
(1994) 11 RAJ CK 0016

In the Rajasthan High Court

Case No : Criminal Revision Petition No's. 296 and 366 of 1993 and Criminal Miscellaneous Petition No. 726 of 1993

Devi Chand and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 21-11-1994

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 244, 245(1), 246, 313, 482
Prevention of Food Adulteration Act, 1954 — Section 16, 16A, 17(1), 20, 20A

Citation : (1995) CriLJ 2977 : (1995) 2 WLC 64

Hon'ble Judges : Rajendra Saxena, J

Bench : Single Bench

Advocate : D.S. Shishodia, sisted by Manish Shishodia, Sanjay Mathur, Devi Chand, Laxmi Path and Naga Ratanam, for the Appellant; S.M. Singhvi, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Saxena, J.—The aforementioned Criminal Revision Petitions/Misc. petition have been preferred against the order dated 20-8-1993 passed by the learned Addl. Chief Judicial Magistrate No. 2, Udaipur, whereby he framed charge against the petitioners for the offence punishable u/s 7/16 of the Prevention of Food Adulteration Act, 1954 (in short the Act) and ordered for further proceedings in Cr. Case No. 493/1973 pending before him. Accordingly these petitions are being decided by a common order.

2. The skeletal facts of this case, which is pending before the learned trial Magistrate since 24-9-1973, can be briefly recapitulated like this. It appears that on 3-7-1973, Qayyum Ali, Food Inspector, Udaipur purchased 1.5 kg. Prabhat vegetable Ghee from accused Laxmi Lal Pujari (now expired), the paid Salesman of the fair price shop of Ward No. 8, Udaipur, which was being run by the Udaipur Sahakari Upbhokta Bhandar (in short USUB). The said Food Inspector equally distributed in three parts the vegetable Ghee so purchased by him, poured the

same in three empty phials and sealed those samples in presence of motbirs. One sealed sample was given to Laxmi Lal Pujari. On 31-7-1973, another sealed sample was sent for chemical analysis to the Public Analyst, Public Health Laboratory, Udaipur, who vide his report dated 14-8-1973 Ex. P4 opined that the said sample of vegetable Ghee was adulterated. The Food Inspector came to know that co-accused Balwant Singh Bolia was the Executive Officer of USUB. The Commissioner Municipal Council, Udaipur (Local Authority) accorded necessary sanction u/s 20 of the Act for the prosecution of the said Laxmi Lal Pujari (vendor) and Balwant Singh Bolia for offence u/s 7/16 of the Act and also authorised the Food Inspector to lay the complaint and prosecute them. On 24-9-1973, the Food Inspector filed criminal complaint Ex. P11 in the Court of Municipal Magistrate, Udaipur against them. On 6-2-74 and 1-6-74, the statement of PW1 Qayyum Ali the Food Inspector was recorded as pre-chargeevidence. After hearing the APP and the Advocate for the said accused persons, the learned Chief Judicial Magistrate, to whom the case was transferred by his order dated 2-7-1974, refrained from framing any charge against Laxmi Lal Pujari and Balwant Singh Bolia at that stage, but u/s 20A of the Act impleaded the manufacturers of Ghee namely Bhavnagar Vegetable Mills Pvt. Ltd., Bhavanagar, Gujarat (in short BVML), petitioners Devi Chand, Depot Manager and Laxmi Path as Local representative of BVML and summoned them through bailable warrants. The learned CJM by his order dated 6-11-1974, accepting the application filed by the APP clarified that by his Order dated 2-7-74, the manufacturers which included the Directors of the Company, had also been impleaded as accused persons. Accordingly, he issued bailable warrants against as many as eleven Directors and the Secretary of the said company, whose names were enumerated in APP's application. On 1-10-75, the APP moved another application praying that the company Bhavnagar Vegetable Products Ltd., Bhavnagar (in short BVPL) itself be also impleaded as an accused. The CJM by his order dated 17-11-75 further clarified that by his order dated 2-7-74, the manufacturing company of the said Vegetable Ghee namely BVPL was also impleaded as an accused. Appearance on behalf of the BVPL was entered on 2-7-76. On the same day an application was filed on behalf of the BVPL that it had gone into liquidation and liquidation proceedings were pending before the Gujarat High Court, that all its Directors and the Secretary have resigned and, therefore, permission for arraying them as accused persons may be sought from the said High Court. Again on 21 -3-77, a similar application was filed stating that BVPL has already gone into liquidation and that the liquidator has taken in his possession all the assets and the properties of the said company and that necessary permission be sought from the Hon"ble Gujarat High Court for appointing some one to defend the accused BVPL company. Thereupon, the learned Magistrate entered into correspondence with the Gujarat High Court for number of years. On 16-12-1981, the liquidator appointed by the Gujarat High Court informed the CJM that the company BVPL has already been taken over by the National Dairy Development Board, Anand by an order passed by the Hon"ble Gujarat High Court. Thereupon, the learned Magistrate vide his order

