
(2008) 10 SHI CK 0008
In the High Court Of Himachal Pradesh

Harish Rangta

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 22-10-2008

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 14, 20A

Citation : (2009) CriLJ 803 : (2009) 1 ShimLC 41

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surinder Singh, J.—This revision petition has been directed against the order dated 27.3.2008, passed by the learned Sessions Judge in Criminal Revision No. 29-S/10 of 2007 whereby the respondent No. 2 Shri Narendra Sood, a dealer was ordered to be summoned by the learned trial Court by impleading him as an accused u/s 20-A of the Prevention of Food Adulteration Act, in short "the Act", was set aside.

2. In brief, the facts are that the petitioner herein was running a shop at Lellu Pul and was prosecuted for the offence punishable u/s 16(1)(a)(i) of the Act, as sample of "Lehar Slice" Bottle 250 ml purchased by the Food Inspector was found to be misbranded by the Public Analyst. A notice of accusation was put to him. He pleaded not guilty and claimed trial.

3. During the trial of the case, an application was moved by the petitioner u/s 14 read with Section 20-A of the Act for impleading respondent No. 2 as co-accused being the Dealer having sold the said product to him, on warranty Ex.AW 1/A. The application was kept pending by the learned trial Court, on the ground that it could only be considered when the evidence of the complainant is examined. Thereafter the Food Inspector examined four witnesses, but the Counsel for the petitioner refused to cross-examine the witnesses, on the ground that he could not prepare the case. The trial Court closed the evidence. Thereafter, the

application was fixed for the reply of the respondent, in the meantime, the petitioner preferred a revision-petition which was allowed by the learned Sessions Judge (Forests), Shimla, vide his order dated 14.7.2006 and the case was remanded back with the direction to the learned trial Court to allow the petitioner to cross-examine the witnesses of the complainant and also to decide the application of impleadment.

4. Pursuant to the above directions, the learned trial Court considered the averments made in the application, reply filed by the Food Inspector and also the statement of the petitioner (AW 1) and bill/warranty Ex.AW1/A and found sufficient grounds to proceed against the proposed accused. Thus, vide order dated 2.6.2007 allowed the application aforesaid and summoned "M/s. Kishori Lai Sood and Company", the Whole seller and Retailers, through its proprietor Shri Narender Sood, the respondent No. 2 herein. When he appeared, notice of accusation was put to him, but he pleaded not guilty and claimed trial.

5. Feeling aggrieved by his impleadment, a revision petition was filed before the learned Sessions Judge, which was allowed on the grounds that the respondent No. 2 could not be connected with the warranty Ex.AW1/A, because it did not carry any date, the contents of the article in question, were 300 ml as against 250 ml in each bottle picked up by the Food Inspector, secondly, the petitioner was found in possession of twenty sealed bottles of 250 ml each of Lehar Slice, but as per cash memo, the lesser quantity thereof was sold by M/s. Kishori Lai Sood.

6. Feeling aggrieved by the impugned order passed by the learned Sessions Judge, the instant revision petition has been filed by the petitioner/main accused, the proprietor of M/s. Bridge View, Lellu Pul, Sainj.

7. Shri Harsh Khanna, learned Counsel for the petitioner has vehemently argued that the order of the learned Sessions Judge exonerating the respondent is unjust, illegal and arbitrary. There was no material before the learned Sessions Judge to conclude that petitioner had more quantity of the said article than purchased. It is also argued that the bill/warranty implicates the proposed accused with the article in question. He also took pains to connect the respondent No. 2 with the cash memo/warranty in question with the aid of other bills Annexures A-2 to A-4 and submitted that by all logical conclusions it stands established that the article in question was purchased from respondent No. 2 before the date of sample i.e. 30.5.2003.

8. Contra, Shri Ajay Kochhar, learned Counsel for respondent No. 2 has supported the order passed by the learned Sessions Judge for quashing the order passed by the learned Judicial Magistrate and further argued that the material placed before the learned trial Court was not sufficient so as to arrive at a satisfaction and conclusion that the respondent No. 2 had sold the said article to the petitioner (Accused No. 1), therefore, the order impleading respondent No. 2 as co-accused was rightly reversed by the learned trial Court.

