
(2004) 07 BOM CK 0119

In the Bombay High Court

Case No : Criminal W.P. No. 119 of 2000

Corn Products Co. (India) Ltd. and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 12-07-2004

Acts Referred:

Constitution of India, 1950 — Article 227

Prevention of Food Adulteration Act, 1954 — Section 17(4)

Citation : (2004) 4 MhLj 662

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : S.V. Manohar, for the Appellant; S.G. Loney, APP, for the Respondent

Judgement

A.P. Lavande, J.—By this petition, the petitioners challenge the order of issuance of process against them by Chief Judicial Magistrate, Bhandara in Regular Criminal Case No. 18/2000 instituted by respondent No. 1 herein. The petitioner No. 1 is a Company, which is inter alia engaged in business of manufacturing of food products. The petitioner Nos. 2 to 8 are Directors of the petitioner No. 1-Company. Respondent No. 2 was the vendor and respondent No. 3 was the stockist of the petitioner company. On 19-3-1993 the Food Inspector visited the shop of respondent No. 3 and purchased three bottles of Rex Pineapple Jam and thereafter he took samples of the Jam and after following due procedure, as required under Prevention of Food Adulteration Act, 1955 (the Act for short) filed Regular Criminal Case No. 18/2000 against respondent Nos. 2 and 3, the present petitioners and one Mr. R.K. Hanry, who was original accused No. 3 and one Mr. Diego Bevilacqua, who was original accused No. 9. In the said complaint all the Directors have been shown as accused No. 12 and M/s Corn Products Company (India) Ltd. has been shown as accused No. 13. The complaint came to be filed against all the accused on 3-2-2000. The learned Chief Judicial Magistrate issued process against all the accused by order dated 3-2-2000. It is against this order, present petition has been filed.

2. Since the order of issuing process is revisable I would not have interfered in the order of issue of process. However, the matter is admitted, and I have no alternative, but to deal with the submissions made by the learned counsel appearing for the parties.

3. I have heard Mr. S.V. Manohar, learned counsel for the petitioners and Mr. Loney, learned Additional Public Prosecutor appearing for respondent No. 1-State.

4. Mr. Manohar has made two submissions. Firstly, he submits that a plain reading of complaint i.e. Regular Criminal Case No. 18/2000, reveals that there is no averment in the complaint against the petitioners and other Directors that the offence had been committed with the consent or connivance or was attributable to any act or neglect on the part of the Directors. Mr. Manohar relying on Section 17(4) submits that such averments are absolutely essential so that the Magistrate could take cognizance of the offence against the Directors. The offence alleged against the petitioners is under the Prevention of Food Adulteration Act. In support of the above submissions, the averments in terms of Section 17(4) of the Act, is mandatory. Mr. Manohar has relied upon the following judgments.:-

1) Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, 2) State of Haryana Vs. Brij Lal Mittal and Others, 3) Keki Bomi Dadiseth and Others Vs. The State of Maharashtra, , Keki Bomi Dadiseth v. State 2004(1) FAC 68, Nalin Thakur v. State of Maharashtra.

5. Mr. Manohar further submits that the judgment of this Court, reported in Keki Bomi Dadiseth and Others Vs. The State of Maharashtra, has been upheld by the Apex Court. Mr. Loney, learned Additional Public Prosecutor appearing for State does not seriously dispute the proposition of law advanced by the learned counsel for the petitioners. I find considerable force in the submission of Mr. Manohar that a plain reading of complaint, it is evidence that there is absolutely not even whisper against the Directors of the Company. In this view of the matter, in my opinion, the submission made by the learned counsel for petitioners that order issuing process against the Directors of the Company, is liable to be quashed is well founded. Insofar as the proceedings against petitioner No. 1 -- the Company, which is accused No. 13 in the complaint filed by the respondent No. 1 is concerned, there is no bar in continuing with the proceedings as against petitioner No. 1 since there is no breach of Section 17(4) of the Act. At this stage, it is pertinent to note that in the complaint one Mr. R.K. Hanry has been joined as accused No. 3 and one Mr. Diego Bevilacqua has been joined as accused No. 9 probably because they were Directors of the petitioner No. 1 Company at the relevant time. The said accused are not before this Court but having regard to the fact that there is absolutely no averment that the Directors are responsible for commission of offence, in my opinion, it would be just and proper, if the proceedings are also quashed as against the original accused Nos. 3 and 9, although they are not before this Court in these proceedings and since no purpose would be served in continuing proceedings

against them.

6. Mr. Manohar has further submitted that the complaint has been filed almost three years after the commission of alleged offence and on this count itself, the proceedings against Company, are liable to be quashed. I am unable to accept this submission. It is not that in every case delay in filing proceeding is fatal to the prosecution case. It all depends upon the facts and circumstances of the case. I do not think this Court exercising jurisdiction u/s 227 of Constitution of India should quash the proceedings against the Company, the vendor and stockist on the ground that there is inordinate delay in filing complaint as alleged by the learned counsel for the petitioners. I am, therefore, of the opinion that the complaint is not liable to be dismissed on the ground that there is inordinate delay in filing the complaint. However, it is made clear that Company shall be at liberty to raise this ground before the learned Chief Judicial Magistrate, before whom the criminal case is pending and if such ground is raised, the learned Chief Judicial Magistrate shall decide the same on its merits. In the result, the impugned order dated 3-2-2000 passed by Chief Judicial Magistrate Bhandara, in Regular Criminal Case No. 18/2000 and the proceeding against the petitioner Nos. 2 to 8 and also original accused Nos. 3 and 9 are hereby quashed and set aside. The proceedings shall continue as against original accused No. 13 i.e. Company and respondent Nos. 2 and 3, who are vendors and stockist. It is also made clear that if the petitioner-Company takes up a ground that the proceedings are liable to be dropped on the ground of inordinate delay in filing complaint, the same shall be decided on merits after evidence is led in the case. It is further made clear that in the course of trial, if the prosecution is successful in bringing on record the material either against the Directors or any other person, learned Chief Judicial Magistrate shall be free to exercise powers u/s 319 of Criminal Procedure Code and proceed according to law. The parties shall appear before the Court of Chief Judicial Magistrate, Bhandara on 10th August, 2004 at 11.00 a.m. Interim order dated 11-4-2000 passed by this Court stands vacated.

7. With the above observations, the petition stands partly allowed. Petition is accordingly disposed of.