dated 22-7-83 summoned the liquidator to appear, and defend the accused company BVPL. On 24-4-1984, the accused - Directors of BVPL by an application informed the learned trial Magistrate that the Hon'ble Gujarat High Court had not yet granted permission to the liquidator to appear and defend the company BVPL and, therefore, proceedings against the said company could not proceed further. However, since the Directors and the Secretary had put their appearance in the Court, the Magistrate recorded the statement of motbir Devi Lal on 22-1-87 as pre-charge evidence. On 12-3-1987, it was reported that as many as seven directors of BVPL namely Navin Chandra, Ratan Lal Dhiraj Lal, Nagar, Mal, Fida Hussain, Mangi Lal and Mausum Ali have, died. Therefore, from 12-3-1987, to July, 1993, the trial in this case could not proceed and the proceedings were simply confined for the confirmation of the deaths of the aforementioned seven Directors, who had allegedly died pending trial. It may also be mentioned that on 27-6-90, there was a report on the warrant of Laxmi Lal Pujari, Vendor that he had died and as such proceedings against him were dropped. On 20-8-93, it was further reported that accused Nissar Ahmed and Abdul Hussain, Directors of the Company BVPL have also expired. Hence proceedings against them were dropped. On that day the trial Magistrate also revoked his earlier order summoning the official liquidator of the company BVPL on the ground that the Hon'ble Gujarat High Court had not granted permission to the official liquidator to defend the BVPL company. The effect of the said order was that the BVPL company ceased to be an accused. On 20-8-93, the learned trial Magistrate without passing any formal order for dropping the proceedings against the aforementioned various Directors of BVPL, who were impleaded as accused persons, and reported to have expired, framed the charge for the offence u/s 7/16 of the Act against six accused persons namely (1) Balwant Singh and petitioners (2) Devi Chand, (3) Laxmi Path (wrongly mentioned, as Laxmi Lal), (4) Mohamad Hussain, (5) Ahmed Hussain and (6) Krit Kumar and since they were not present in person on that day in the Court, their plea was recorded through their respective Advocates. On 20-8-93 itself the learned Magistrate also recorded the statement of PW Abdul Rahim and allowed further cross examination of Food Inspector Qayyum Ali. He further directed all the accused persons to appear in person on 4-10-93 for recording their statements u/s 313 Cr. P. C. He further directed that the prosecution could also produce its witness Devi Lal for further cross-examination on that day. Aggrieved by the said order dated 20-8-93, these petitions have been filed. By this Court's interim order dated 13-9-93, the proceedings in the case have been stayed.

3. I have heard the learned counsel for the petitioners and the learned public prosecutor at length and carefully perused the record of the lower Court in extenso.

4. Shri Naga Ratanam, the learned counsel appearing for the Directors of the company, has strenuously contended that admittedly the Food Inspector did not file any complaint against the Company nor Its Directors and that even in the application dated 3-9-74 filed by the APP, the only allegation against the

petitioners was that they were Directors of the Company BVPL which is, alleged to have manufactured Prabhat Vanaspati Ghee However, there was no assertion as to whether they were incharge of, and responsible to the company for the conduct of its business or that in what manner they were liable for the conduct of its business so as to make them vicariously liable. He has, therefore, claimed that there is not an iota of evidence to connect them with the offence and as such the charge framed against them is ex facie illegal and without jurisdiction, which amounts to abuse of the process of the Court, especially when the proceedings against the company BVPL have already been dropped by the learned Magistrate.

