

(2012) 04 DEL CK 0170
In the Delhi High Court
Case No : Criminal M.C. 3177 of 2008

Dharam Pal Gulati

APPELLANT

Vs

State (PFA, Govt of NCT Delhi)

RESPONDENT

Date of Decision : 20-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 16, 17, 20, 7
Prevention of Food Adulteration Rules, 1955 — Rule 37A(2)

Citation : (2012) 2 JCC 1278

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : S.S. Gandhi, with Ms. Aasha Tiwari, for the Appellant; Fizani Husain, APP., for the Respondent

Final Decision : Allowed

Judgement

M.L. Mehta, J.—The petitioner seeks quashing of the complaint bearing C.C NO. 96/2007 titled, "Delhi Administration v. Hitesh Khatuja & Ors" u/s 7 & 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the "PFA Act") qua the petitioner claiming absence of vicarious liability for the offence. The brief facts necessitating the disposal of the present petition are that on 27.11.2007, the Food Inspector purchased a sample of "kitchen King", a food article, for analysis from the premises of M/s K.M. Enterprises. The requisite sampling procedure was followed and the article was sent for analysis. The case of the prosecution is that the declaration regarding the "Kind and Category" was not specified on the label of the sample article of "Kitchen King". The sample was treated as misbranded because of such omission as to the "kind and Category" on the label of the sample, thus a violation under Rule 37A(2) of the PFA Rules. However, the accused at the time of the sale of the aforesaid article to the Food Inspector, while making the endorsement on the vendors receipt and the Form-VI referred to the sample as "Kitchen King Masala". The petitioner is a partner in the accused firm M/s Mahashaji Di Hatti, who were the super stockist of the

product "Kitchen King". A complaint was filed against the accused persons including the present petitioner, holding them vicariously liable u/s 17 of the PFA Act, after obtaining the statutory consent of the Director, Prevention of Food Adulteration u/s 20 of the PFA Act on 10.06.2008. Hence the present petition seeking quashing of complaint qua the present petitioner, on the ground of absence of any vicarious liability for the said offence.

2. The learned counsel for the petitioner submitted that the present petitioner is 85 years old and was merely a sleeping partner in the accused firm Mahashaji Di Hatti. The partnership deed of the aforesaid accused firm at clause 15, evidences that at the time of formation of this partnership, it was decided that co-accused, partner Sh. Satish Kumar Pruthi shall be the active working partner, whereas the present petitioner shall be merely a sleeping partner. It is further submitted that the accused partnership firm namely Mahashaji Di Hatti, intimated the concerned authorities vide letter dated 01.02.2008 that the petitioner is merely a sleeping partner in the partnership firm and does not attend to the business of the firm. However, the Director, Prevention of Food Adulteration failed to take notice of these facts at the time of granting consent u/s 20 of the PFA Act. Therefore, the consent accorded by the Director, Prevention of Food Adulteration is without application of mind. Reliance is placed on Anita Malhotra v. Apparel Export Promotion Council 2011 (8) Supreme 1 in support of this contentions.

3. Per Contra, the learned APP submitted that the name of the petitioner and the fact that he was in-charge of responsible for the day-to-day affairs and conduct of the company has been specifically averred in the complaint.

4. I have heard the learned counsel for the petitioner, the learned APP and perused the documents available on record.

5. The allegations in the complaint against the petitioner are as under:

The sampled article of food....supplied to M/s R.R. Enterprises by super stockiest firm M/s Mahasha Ji DI Hatti. 10-B, Prahlad Market, Desh Bandhu Gupta Road, karol Bagh, New Delhi- 110005. M/s Mahasha Ji Di Hatti is a partnership firm having two partners namely (1) Sh. Dharam Pal Gulati S/o Sh. Chunnilal Gulati and (2) Sh. Satish Kumar Pruthi S/o Sh. Sitaram Pruthi and as such both the partners are in-charge of and responsible for the day to day conduct of the business of the said firm. Being a partnership firm M/s Mahasha Ji Di Hatti is also liable.

