
(1998) 03 MAD CK 0132

In the Madras High Court

Case No : Criminal Revision Case No. 873 and Criminal M.P. No. 3877 of 1996

G. Lakshmanan and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 06-03-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 204, 242(2), 319

Prevention of Food Adulteration Act, 1954 — Section 13(2), 14, 14A, 20A

Citation : (1998) 2 ALT(Cri) 451 : (1998) CriLJ 3099 : (1998) 2 LW(Cri) 572

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : Ganathra, for the Appellant; N.R. Elango, Government Advocate, for the Respondent

Judgement

M. Karpagavinayagam, J

1. This revision is directed against the order passed by the lower Court dismissing the application filed by the petitioners, accused Nos. 2 and 3 praying for discharge under Sections 204 and 242(2), Cr. P.C.
2. The counsel for the petitioners has raised several points objecting to the jurisdiction of the lower Court as well as maintainability of the complaint.
3. After hearing the parties, I am of the view that the proceedings initiated by the Food Inspector should be quashed on the sole ground that there is no sufficient material as against the petitioners, accused Nos. 2 and 3, to file a complaint under the relevant provisions of the Prevention of Food Adulteration Act.
4. It is seen from the records that the Food Inspector went and inspected the shop of accused No. 1 Palandi, who is not the petitioner herein and took sample of asafoetida. On analysis, it was found to be adulterated. After getting report, the Food Inspector sent a requisition to the Joint Director for getting consent to institute prosecution against the persons concerned.

5. Since the packet from which sample has been taken, was a sealed packet and the said packet contained the name of the third accused-company as the manufacturer, the consent had been given by the Joint Director to file prosecution against the vendor as well as the Company.

6. Thereafter, on coming to know that the first petitioner Lakshmanan is the Manager and nominee of the Company, the Food Inspector filed complaint against the vendor, the first petitioner Lakshmanan and second petitioner-company represented by the said Manager.

7. Admittedly, there was no consent from the Joint Director as against the first petitioner in pursuance of G. O. Ms. No. 299 dated 10-5-1955 (sic). Therefore, the first petitioner (A2) cannot be held responsible in his individual capacity for the alleged offence committed by the Company.

8. As regards the Company, though it is mentioned in the complaint that the article of the sample was manufactured by the Company, the second petitioner (A3), a mentioned in the packet of the sample, it is seen from the records that the Food Inspector has neither obtained any statement from the accused No. 1 to the effect that it was purchased from accused No. 3 nor any bill was seized from him to show the sale by second petitioner to the first accused.

9. Mr. Elango, the Government Advocate, would oppose the application on the ground that though there are no such materials available, the very fact that Form No. 6 and notice u/s 13(2) was served upon the petitioners and that there is no reply stating that they are not the real manufacturers, would show that they are the manufacturers and liable to be proceeded under the relevant provisions of the Prevention of Food Adulteration Act.

10. I am afraid that this argument would not hold good because in the absence of materials, in the form of a statement from the first accused obtained by the Food Inspector, or purchase bill u/s 14-A of the Act, the Food Inspector cannot come to the conclusion that the Company, the accused No. 3, alone is the manufacturer.

11. Section 14-A of the Act provides thus :-

Vendor to disclose the name, etc. of the person from whom the article of food was purchased :- Every vendor of an article of food shall, if so required, disclose to the Food Inspector the name, address and other particulars of the person from whom he purchased the article of food.

Admittedly, this has not been followed.

12. Moreover, u/s 14 manufacturer shall sell the article of food to any vendor along with the warranty. In this case, the Food Inspector neither asked the vendor with reference to the particulars u/s 14-A nor seized any such warranty as provided u/s 14.

13. Therefore, in the absence of materials with reference to the involvement of

the petitioners, accused Nos. 2 and 3, in my view, the prosecution filed against them cannot be sustained. So, in this view, the impugned order dismissing the application filed for discharge, is liable to be set aside and accordingly it is set aside. Consequently, the petitioners are discharged.

14. However, it is to be pointed out that during the course of enquiry or trial of the case, if the prosecution or any vendor adduces evidence as against the petitioners with reference to their involvement in the offence mentioned, it is open to the trial Court to invoke Section 319, Cr. P.C. to summon those accused to try them along with the other accused. Section 20(A) also provides for adopting such a course.

15. Therefore, if the materials are placed before the trial Court, it could invoke the above powers to summon the manufacturer etc. While dealing with the similar situation in a case arising out of the Prevention of Food Adulteration Act, the Apex Court in *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, observed that Section 319, Cr. P.C. could be invoked by the trial Court, in order to proceed against the other accused also.

16. In the result, (1) the revision is allowed and the petitioners, accused Nos. 2 and 3 are discharged; (2) during the course of enquiry or trial, if the prosecution adduces materials as against the petitioners and others, the trial Court could very well invoke either Section 319, Cr. P.C. or Section 20-A of the Prevention of Food Adulteration Act, to summon those persons to try the case against them along with the other accused. In other words, the order of discharge by this Court should not in any way influence the trial Court in taking a decision to invoke those provisions when the materials are placed by the prosecution as against the petitioners and others. In view of the above, no further order is necessary in Crl. M. P. No. 3877 of 1996.