5. Shri D. S. Shishodia and Shri Sanjay Mathur have strenuously canvassed that the learned trial Magistrate without hearing the arguments in respect of framing of charge and even without considering the precharge evidence recorded by him and without applying his judicial mind straight away framed the charge against the accused persons, that it was obligatory on the part of the learned Magistrate to have considered whether from the evidence recorded by him u/s 244 Cr. P. C. any case against the accused persons was made out and whether on the basis of precharge evidence, if unrebutted, conviction of the accused persons was warranted. They have asserted that the learned Magistrate even did not bother to peruse the record of this case, to pass specific order dropping proceedings against those accused persons, who were reported to have expired. They have pointed out that Qayyum Ali, Food Inspector has categorically stated that the sample of Ghee was taken from an open tin and not from the sealed tin, that petitioner Devi Chand was not the Manager/Incharge of the Company and that the factory of the BVPL Company was situated at Bhavnagar. They have urged that in such circumstances by no stretch of imagination petitioner Devi Chand can be held responsible for the sale of Prabhat Vanaspati Ghee, in question, and which was alleged to have been found adulterated especially when the Food Inspector had even not served any notice to him. They have contended that in such circumstances, there is no legal evidence, worth the name against petitioner Devi Chand for making him liable for the offence u/s 7/16 of the Act.

6. As regards petitioner Laxmi Path, their contention is that there is not a shred of evidence to prove that he was either the distributor or the local representative of the BVPL Company. They have pointed out that the Food Inspector in his statement has clearly deposed that the said Ghee was directly sold by accused Devi Chand to the USUB vide Bills Ex. D3 to Ex. D6, and not through petitioner Laxmi Path and, thus, there was no material on record to connect him for the offence u/s 7/16 of the Act. They have asserted that the impugned order dated 20-8-93 is ex facie illegal and non-speaking, which clearly proves that the learned Magistrate did not apply his judicial mind.

7. Mr. Naga Ratanam and Shri D. S. Shishodia have also vehemently contended that the trial in this case is going on for the last more than 21 years and for this delay the petitioners are not at all responsible and, therefore, their right to

speedy trial under Article 21 Constitution of India has been offended and violated, that there is absolutely no chance for their conviction and in such circumstances, further proceedings against them tantamount to abuse of the process of the Court and as such proceedings against them deserve to be quashed.

8. Shri S. M. Singhvi, the learned Public Prosecutor has simply submitted that since the trial is now at its fag end, the learned Magistrate be directed to expeditiously decide this case within a stipulated period. However, on merits he has clearly conceded that from the pre-charge evidence recorded in this case there is no sufficient material to frame the charge against the petitioners.

9. I have bestowed my anxious consideration to the rival submissions made before me. The learned Magistrate has framed charges on 20-8-93 against (1) Balwant Singh Bolia, the Executive Officer of USUB, (2) petitioner Deo Chand alias Devi Chand. the alleged Local Manager of Company BVPL, (3) Laxmi Path, the alleged Local Executive Officer of Company BVPL and the Directors of the said company namely (4) Ahemad Hussain, (5) Krit Kumar and (6) Mohammad Hussain for the offence u/s 7/16 of the Act. This is an admitted position that accused Laxmi Lal Pujari, Salesman of the Fair Price Shop from whom the Food Inspector had purchased the Vegetable Ghee has died long back and proceedings against him have abated. The learned Magistrate has also dropped the proceedings against the BVPL Company and revoked his order summoning the Official Liquidator of the company. Since as many as seven Directors of the BVPL were reported to have expired the learned Magistrate also impliedly dropped the proceedings against them. However, he did not pass a specific order in this behalf.

10. Now let us first scan the pre-charge evidence recorded By the learned Magistrate in this case. P.W. 1 Qayyum Ali, Food Inspector, proved the contents of the criminal report filed by him. He admitted that he had taken the sample of the Ghee from the open (sic) and not from the sealed tin and that the USUB had purchased the Vegetable Ghee from M/s Bhavnagar Vegetable Products Ltd. He deposed that when he purchased the Prabhat Vegetable Ghee, Vendor Laxmi Lal Pujari was also having one sealed tin of Ghee weighing 16 1/2 kg. and another open tin which had about 2 Kg. of Ghee therein. He admitted that he did neither note down the batch number nor the month of manufacture of the said open tin from which he had taken the Ghee. He further admitted that he also did not make any enquiry as to when the said Ghee was manufactured by BVPL Company. He. slated that though there was a label of Prabhat Vegetable Oil pasted on that open tin, but he did not seize that label. He stated that Laxmi Path was the Agent of BVPL, but he did not give him any notice in respect of the said sample of Ghee taken by him, because the said Ghee was not sold through him (Laxmi Path) to the USUB. He further admitted that in bills Ex. D.3 to Ex. D. 6, the commission of petitioner Laxmi Path has not been included. Thus, as per testimony of P.W. 1 Qayyum Ali, the Vegetable Ghee in dispute was not supplied to the USUB through petitioner Laxmi Path. He also admitted that he did not call

petitioner Devi Chand, at the time when he had purchased the Vegetable Ghee from Vendor Laxmi Lal. He further admitted that he even did not make any enquiry as to which of the Directors of the BVPL Company was incharge of and responsible to the Company for the conduct of its business. In his cross-examination P.W. 1 Qayyum AH specifically stated that he was not sure as to whether in the said open tin some other Vegetable Ghee of different trade mark was also mixed or not.

