

(1982) 08 GAU CK 0016
In the Gauhati High Court

Gopal Bagaria and Others

APPELLANT

Vs

Swarga Narayan Mazumdar and Others

RESPONDENT

Date of Decision : 04-08-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401, 482
Prevention of Food Adulteration Act, 1954 — Section 17, 20A

Citation : (1983) CriLJ 1006

Hon'ble Judges : B.L. Hansaria, J

Bench : Single Bench

Judgement

B.L. Hansaria, J.—A prosecution was launched under the provisions of the Prevention of Food Adulteration Act, 1954 hereinafter referred to as the Act, against opposite parties Nos. 3 to 9. Processes against those opposite parties were issued and they appeared. The learned Sub-Divisional Judicial Magistrate. Sibsagar then recorded the evidence of opposite party No. 1 the District Food Inspector on 7-9-1979. On the same day O. P. No. 9 filed a petition praying to implead petitioner No. 4 as an accused in the case, alleging, inter alia, that the adulterated mustard oil was manufactured by the said petitioner. The following order was passed on this prayer:

Two accused persons are present. Others are not present. Advocate filed petition, 3 witnesses are present. The evidence of one witness is recorded. Accused Dulichand Deepchand filed petition for impleading the manufacturer M/s Gopal Oil Industries. Barpeta Road as an accused. Heard From the evidence of P. W. 1 it is seen that the said firm is the manufacturer of the oil of the sample. Therefore, issue summons to M/s. Gopal Oil Industries, Barpeta Road, as witness u/s 20-A of the Act. Fixing 9-10-1979.

2. In pursuance to this notice Petitioner No. 4 appeared through its Manager, petitioner No. 5 on 22-9-1980 on which date the following order was rendered by the learned Additional Chief Judicial Magistrate to whose file the case had been transferred in the meantime:

22-9-1980. Accused Bhabesh is present. The other accused persons are present through Advocate. Manager Sri Suparash Mail Bejwani appears on behalf of Gopal Oil Industries. He may go on local bail of Rs. 500/-. Issue warrant of arrest with bail of Rs. 100/- to the partners Gopal Bagaria, Arun Kumar Bagaria and Kumud Kumar Seksaria. The address of Kumud Kr, Seksaria is second Floor, 120 Mahatma Gandhi Road. Calcutta 7, The address of other two is Barpeta Road. The Manager has filed nomination paper. Keep it on record. It is not enough if the Manager is present. I consider that it is necessary to implead the partners of the firm in this case because there may be unnecessary delay if the processes are to be issued later on and the case will be delayed unnecessarily. The names of the partners are taken for the time being from the Manager. I feel that it is not necessary to collect the names from other source because there will be loss of time without any reason. This has been done u/s 20A of the Food Adulteration Act, Fix 30-10-1980, for appearance.

Sd/- p. N. Sarmah Addl. C.J.M. Sibsagar.

3. By this application u/s 482 read with Section 401 of the Criminal Procedure Code, the legality of issuing processes against the petitioners has been challenged. Shri Barua has ultimately advanced only one submission in support of the petition, and the same is that summoning of petitioner Nos. 1, 2 and 3 is in violation of Section 17 of the Act.

4. Before examining this submission, it may be stated that though in the order of the learned Sub-Divisional Judicial Magistrate passed on 7-9-1979 it has been stated that summons be issued on M/s. Gopal Oil Industries, Barpeta Road "as witness u/s 20A of the Acts", it is apparent that the summons was not meant on this firm as a witness inasmuch as power u/s 20A was being invoked which is meant to implead manufacturer, distributor or dealer as an accused in the case. Thus the order to summon the firm as a witness was apparently a slip of pen.

