

(1978) 05 P&H CK 0026
In the Punjab And Haryana At Chandigarh
Case No : Criminal Misc No. 613-M of 1976

Bhagwan Dass and others

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision : 01-05-1978

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 7

Citation : (1978) 05 P&H CK 0026

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Advocate : D.S. Bali, for the Appellant; R.P. Bhasin, A.D.A. (Haryana), for the Respondent

Judgement

Surinder Singh, J.—This Judgment will dispose of Criminal Miscellaneous Nos. 613/M of 1976 and 983/M of 1976. By means of the former petition filed by six partners and the later by the seventh partner of the Firm Messrs Haryana Vanaspati & General Mills, Kundali, District Sonapat, it is desired that the order dated December 26, 1975, passed by the Judicial Magistrate First Class, Hanst, by which a charge against the petitioners has been framed u/s 7 read with section 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter called the Act), may be quashed.

2. The facts in brief are that the premises of Firm Messrs Lal Chand Bal Krishan were visited by the Food Inspector on September 15 1973, and one Bhim Sain who was present at the shop was found to be in possession of a large number of tins of Vanaspati Ghee of Eagle Brand which indicated the same of the manufacturer to be Messrs Haryana Vanaspati & General Mills Kundali. The Inspector obtained a sample of ghee and sent the same for analysis after performing the various formalities, as required. On receipt of the result of the Public Analyst, the Food Inspector lodged a complaint under the provisions of the Act against the aforesaid Bhim Sain. When Bhim Sain appeared in Court in response to a notice, he filed an application (Exhibit PC/1) in consequence of

which two other persons, namely, K.K. Pahwa and Girdhari Lal were also summoned as they were said to be partners with the manufacturer Firm. Later on during the course of the statement of the Food Inspector, it transpired that there were five more partners of the manufacturer Firm apart from Girdhari Lal and K.K. Pahwa. The trial Court, therefore, summoned the remaining five partners also. The said order of the trial Court has necessitated the filing of the two petitions u/s 482 of the Code of Criminal Procedure.

3. Apart from the other grounds raised in the petition, one main ground which has been urged during the course of the arguments is enough for the disposal of the two petitions. It is contended that so far as that statement of the Food Inspector is concerned, he has stated in unequivocal terms that he did not know as to who was the person incharge of the manufacturer Firm at the time when the sample was taken, nor could he disclose as to who amongst the partners of the said Firm was incharge and responsible for the conduct of the business of the Firm. There is, however, indication in regard to these matters in two documents Exhibits D. 1 and D. 2 Both these documents bear the signatures of Girdhari Lal petitioner. In the document Exhibit D.1 which is an application for registration of the unit under the Factories Act, it is specifically mentioned that Girdhari Lal petitioner shall be the Manager of the Factory and Exhibit D. 2 has been specifically signed by Girdhari Lal in the capacity of a Manager. Apart from this material, there is nothing whatsoever on the record to indicate if the petitioners other than Girdhari Lal have anything to do with the management of the business of the Firm. There is no dispute that the manufacturing Firm falls within the definition of the term "Company". Section 17 of the Act relates to offences committed by Companies. Under the said provisions, when an offence is alleged to have been committed by a Company, it is only the person, who has been nominated to be incharge of the business who is to be prosecuted. The other partners of the Firm cannot be dragged into trial merely on the principle of vicarious liability when there is no evidence to show that they had anything to do with the management of the affairs of the Company. In *Manohar Singh and others v. Municipal Corporation of Delhi* 1978 CLR (Del) 43, this matter received the attention of a learned Single Judge and it was held that no prosecution could be launched against a partner of the Firm u/s 17 of the Act unless the said partner was incharge and responsible to the Company for the conduct of the business at the time when the offence was committed. I respectfully agree with this view. That being so, the summoning of the five petitioners (other than Girdhari Lal petitioner No. 6) to face the protracted trial is nothing but an abuse of the process of Court, is quashed.

4. In Criminal Miscellaneous No. 983/M of 1976, the petitioner is K.K. Pahwa who was also summoned as a partner of the Firm. In view of what has been said above, there was no ground or occasion for the trial Court to summon the petitioner in this case. The order summoning him is also manifestly illegal and amounts to an abuse of the process of Court The same (in so far as K.K. Pahwa is concerned) is quashed. The Trial court will now proceed with case in the light

of the above observations.