11. Motbir Devi Lal, who was examined on 22-1 -87 did not support the prosecution case and, therefore, he was declared hostile. Devi Lal also stated that the Food Inspector had taken the Ghee from an open tin. There was not other pre-charge evidence.

12. Since the sample of Ghee was taken on 30-7-73 i.e. prior to the insertion of Section 16A in the Act, the procedure for trial of warrant case otherwise than on a police report was adopted and the pre-charge evidence for prosecution was recorded u/s 244, Cr. P.C. Section 245(1), Cr. P.C. lays down that if, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him. Section 246 provides the procedure where accused is not discharged. It lays down that if, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against (he accused. Thus, before framing the charge, the Magistrate has to consider the evidence recorded by him and to apply his judicial mind to find out as to whether there are grounds for presuming that the accused has committed such offence. From a bare perusal of the impugned order dated 20-8-93, it becomes abundantly apparent that the learned Magistrate neither gave an opportunity of hearing to the accused persons, nor considered the pre-charge evidence recorded by him, nor even mentioned in the impugned order that he was of the opinion that there was ground for presuming that the accused have committed the offence punishable u/ s 7/16 of the Act. On the other hand, he mechanically framed the charge without applying his judicial mind against the accused persons. He even did not take into account that as per statement of Qayyum Ali, Food Inspector, the Vegetable Ghee in dispute was not purchased by the USUB through the commission Agent petitioner Laxmi Path Paharia and that his commission was also not included in the relevant bills Ex.D. 3 to Ex. D.6. He also did not take into account the clear admission of the said Food Inspector that he had not purchased the disputed sample of Vegetable Ghee from the sealed tin, but purchased the same from an open tin that he had not even seized the lable of Prabhat Vegetable Oil pasted on that open tin and that the Food Inspector even did not know the month and year of manufacture of that Vegetable Ghee. The pre-charge evidence was, therefore vague, incomplete, contradictory and unreliable and was insufficient and

inadequate even to prima facie show that the Vegetable Ghee in dispute purchased by the Food Inspector was manufactured by the BVPL Company, that the same remained intact and in the same condition when it was supplied to the Vendor Laxmi Lal Pujari. There was not an iota of evidence against petitioner Devi Chand to show that either he was a Depot Manager of BVPL, or that he had sold the Ghee in dispute to the USUB. Similarly there was not a shred of evidence against petitioner Laxmi Path Paharia to connect him with the crime. Admittedly the Food Inspector had filed the criminal complaint only against the Vendor late Shri Laxmi Lal Pujari and Balwant Singh Bolia, the Executive Officer of USUB. He had not arrayed either the BVPL Company or its directors or petitioners Laxmi Path Paharia and Devi Chand. There was no averment or allegation against petitioners Devi Chand and Laxmi Path Paharia or the Directors of BVPL Company. Even in the application dated 3-9-74 filed by the Public Prosecutor, no specific role of the Directors of the said Company was disclosed. P.W. Qayyum Ali, the Food Inspector specifically admitted that he did not try to find out the specific functions assigned to various Directors of the said Company as also which of the Directors were incharge of, and responsible to, for the conduct of the business of the Company.

13. In view of the law laid down by the Apex Court in Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, , it is no longer res integra that where the allegations made in the complaint taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence, which is alleged against the accused, then the High Court in its inherent power u/s 482, Cr. P.C. should quash the criminal proceedings against such an accused. A similar view has-been taken in Dr. Sharda Prasad Sinha Vs. State of Bihar,

14. In Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, , the Food Inspector purchased a sample of "Morton Toffees", which on chemical analysis did not conform to the standard prescribed for toffees. The toffees were manufactured by M/s. Upper Ganges Sugar Mills. The complaint was filed against respondent Ram Kishan Rohtagi, Manager of the Company and respondents No. 2 to 5, who were directors of the company and also against the said company. The Magistrate summoned the respondents for being tried for the offence u/s 7/16 of the Act. In the complaint, so far as the Directors were concerned, there was not even a whisper nor a shred of evidence, nor anything, to show apart from the presumption drawn by the complainant that there was any act committed by the Directors from which a reasonable inference could be drawn that they could also be vicariously liable. In such circumstances, the Apex Court held that no case was made out ex facie on the allegations made in the complaint against the Directors and affirmed the findings of the High Court quashing the proceedings against them.

