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**(1975) 12 SHI CK 0002**  
**In the High Court Of Himachal Pradesh**  
**Case No : Cr.R. (R) No. 18 of 1974**

Charan Dass

APPELLANT

Vs

The State of Himachal Pradesh and Another

RESPONDENT

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**Date of Decision :** 19-12-1975

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 351(1)  
Prevention of Food Adulteration Act, 1954 — Section 14, 14A, 19(2), 20A

**Citation :** (1975) 4 ILR HP 833

**Hon'ble Judges :** C.R. Thakur, J

**Bench :** Single Bench

**Advocate :** B.B. Vaid, for the Appellant; B. Sita Ram, General for State and Inder Singh, for the Respondent

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## Judgement

Chet Ram Thakur, J.—Shri Charan Dass who was prosecuted by the Food Inspector for having sold adulterated flour made an application before the Magistrate 1st Class, Simla, purporting to be u/s 20A of the Prevention of Food Adulteration Act (hereinafter called the Act) for impleading the proprietor of Vishnu Flour Mills, Ganj, Simla, the distributor, dealers and manufacturer of the atta out of which the sale was made to the Food Inspector and which was found to be adulterated and which led to his prosecution. This application was dismissed by the learned Magistrate by his order dated 3-9-1973. Against this order Shri Charan Dass whose plea was that he had purchased this atta from M/s Vishnu Flour Mills and therefore, he was the person who was to be prosecuted for having sold adulterated atta to him, went in revision to the learned Sessions Judge, Simla, who by this order, dated 29-3-1974, recommended that the order made by the Magistrate dismissing the application of Charan Dass be set aside and that the case be remanded for impleading M/s Vishnu Flour Mills as party in the case.

2. Section 20A reads as under:

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 had been instituted against him u/s 20.

This section, therefore, aims on bringing to book the manufacturer, distributor or dealer if from evidence adduced before the court in respect of warranty issued by such manufacturer, distributor or dealer or otherwise, the court is satisfied that such manufacturer, distributor or dealer is also concerned with the offence. The order of the learned Magistrate while dismissing the application to implead the manufacturer shows that although it was apparent that M/s Vishnu Flour Mills, Simla, are manufacturer as well as distributors and dealers in atta but the accused had failed to establish that the bag of atta from which sample was purchased by the Food Inspector was purchased from M/s Vishnu Flour Mills, Simla. The documentary evidence produced of a bill for the purchase of 8 bags of atta from M/s Vishnu Flour Mills cannot go to prove that the bag from which atta sample was taken was a bag out of these eight bags. The documentary evidence of an affidavit has been contradicted by a counter affidavit, and further that from the cross examination of the Food Inspector it was shown that the bag containing atta from which the sample was taken by the Food Inspector had no mark of M/s Vishnu Flour Mills. Further that the accused Charan Dass had not told the Food Inspector that he had purchased the said bag of atta from M/s Vishnu Flour Mills, Simla, and he had also not produced the warranty of M/s Vishnu Flour Mills even on an enquiry made by the Food Inspector. Consequently the applicant Charan Dass failed to adduce evidence in respect of the warranty issued by such manufacturer and, therefore, the court was not satisfied that such manufacturer, distributor or dealer was concerned with the offence.

3. Section 14 requires that the manufacturer, dealer or distributor is to give a warranty in writing in the prescribed form to the vendor when articles of food are sold by them and this provision has obviously been made to safeguard the interest of the vendors who shall sell the articles of food to the customers. It would, therefore, appear that it is incumbent upon the manufacturer or the distributor or the dealer to give a warranty while making a sale of any article of food. M/s Vishnu Flour Mills have denied their liability, although the Petitioner had produced a receipt for sale of eight bags. It cannot be said as has rightly been observed by the learned Magistrate that the atta sold by Charan Dass to Food Inspector was out of those eight bags for which he had issued a receipt to him. Section 14A casts a liability upon each and every vendor of an article to disclose the name, address and other particulars of the person from whom he had purchased the articles to the Food Inspector if the latter so requires. From the evidence on the record it is manifest as has been observed by the trial Magistrate that Shri Charan Dass did not disclose the name, address and other particulars of the person from whom he had purchased the article despite the fact that he was called upon to do so. Therefore, the requirement of this section

was not satisfied. Under Sub-section (2) of Section 19, a vendor shall not be deemed to have committed an offence if he proves that the article of food was purchased by him as the same in nature substance and quality as that demanded by the purchaser and with a written warranty in the prescribed form, in any, to the effect that it was of such nature, substance and quality. The requirement of this section is also not satisfied by the vendor because he had purchased the same without any warranty. So in these circumstances, I am of the view that the learned Magistrate was not fully satisfied that the article was purchased from M/s Vishnu Flour Mills.

4. The learned Sessions Judge has observed:

In this application it had been alleged that the proprietor of M/s Vishnu Flour Mills, Ganj, Simla is duly licensed distributor, manufacturer and dealer in atta from whom the wheat atta was purchased, vide his bill, dated 22-8-1970 which is original was attached with the application, that the Food Inspector took the sample out of the said atta while the said atta in question was in the same state as it was purchased from the said dealer. The said atta was kept properly and stored throughout the period intervening between the purchase of the said atta from the said dealer and taking of the sample by the Food Inspector, and that the said firm was mainly concerned with the alleged offence and so it was expedient to implead him as necessary party in these proceedings. The receipt is of Vishnu Flour Mills. In view of these allegations of the Petitioner, it was proper for the Magistrate to implead M/s Vishnu Flour Mills in the case.

5. From the aforesaid observations of the learned Sessions Judge, it would appear that he did not give any reasons so as to hold that the order passed by the learned Magistrate was not warranted. The learned Sessions Judge failed to apply his mind. He simply narrated the facts as given in the application without giving the reasons which impelled him to make a recommendation to this Court for quashing the order. The learned Magistrate was not satisfied from the evidence that the atta sold by Charan Dass to the Food Inspector was from the same bag which he alleged to have purchased against a receipt obtained by him from M/s Vishnu Flour Mills and produced before the Court. No warranty had been produced. He had also not disclosed the name of the manufacturer at the time of the sale of the sample of the atta to the Food Inspector, even though he was asked. In such circumstances in my opinion, the learned Magistrate was perfectly justified in dismissing the application of Charan Dass for impleading M/s Vishnu Flour Mills. I, therefore, feel disinclined to accept this recommendation and dismiss the revision petition and uphold the order of the learned Magistrate.