Dal from firm Babu Lal Mathura Prasad of Allahabad. The firm had told him that there was no adulteration in the Dal. He sold the Dal in the same condition in which he had received from the firm (vide Annexure "I" of counter affidavit of Sita Ram). Raja Ram then entered into the witness box u/s 315 Code of Criminal Procedure and gave statement to the same effect (vide Annexure T to the counter affidavit of Sita Ram). Thereupon the

Magistrate passed order on 27-11-1976 that the proprietor of the firm Babu Lal Mathura Prasad Dal Mill, 291 Muthiganj, Allahabad and Sri L.N. Keshri Munim of the firm be summoned. Thereafter an application was moved through, Moti Lal, Ramesh Chand, Prakash Chand and L.N. Keshri on 24-3-1977 (vide Anneure "J" of the affidavit of Moti Lal given in support of the application u/s 482 Code of Criminal Procedure). In this application it was prayed that the proceedings against the applicant be dropped and the applicants be discharged. The Magistrate treated this application as one u/s 245 Code of Criminal Procedure. By order dated 25-5-1977 the Magistrate rejected the application. Thereafter statements of Sri Sita Ram, Food Inspector Moti Lal, Prakash Chand, Ramesh Chand and Lakshmi Narain Keshri were recorded. Later on, the Magistrate passed order on 20-7-- 1977 that Roznamcha Bahi, Rokar Bahi. and Dal stock register of firm Babu Lal Mathura Prasad be summoned. It is noticeable that in this order the Magis-rate did not mention from whom these documents be summoned. It is also noticeable that he did not direct the firm or any of its partners to produce these papers. It may, however, be observed that an accused person cannot be compelled to file document against him.

3. It appears that so far the Magistrate had not framed any charge against the firm or its partners or its Munim. The contention of Sri Tej Pal, learned Counsel for the applicant is that the Magistrate was not justified in proceeding against Moti Lal. Prakash Chand, Ramesh Chand and Lakshmi Narain Keshri (applicants 2 to 5). Undisputedly Lakshmi Narain Keshri is the Munim of the firm. Moti Lal, Prakash Chand and Ramesh Chand are the partners of the firm. It is said that the firm is a registered one and as such it is juristic entity by itself.

4. Section 20A of the Prevention of Food Adulteration Act empowers the court to implead manufacturer. It lays down that:

Where at any time during the trial of any offence under this Act alleged to have been committed by any person, not being the manufacturer, distributor or dealer of any article of food, the court is satisfied, on the evidence adduced before it, that such manufacturer, distributor or dealer is also concerned with that offence, then the court may, notwithstanding anything contained in Sub-section (1) of Section 351 of the Code of Criminal Procedure, 1898, or in Section 20 proceed against him as though a prosecution has been instituted against him u/s 20.

5. It may be noted that the Magistrate passed order dated 27-11-1976 under the above section Section 17 of the Prevention of Food Adulteration Act was amended in the year 1976. The original Section 17 which is applicable to the present case requires consideration. It deals with offences by companies. The term "company" means any body corporate, and includes a firm or other association of individuals. The term "director" in relation to a firm means a partner in the firm.

Sub-section (1) of Section 17 lays down: "Where an offence under this Act has been committed by a company, every person who at the time the offence was

committed was incharge 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 offence and shall be liable to be proceeded against and punished accordingly."

It will thus be seen that the company or the firm has to be punished and every person, who is in charge of, and was responsible to the company for the conduct of, the business can also be punished.

Sub-section (2) further lays down that:

Where an offence under this Act has been committed by a company and it is provided 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.

6. It is evident from Section 20A of the Act that the Magistrate must be satisfied on the evidence before it that the manufacturer was concerned with the offence. It is further evident from Section 17 Sub-sections (1) and (2) that that partner or officer of the company would also be liable if either he was in charge of or responsible to the company for the conduct of the business or the offence was committed with his consent or connivance.

7. In the instant case the only piece of evidence before the Magistrate was the statement of Raja Ram accused. He simply stated in his statement u/s 313 that he had purchased the Arhar Dal from the firm Babu Lal Mathura Prasad. He did not state as to which of the partners or the Munim had actually sold the Dal to him. At the time of the statement u/s 315 Code of Criminal Procedure Raja Ram did not make any disclosure about any partner or Munim who did the transaction with him. He, however, proved an invoice of the firm Babu Lal Mathura Prasad. The position, therefore, is that there was no evidence whatsoever before the Magistrate against the partners and the Munim. Therefore, taking into account the provisions of Sections 20A and 17 the Magistrate was not justified in proceeding against the partners and the Munim. The Magistrate could of course proceed against the firm.

8. The State Counsel has also been heard in the case. He has also not been able to point out any evidence to show that the Magistrate could have proceeded against the partners and the Munim. The State counsel has simply pointed out the statement of Moti Lal, Prasash Chand, Ramesh Chand and Lakshmi Narain Keshri. Moti Lal and Prakash Chand and Ramesh Chand admitted to be the partners of firm Babu Lal Mathura Prasad. Lakshmi Narain Keshri admitted to be the Munim of the firm. But it will be noticed that these persons denied to have sold the Dal in question. These statements do not go to show that the offence was committed with their consent or connivance. Their statements also do not show as to which of them was in charge of or responsible to the company. The

learned Counsel for the applicants referred to the case of Shri Raghunandan Panda Vs. State of Orissa and Others, . In this case the Food Inspector had taken the sample of oil from Pran Jiwan s/o Smt. Mani Bai. Thereafter Smt. Mani Bai and Pran Jiwan both were prosecuted. Smt. Maui Bai was alleged to be a licensee of the shop and Pran Jiwan was alleged to be a co-licensee. The Supreme Court accepted the appeal of Smt. Mani Bai and made the following observation:

There is nothing to show that the business carried on in the shop in question was that of a firm and that Mani Bai was a partner of that firm. Even if it may be assumed that the business was owned by a firm or an association of individual and Mani Bai was a partner of that firm or member of that association of individuals, Mani Bai would be liable u/s 17(1) of the Act for the sale which was made by her son Pran Jiwan only if it was shown that she was incharge and was responsible for the conduct of the business which was carried on at the shop. There is no evidence to that effect on the record. In the absence of such evidence no criminal liability for the sale of coconut oil by Pran Jiwan can be fastened on Mani Bai under the provisions of the Act.

9. It follows from the above that even if Moti Lal, Prakash Chand, Ramesh Chand and Lakshmi Narain Keshri admitted to be the partners and Munim of the firm, they cannot be prosecuted because there is no evidence that they were in charge of the business of the firm or that the offence had been committed with their consent or connivance.

10. In the result the contention of Sri Tej Pal that the Magistrate was not justified in proceeding against Moti Lal, Prakash Chand, Ramesh Chand and Lakshmi Narain Keshri applicants Nos. 2 to 4, is justified.

11. In view of the material which was before the Magistrate and in view of the specific provisions of Section 20A as well as Section 17 of Prevention of Food Adulteration Act the Magistrate could proceed against firm M/s. Babu Lal Mathura Prasad, applicant No. 1.

12. No other point relating to the firm was urged by Sri Tej Pal. For what has been said above the criminal proceedings in Food Inspector v. Raja Ram and Ors. Criminal Case No. 786 A/X-76 pending in the court of Judicial Magistrate, First Class, Karwi, against Moti Lal, Prakash Chand, Ramesh Chand and Lakshmi Narain Keshari applicants 2 to 5 are quashed. The proceedings in the said case against firm M/s. Babu Lal Mathura Prasad applicant No. 1 shall continue according to law. The stay order dated 1-8-1977 is vacated.