15. In P.R. Neelkantham and Others etc. Vs. State of Rajasthan and Others, the Food Inspector purchased tea from the Vendor, which on chemical analysis was

found to be adulterated. The vendor disclosed that he had purchased the tea from the agent of the M/s. Brooke Bond India Ltd. The Food Inspector presented a complaint before the CJM against the said vendor, M/s. Brooke Bond India Ltd. and its Directors. Relying on Ram Kishan Rohtagi's case (supra)" this Court held that in the absence of any allegation" in the complaint that the particular persons were incharge of and were responsible to the company for the conduct of the business of the company, the deeming provision contained in Section 17(1) of the Act could not be attracted and such persons could not be prosecuted and punished in respect of offences under the Act. It was further held that they could not be deemed to be guilty of the offence alleged and that Section 20A of the Act would not help the prosecution since the case had not reached the trial stage and the proceedings against the Directors were quashed and set aside. It was, however, directed that it would be open for the prosecution to proceed against M/s Brooke Bond India Ltd.

16. In the instant case, the learned Magistrate has already dropped proceedings against the BVPL company. There is not a shred of evidence even to prima facie show, that petitioners Mohammad Hussain, Ahmed Hussain and Krit Kumar Ex. Directors of the said company, which has already gone into liquidation, were in any way incharge of and responsible to, the company for the conduct of its business. In such circumstance, in this case no reasonable or sufficient grounds exist to believe or presume that the aforementioned Directors of the company have committed an offence punishable u/s 7/16 of the Act. Therefore , the Magistrate's order taking cognizance as well as the order from framing of charge for the offence u/s 7/16 against them are patently illegal and continuation of proceedings against them amounts to abuse of the process of the court and on this count alone the proceedings against these petitioners deserve to be quashed by invoking the inherent power of this Court u/s 482, Cr. P.C.

17. There is another aspect of the matter to be taken into consideration. The incident took place on 30-7-73 i.e. more than 21 years ago. The criminals complaint was filed on 24-9-73 and since then the petitioners are facing this protracted trial. The delay has not been caused by any fault or dilatory tactics of the petitioners.

18. In Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., , the Apex Court has issued guide lines in regard to the speedy trial. It has been reiterated that fair, just and reasonable procedure implicit in Article 21 of the Constitution of India creates a right in the accused to be tried speedily, that the right to speedy trial is the right of the accused and that the fact that a speedy trial is also in public interest or that it serves the societal interest does not make it any-the-less the right of the accused. It has been further held that the right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. It has been emphasized that worry, anxiety, expense and disturbance to his vocation and peace resultig from an unduly prolonged investigation, inquiry or trial should be minimal and

that undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or nonavailability of witnesses or otherwise. It has also been observed by the Apex Court that in every case, where the right to speedy trial is alleged to have infringed, the first question to be put and answered is - who is responsible for the delay, that inordinately long delay may be taken as presumptive proof of prejudice, that the court has to balance and weigh the several relevant factors, "balancing test" or "balancing process", - and determine whether the right to speedy trial has been denied in a given case. Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed, the charges or the conviction as the case may be shall be quashed. However, the nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order - including an order to conclude the trial within a fixed time.

19. In the case on hand, practically, there is no evidence against the petitioners and chances of their conviction are almost nil. The main accused Laxmi Lal Pujari, Vendor has expired long back. Proceedings against the company, which is alleged to have manufactured the Vegetable Ghee in dispute, have already been dropped. The inordinate delay in the protracted trial of this case cannot be attributed to any fault or dilatory tactics of the petitioners. Therefore, in such circumstances, the petitioners right to have speedy trial as enshrined in Article 21 of the Constitution of India has been vigorously offended and they cannot be exposed to further mental torture, physical harassment and financial burden in continuing the trial of this case, which is almost a dead case.

20. Hence for the reasons stated above, these petitions are allowed and the charges framed against the petitioners for the offence u/s 7/16 of the Prevention of Food Adulteration Act as also the proceedings in Criminal Case No. 493/73 (122/93) "State v. Laxmi Lal and others" against all the accused persons are hereby quashed.