
(1988) 11 AHC CK 0033

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 973 of 1983

Haji Esmail Noor Mohd & Co and others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 28-11-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 305

Prevention of Food Adulteration Act, 1954 — Section 16, 17, 7

Citation : (1988) 11 AHC CK 0033

Hon'ble Judges : G.B.Singh, J

Final Decision : Dismissed

Judgement

G.B. Singh, J.—This is a petition under Section 482 Cr.P.C. for quashing the proceedings under Section 7/16 Prevention of Food Adulteration Act, in Criminal Case No. 882 of 1981 State v. Shri Ram and others pending in the court of Judicial Magistrate Sitapur.

2. Shri B.B. Singh Food Inspector on 28.11.81 took sample of coconut oil from Shri Ram whose shop is situate in Mohalla Daulatpur town Misrikh district Sitapur. Shri Ram was found selling coconut oil and sugar at his shop. When licence for selling these articles was demanded from him he could not produce, it. About the coconut oil he informed that he purchased it from M/s Veena Oil Mills Thompsonganj Sitapur. Since he suspected that coconut was adulterated the aforesaid sample was taken and was sent for chemical examination to the public analyst who found it adulterated. When the Food Inspector enquired from M/s Beeha Oil Mills, they informed that they had purchased the said coconut oil from M/s Haji Esmail Noor Mohd Kanpur. According to the Food Inspector Shri Ram, M/s Beeha Oil Mills Sitapur and M/s Haji Esmail Noor Mohd Kanpur, therefore, committed offences under Sections 7/16 of the Prevention of Food Adulteration Act. The Food Inspector after obtaining sanction from Local Health Authority filed complaint against Shri Ram and two firms. It appears that the learned Magistrate summoned the accused on the basis of that complaint. One Ram Swaroop Bajpai Munim of firm M/s Haji Esmail Noor Mohammad put in appearance on behalf of

that firm and produced an authorisation to represent the partners of the firm in the case. He prayed for leave in this connection but it was refused by the learned Magistrate. The authority had been given by Razak Abdul Latif partner of M/s Haji Esmail Noor Mohammad. Since Razak Abdul Latif was absent and he had been directed earlier to appear before the Court an order for issue of bailable warrant of arrest was passed. It seems that in application for rejecting the complaint that no prima facie case has been made out against the said firm had also been moved. That application was also rejected by the learned Magistrate observing that a prima facie case has been made out. Feeling dissatisfied with these orders, the present petition has been filed.

3. The first point argued by the learned counsel for the petitioners is that the coconut oil was imported one and since no standard has been prescribed for such a coconut oil under the prevention of Food Adulteration Rules, the Finn Haji Esmail Noor Mohammad and its partner Rajak Abdul Latif could not be preceeded against. I do not find any substance in this contention. The petitioners have not furnished any proof in support of their contention that it was imported coconut oil. The fact that the tins from which the sample was taken were bearing the label of imported coconut oil and the fact that on the basis of the same, the Food Inspector described it as imported coconut oil appears quite insufficient to accept at this stage that the coconut oil was imported one. If the petitioners wanted to take advantage of this plea they should have taken specific plea to that, effect before the learned Magistrate and furnished proof in its support. The mere description of oil in the complaint on the basis of the label pasted on the tins cannot be taken for granted and on its basis that it was, imported coconut oil. The proceedings could not, therefore, be dropped on this ground.