6. Admittedly, no person was nominated by M/s Mahasha Ji Di Hatti as nominee who could be taken to be incharge and responsible for conducting their day-to-day affairs of the business and consequently could be covered u/s 17(a)(ii) of the Act. From the wording of this provision, it would be seen that the complaint should make a specific averments as to whether anyone of the partners or all the partners or directors of the firm were incharge and responsible for conducting day-to-day business of the firm and unless and until such averment is specifically made in the complaint, the offence against the partners or the directors cannot

be said to be made out prima facie and such an omission was therefore, fatal to the prosecution case. In the case of *Municipal Corporation of Delhi v Ram Kishan Rohtagi and others* (supra), the Supreme Court held as under:-

14. Reliance has been placed on the words "as such" in order to argue that because the complaint does not attribute any criminal responsibility to accused Nos. 4 to 7 except that they were incharge of and responsible for the conduct of the business of the company. It is true that there is no clear-averment of the fact that the Directors were really incharge of the manufacture and responsible for the conduct of business but the words "as such" indicate that the complainant has merely presumed that the Directors of the company must be guilty because they are holding a particular office. This argument found favour with the High Court which quashed the proceedings against the Directors as also against the Manager, respondent No. 1.

7. This Court in the case of *Shyam Sunder Bhartia & Ors v State (Through Food Inspector Govt. of NCT of Delhi)* 2009 (1) JCC 518 and *Subhash Chand Gupta and others v State* 2009 (3) Crimes 310 (Del.) and also *Padam Chand Jain Vs. State*, following the case of *Municipal Corporation of Delhi v Ram Kishan Rohtagi and others* (supra) proceeded to quash the complaints against the partners and directors on identical facts.

8. In the present case, a bare perusal of clause 15 of the partnership deed of the accused partnership firm, of which the petitioner is a partner, evidences that from the very commencement of the partnership firm, the petitioner was taken as a sleeping partner. This fact was further communicated to the concerned authorities vide letter dated 01.02.2008. However, the Director, Prevention of Food Adulteration failed to take notice of this fact. Further from the perusal of the complaint, it is also apparent that that no specific averments have been made against the petitioner and merely by stating that the petitioner being partner and "as such" was in-charge of the day-to-day activities of the partnership firm, is not sufficient to fasten vicarious criminal liability.

9. The powers of this Court u/s 482 CrPC have to be used sparingly and cautiously to prevent any miscarriage of justice. Only in cases where there is any gross irregularity committed by the subordinate courts or in cases where any glaring injustice has been done, this Court may use its powers to correct such irregularity or illegality. In the case of *State of A.P. Vs. Gourishetty Mahesh and Others*, which reads thus:

12. While exercising jurisdiction u/s 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge/Court. It is true that Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, otherwise, it would be an instrument in the hands of a private complainant to

unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and brings about its closure without full-fledged enquiry. Though High Court may exercise its power relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice, the power should be exercised sparingly. For example, where the allegations made in the FIR or complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused or allegations in the FIR do not disclose a cognizable offence or do not disclose commission of any offence and make out a case against the accused or where there is express legal bar provided in any of the provisions of the Code or in any other enactment under which a criminal proceeding is initiated or sufficient material to show that the criminal proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, the High Court may step in. Though the powers possessed by the High Court u/s 482 are wide, however, such power requires care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution. We make it clear that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of inherent powers u/s 482.

10. In the present case, on a perusal of the complaint and the partnership deed, it can safely be concluded that the petitioner herein was not in-charge of or responsible to the accused firm in its day-to-day affairs and was merely a sleeping partner. This is a fit case for this court to use its powers u/s 482 CrPC to prevent any further harassment to the petitioner.

11. In view of the above observations, the complaint qua the petitioner is hereby quashed. The petition is allowed.