

**(1992) 06 SHI CK 0011**

**In the High Court Of Himachal Pradesh**

**Case No :** Criminal Miscellaneous Petition No. (M) No. 516 of 1991

Haryana Dairy Development Co-operative Federation Ltd.

APPELLANT

Vs

The State of Himachal Pradesh

RESPONDENT

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**Date of Decision :** 05-06-1992

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482

Prevention of Food Adulteration Act, 1954 — Section 14A, 16(1), 17, 17(1), 17(2)

**Citation :** (1993) 1 ShimLC 204

**Hon'ble Judges :** V.K. Mehrotra, J

**Bench :** Single Bench

**Advocate :** Balwant Kukreja, for the Appellant; H.K. Bhardwaj, for the Respondent

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## **Judgement**

V.K. Mehrotra, J.—A sample of toned milk, sold under the label "Vita Milk" was collected by the Food Inspector, Solan, (H.P.). from Jagdish Kumar proprietor of M/s. Amratsari Dhaba, Sector-2 Parwanoo on 20th June, 1990. One part of the sample was sent to the Public Analyst Punjab, Chandigarh, for its analysis. In his report dated 18 July, 1990 the Public Analyst found that the sample contained milk fat 2 8 per cent and milk-solids-not fat 8.2 per cent. He expressed his opinion saying that:

I am of opinion that the contents of the sample are deficient in milk fat by 70 per cent and in milk-solid-not fat by 3.5 per cent of the minimum prescribed standard.

2. Written consent of the Chief Medical Officer, Solan, (Local (Health) Authority, Local area, Solan) was sought by the Food Inspector. It was accorded by the Local (Health) Authority on 21 August, 1990. The consent was given for prosecution not only of Jagdish Kumar but also of one Onkar Singh.

3. Onkar Singh was proceeded against on the basis of the information given by Jagdish Kumar when required by the Food Inspector u/s 14-A of the Prevention

of Food Adulteration Act, 1954 ("the Act", for short) as the person who was the distributor of the Vita milk and from whom Jagdish Kumar had purchased it.

4. Jagdish Kumar made a request to the Chief Judicial Magistrate, Solan, who had summoned him along with Onkar Singh on the basis of a complaint filed by the Government Food Inspector Solan against them u/s 16(1)(a)(i) of the Act for having contravened the provisions of Section 2(1-a)(m) read with Section 7(i) of the Act for the other part of the sample to be sent to the Director Central Food Laboratory, Mysore, for analysis. After analysis, the Director Central Food Laboratory issued a certificate of test or analysis in Form II on 28 November, 1990. In it the sample was found to contain milk fat at 2.5 per cent and milk-solids-not fat at 9.2 per cent. The opinion expressed by the Director was:

...I am of the opinion that the same does not conform to the standards of toned milk as laid down under the provisions of P.F.A. Act 1954 and Rules thereof in that (a) Milk fat contents falls below the minimum specified limit of 3.0%.

5. An application dated 5th January, 1991 was presented by Onkar Singh u/s 20 of the Act seeking impleadment of M/s Haryana Dairy Development Co-operative Federation Ltd., Chandigarh, saying, inter alia, that the milk out of which the sample had been taken had been purchased from the Federation which made the supply in a sealed condition and the sale was to be made thereafter, in the same condition, to the customers by him who was a distributor thereof. Two documents purporting to be "Outward Gate Pass" and a bill, both being of June 20, 1990 which had been issued by the Federation, were also filed along with the application. The statement of Onkar Singh on oath was recorded by the learned Chief Judicial Magistrate. In it, it was stated that he had supplied the milk to Jagdish Kumar in the same condition in which it had been received by him from the Federation. He also said that he was not responsible for any offence and that the General Manager of the federation at Ambala and the Managing Director of the Federation be impleaded in the case.

6. An order was passed by the Chief Judicial Magistrate on 4 March, 1991 in which it was said, amongst other things, that:

...There are reasons to believe that the sample pertained to the lot supplied on 20-6-1990. In view of this the General Manager Haryana Dairy Development Co-operative Federation Ltd., (Milk Plant Ambala City) and Managing Director of this concern registered office. Chandigarh be ordered to be impleaded as accused No. 3 and 4. They be summoned accordingly....

7. It is this order of the Chief Judicial Magistrate which is under challenge in the present Criminal Miscellaneous Petition (Main) No. 516 of 1991 u/s 482 Code of Criminal Procedure

8. Shri Balwant Kukreja had appeared on behalf of the Applicant M/s. Haryana Dairy Development Federation through its General Manager Shri Kuldeep Singh Dhillon He has made three submissions : Firstly, that the Chief Judicial Magistrate

was in error in directing the impleadment of the Managing Director and the General Manager as accused persons u/s 20 read with Section 17 of the Act; secondly, that the written consent by the Local (Health) Authority, Solan for lodging the prosecution was not in accordance with law and, thirdly, that the prosecution founded upon a written consent given by the Local (Health) Authority on the basis of the report of the Public Analyst which stood superseded by the certificate of the Director Central Food Laboratory, Mysore, without a fresh written consent from the Local (Health) Authority, was unsustainable in law.

9. Even though the present petition purports to be on behalf of M/s. Haryana Dairy Development Co-operative Federation Ltd. and seeks the quashing of the proceedings on various grounds, the submission which has been made in this Court by Shri Kukreja is that the two senior officers of the Federation, namely, its Managing Director and the General Manager could not have been impleaded nor summoned as accused persons in this case. The submission is founded upon the provisions contained in Section 17.