9. I have given my thoughtful consideration to the rival contentions and have perused the record.

10. It shall be relevant to refer Section 7 of the Act, is reads as under:

7. Prohibition of manufacture, sale etc. of certain articles of food. No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute

(i) any adulterated food;

(ii) any misbranded food;

(iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence;

(iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority [in the interest of public health];

(v) any article of food in contravention of any other provision of this Act or of any rule made thereunder; [or]

(vi) any adulterant.

[Explanation. For the purpose of the Section a person shall be deemed to store any adulterated food or misbranded food or any article of food referred to in Clause (iii) or Clause (iv) or Clause (v) if he stores such food for the manufacture therefrom of any article of food for sale.]

11. The above Section fastens the liability to the manufacturer, dealer, stockiest or distributor along with the seller of adulterated or misbranded article of food. Section 14 of the Act makes it obligatory for manufacturers, dealer or distributor to give written warranty in prescribed form to the vender about the nature or quality of the article sold. It is obligatory for the vendor by virtue of Section 14-A to disclose the name, address and other particulars of the person from whom, he purchased the article of food, to the Food Inspector.

12. Section 20-A of the Act provides:

20-A. Power of Court to implead manufacturer, etc. Where at any time during the trial of any offence under this Act alleged to have been committed by any person, not being the manufacturer, distributor or dealer of any article of food, the Court is satisfied, on the evidence adduced before it, that such manufacturer, distributor or dealer is also concerned with that offence, then, the Court may, notwithstanding anything contained in [Sub-section (3) of Section 319 of the Code of Criminal Procedure, 1973 (2 of 1974)], or in Section 20 proceed against him as though a prosecution had been instituted against him u/s 20.

13. This Section gives powers to the trial Court to summon manufacturer, distributor or dealer during the trial of the vendor of the adulterated food article if on evidence he is satisfied that such-persons are also concerned with the

offence. The essential conditions for invoking power u/s 20-A of the Act are:

- (i) The trial should have begun already;
- (ii) The trial must be of any offence under the Act allegedly committed by a person other than the manufacturer or distributor or dealer of food article;
- (iii) The Court must have been satisfied that such manufacturer or dealer or distributor is also concerned with the offence; and
- (iv) Such satisfaction must have been formed on the evidence adduced before the Court.

14. In the case on hand, the Condition No. (i) and (ii) stand satisfied but in so far as condition No. (iii) and (iv) are concerned, to my mind are not met, because during the enquiry conducted by the learned trial Court the bill/warranty Ex. AW1/A produced did not contain the date on which the said article of food was sold. This fact was also not clarified in the application for impleadment nor in his statement by the vendor as AW1. The Food Inspector in his reply to the application denied having shown the warranty at the time of sampling. Further the contents of "Lehar Slice" sold is shown to be 300 ml in Ex.AW1/A, whereas the Food Inspector had picked up the sample of "Lehar Slice" 250 ml. According to the learned Counsel for the petitioner "Lehar Slice" bottle contains only 250 ml, not 300 ml but this fact has not been spelt out before the trial Court either in the pleadings or on oath by the petitioner. Thus the bill/warranty in question is not connected with the sample of "Lehar Slice" picked up by the Food Inspector. There was no cogent reason to come to the satisfaction that respondent No. 2 was concerned with the alleged offence. Although the finding of the learned Sessions Judge that the quantity sold vide bill Ex. AW1/A was found more than found for sale in the shop of vendor is not born out from the record, but it does not effect his findings to the effect that vendor could not connect the respondent. No. 2 with the said article of food on the basis of the material produced before the trial Court. Further the bills A-2 to A-4 produced by the vendor are of no consequence in the light of the above discussion.

15. The upshot of the entire discussion is that the petitioner has failed to connect the respondent No. 2 with the alleged offence, therefore, the impugned order of the learned Sessions Judge passed in revision Petition No. 29-S/10 of 2007 passed on 27.3.2008 reversing the order of the learned trial Court and dismissing the application u/s 14 read with Section 20-A of the Act is upheld. In result, the present petition is dismissed.

16. The petitioner is hereby directed to be present before the learned trial Court on November 17th, 2008.

Records be returned.