4. The next point pressed by the learned counsel for the petitioner is that the learned Magistrate should have permitted Ram Swaroop Bajpai Munim of the firm to represent the partners of the Firm Haji Esmail Noor Mohd. in this connection he referred to Section 305 Criminal Procedure Code and Section 17 of the Prevention of Food Adulteration Act. In my opinion the argument advanced by the learned counsel cannot be accepted. Section 305 Criminal Procedure Code applies when a Corporation or a registered society is an accused. At the time of arguments the learned counsel for the petitioners conceded that M/s Haji Esmail Noor Mohammad is not a company or a registered society but it is a firm. The description of Razak Abdul Latif as partner of the firm in the heading of the petition clearly shows that it is a partnership firm and not a corporation or a registered society. Section 305 Cr.P.C. has, therefore, no application to the present case. So far as Section 17 of the Prevention of Food Adulteration, Act is concerned its subsection (1) makes it clear that where an offence has been committed by a firm, the firm is deemed to be guilty of the offence and is liable to be proceeded against and punished accordingly. Subsection (2) of Section 17, however, provides facility to a firm in the criminal proceedings. It lays down that the firm may by order in writing authorise any of its partners or managers to exercise all such powers and take all such steps as may be necessary to prevent

commission of any offence under the Act and may give notice to the Local Health, Authority. Subsection (3) further lays down that the person so nominated shall be the person responsible for the offence committed. In the present case it is undisputed that no such notice was given to the Local Health Authority as required under subsection (2) of Section 17 of the Prevention of Food Adulteration Act. The Munim of the Firm has not been said to be a partner or manager of the firm. There could not, therefore, be any such authorisation in his favour and he could not represent the firm in the criminal proceeding for purposes of the prosecution even on the basis of the provisions of Section 17 of the Prevention of, Food Adulteration Act. The prayer of the Munim that he should be permitted to represent the accused firm and its partners was therefore, rightly rejected by the learned Magistrate and there is no substance in the contention of the learned counsel for the petitioners to the contrary.

5. It was thirdly argued by the learned counsel for the petitioners that no prima facie case had been made out against the petitioners and as such they could not be proceeded against. This argument also does not appear to have any substance. The facts narrated in the complaint clearly show that there was material before the Food Inspector to come to the conclusion that the coconut oil in question had been sold by the petitioners firm to M/s Been Oil Mills and from the latter Shri Ram purchased the coconut oil. He could, therefore, treat the petitioner firm as a dealer and file a complaint under Section 7/16 of the Prevention of Food Adulteration Act. The Food Inspector has mentioned the material proceeded by him in this connection. It has not been specifically stated in the position that the petitioner does not deal in such a commodity and M/s Been Oil Mills did not purchase the coconut oil from it. The finding of the learned Magistrate that a prima facie case has been made out does not, therefore, appear illegal or based on no material.

6. It was lastly argued by the learned counsel for the petitioners that the Food Inspector Shri B.B. Singh who filed the complaint was not competent to file it and to take sample. This argument is not acceptable in view of the observations made in *R a mesh Chand v. State and another* (1980 (II) Prevention of Food Adulteration cases 58.). The Notification dated 22.11.73, referred to in this case clearly shows that the Food Inspector is appointed for the whole district. On the basis of this Notification it was observed that the Food Inspector even if he belongs to a different ward has jurisdiction for the whole district in which he is for the time being posted. The complaint itself shows that he was in a squad appointed for the whole district and working as a member of that squad he took sample and filed the complaint. It cannot, therefore, be held that the complaint was legally defective and the learned Magistrate could not take cognizance on its basis.

7. It was also argued by the learned counsel for the petitioners that some observation may be made in the case so that all the partners of the firm may not be forced to appear in the case and be proceeded against. I do not find it at all

necessary. The learned Magistrate has summoned only one partner Shri Razak Adul Latif. The other partners have not been summoned by the learned Magistrate so far. The petitioners have not disclosed who are the other partners in the case. The fact that appearance of the partners of the petitioners firm may cause inconvenience to them, does not justify making of any observation in this regard at this stage.

8. The petitioners have, therefore, failed to made out any cause for interference in the exercise of inherent powers of the Court. The impugned orders do not deserve any interference to secure the ends of justice or to prevent the abuse of the process of the Court.

9. The petition has, therefore, no merits. It is dismissed and the stay order dated 6.4.87 is discharged. The record of the Lower Court shall be sent back immediately so that the case may proceed.