10. Section 17 relates to offences by Companies. It was amended by Parliament Act 34 of 1976. In essence, what it provides is that where an offence under the Act has been committed by a company, the person 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 or where no such person has been nominated, every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, and the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. The proviso to Sub-section (1) of Section 17 says 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 he exercised all due diligence to prevent the commission of such offence.

Sub-section (2) relates to the nomination by the company, in writing, of an officer or a Director for exercising such powers as may be necessary or expedient to prevent the commission by the company of any offence under the Act. Sub-section (3) describes the time till which the person nominated under Sub-section (2) remains responsible while Sub-section (4) says that notwithstanding anything contained earlier where an offence under the Act has been committed by a company and it is proved that it 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.

11. The Supreme Court had occasion to consider Section 17 in State (Delhi

Admn) v. I.K. Nangia and Anr. 1980 (1) FAC 1. The legal position was stated (in paragraph 16) thus:

...The individual liability of the sales manager is distinct and separate from the corporate liability of the manufacturer In case of a "company prosecution" the company along with its agent, that is, the person nominated u/s 17(2) as well as the sales manager can both be prosecuted u/s 7(1) read with Section 16(1)(a). Notwithstanding the nomination of a person responsible u/s 17(2), there can also be prosecution of any director, manager, secretary or other officer of the company u/s 17(4). But in such a case it is necessary for the prosecution to prove that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of such person.

12. The question whether in a particular case any officer, apart from the company itself, should be impleaded as an accused person in a prosecution under the Act, basically seems to depend upon the circumstances found in that case on the evidence brought before the Court Where, however, the impleadment of some officer or director of the company as an accused in a proceeding is assailed at a very early stage, like in the present case, the question will still have to be examined on the basis of the material on the record of the case till then.

13. In a case which related to Section 17, as it stood prior to its amendment by Act 34 of 1976, the Delhi High Court took the view in Ram Kishan Rohtagi and Ors. v. Municipal Corporation of Delhi and Ors. 1980 (1) FAC 419, that the prosecution of directors of a company would be bad in law till such time it was established that they were in charge of and responsible to the company for the conduct of its business and that a presumption to that effect could not be drawn merely because of their status as directors thereof. The matter was taken to the Supreme Court in Municipal Corporation of Delhi v. Ram Kishan Rohtagi and Ors. 1982 (2) FAC 355, which maintained the order of the High Court in so far as it had quashed the proceedings against the directors of the company it, however, observed that if the prosecution could at any stage produce evidence which satisfied the Court that the other accused or those who had not been arrayed as accused and against whom proceedings had been quashed, had also committed the offence the Court could take cognizance against them and try them along with other accused this course was followed by the Delhi High Court in a later decision in K.V. Kathranl and Ors. v. Delhi Administration. 1985 (1) FAC 156, which set aside the order of the Magistrate summoning some accused persons, and said that:

...It is, however, clarified that it shall be open to the complainant to give his statement in Court and to lead evidence and if at a later stage from the material as adduced on the record it prima facie stand proved on the record that any of these accused was in charge of and in control of the day-to-day affairs of the company of which he was a director (partner) the learned Magistrate may then summon such person to stand trial in the case....

14. In the aforesaid case also the persons summoned by the learned Magistrate had approached the Court even before the Government Food Inspector had appeared as a witness at the trial.

15. In the present case as well recording of evidence has yet to start. The complainant (Government Food Inspector) has not so far entered the witness box either. The only statement on oath before the Chief Judicial Magistrate is that of Onkar Singh in support of the application made by him u/s 20 of the Act Neither in the application made by Onkar Singh nor in his statement on oath is there anything to suggest that the Managing Director and the General Manager of the Petitioner Company, who have been impleaded as Respondents Nos. 3 and 4, were in charge of and in control of the day-to-day affairs of the Federation or that the offence had been committed with the consent or connivance of, or is attributable to any neglect on their part. Even otherwise there is no evidence, so far, on the record of the proceedings from which the aforesaid conclusion could be drawn even on a prima facie basis. The impleadment of the Managing Director and the General Manager of the Federation is not justified on the material brought on the record of the case so far. The order of the learned Magistrate deserves to be set aside on this ground alone though, as said by the Supreme Court in the case of *Municipal Corporation of Delhi v. Ram Kishan Rohtagi and Ors.* 1982 (2) FAC 355 and the Delhi High Court in *K.V. Kathrani* 1985 (1) FAC 156, it would be open to the complainant to adduce evidence in Court about it and if on any subsequent stage it stands prima facie proved, from the material brought on the record of the case, that any of these two persons was in charge of or in control of the day-to-day affairs of the Federation or the offence had been committed with his consent or connivance or is attributable to any negligence on his part, it would be open to the trial Court to proceed against them in accordance with law.

16. Since, relief is due to the two officers, namely, the Managing Director and the General Manager of the Haryana Dairy Development Co-operative Federation Ltd. at this stage on the ground aforesaid, it is not necessary to express any opinion on the other two submissions made by Shri Kukreja, as was also prayed by him.

17. The petition succeeds in part to the extent that the order of the learned Magistrate dated 4 March, 1991 (Annexure-P3 to the present petition) shall stand quashed in so far as it directs the impleadment of the General Manager and the Managing Director as co-accused Nos. 3 and 4 and directs that they be summoned.

18. Let the record be sent back to the Court of the Chief Judicial Magistrate, Solan, with a copy of this order, for proceeding further in accordance with law.