5. In support of the submission that the partners of the firm, namely, petitioners 1, 2 and 3 could not have been ordered to be proceeded against at this stage, Shri Barua seeks to place reliance on the provisions of Section 17 of the Act. as substituted by the Amendment Act No 34 of 1976. We may read the relevant portion of Section 17:

17 Offences by companies, (1) where an offence under this Act has been committed by a company

(a) (i) the person, if any, who has been nominated under Sub-section (2) to be in charge of, and responsible to the company for the conduct of the business of the company (hereafter in this section referred to as the person responsible), or

(ii) * * * * (b) The Company,

shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section, shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

(2) Any company may, by order in writing, authorise any of its directors or managers (such manager being employed mainly in a managerial or supervisory capacity) to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this Act and may give notice to the Local Health Authority, in such form and in such manner as may be prescribed, that it has nominated such director or manager as the person responsible, along with the written consent of such director or manager for being so nominated

Explanation ** ** *

(3) * *

(i) to (iii) * *

(4) Notwithstanding anything contained in the foregoing sub-sections, where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, not being a person nominated under Sub-section (2) such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation ** ** *

(a) to (c) * - *

This section was recast totally by the Prevention of Food Adulteration (Amendment) Act, 1976. When the Bill was piloted, no change in this section was contemplated. But the joint committee to which the Bill was referred had to say the following by way of suggestions for the effective implementation of the Act;

Section 17 of the Act, dealing with "offences by companies" was outside the scope of the Bill. The Committee, however, feels that this provision needs a fresh look and that instead of prosecuting the whole lot, the companies dealing in food articles should be asked to name the person who is in charge and also responsible to the company for the conduct of the business so that in case any article manufactured, stored or sold by them is found adulterated only the person in charge may be prosecuted and not the whole board, as is done at the moment.

A new Section 17, whose relevant portion has been quoted, was thereafter substituted for the old one. The intention behind the amendment is thus apparent. The same is to take care of difficulty or harassment that may be caused to the Director (which term includes a partner in a firm), manager, or

secretary or other officers of the company in such case;. The legislature has, therefore, permitted a company to nominate a person with his consent to be held responsible for prevention of the commission of the offence by the company. When such a nominee is available, who should be proceeded first? By legal fiction such a nominee is deemed to be guilty of the offence and he is liable to be proceeded against. The proviso, however, takes care of innocent nominees being punished. But Sub-section (4) of this section authorises the Court when it is proved (for which apparently some evidence would be needed) that the offence has been committed with the consent or connivance or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company. to proceed, against him. It would thus seem that in case of offence against a company, which term includes a firm, it is the nominee as visualised by Section 17(2) who has to be proceeded initially. However, if it is proved that the offence had been committed with the consent etc. of some person other than the nominee he can also be proceeded against as laid down in Sub-section (4). Any other view would make the amendment nugatory.

6. The contention on behalf of the petitioners 1 to 3 has been rejected by the learned trial Court on the ground that issue of processes on the partners later may cause unnecessary delay. The learned public prosecutor also seeks to support the order on this ground. There is no denial that if the partners are to be impleaded as accused in the case later. the case will get delayed. But the question is whether the partners can be called upon legally at this stage to face the trial? I would think not. The scheme of amended Section 17 visualises proceeding against the person responsible at the first instance, and only if it is proved that the offence had been committed with the consent etc. of any director and/or others named in Sub-section (4) then to proceed against them. This being plainly discernible from the scheme of the section, it is not open to the Court to work against it on any ground of public policy. Had two views been possible, the one which delays a proceeding especially in an offence like food adulteration would have definitely merited acceptance. But that is not the position.

7. So, petitioners Nos. 1 to 3 could not have been arrayed as accused at this stage, it may be stated that the nomination filed by petitioner No. 5 fulfils the requirement of Section 17(2) which was certified by the Local Health Authority, Barpeta. This is further fortified by the affidavit filed by petitioner No. 5 in this Court on 27-7-1982 showing acceptance of the nomination by this petitioner.

8. The petition is therefore allowed by directing the learned trial court to proceed at this stage only against petitioners 4 and 5 along with the other accused. It would be open to it to implead such other partners of the firm as accused qua whom consent, connivance or neglect would be proved as visualised by Section 17(4) of the Act. Before parting let it be stated that though Shri Barua had urged at one stage that none of the petitioners could be proceeded against because of lack of sanction to prosecute opposite party No. 9 (M/s. Dulichand Deepchand), or because this opposite party is not vendor-being either a distributor or vendor;

the learned Counsel did not press these points ultimately.