

(2012) 07 P&H CK 0088

In the Punjab And Haryana At Chandigarh

Case No : C.R.M. No's. M-53047 and 53048 of 2007

Jasmeet Singh Puri and Another

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 30-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Prevention of Food Adulteration Act, 1954 — Section 14, 16, 16(1)(a)(i), 17, 17(1)(a)(i)

Citation : (2013) 1 RCR(Criminal) 86

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Advocate : Chetan Mittal, with Mr. Vishal Garg, for the Appellant; Sameer Singh, AAG Haryana, for the Respondent

Judgement

Mehinder Singh Sullar, J.—As identical questions of law and facts are involved, therefore, J propose to decide the indicated petitions, by virtue of this common judgment, in order to avoid the repetition. The epitome of the facts and material, culminating in the commencement, relevant for deciding the instant petitions and emanating from the records, is that on 12.5.2007, the Government Food Inspector (for brevity "the GFI") inspected the premises of Gaurav Sharma son of Neeraj Sharma, servant of M/s. Fortis Health World, Shop No. 4, GF-4, MGF Mega City Mall, Mehrauli Road, Gurgaon (accused No. 1) and found him in possession of 20 poly packets containing 1000 grams each of Health Fields Organic Moong Dal Dhooli for public sale contained in wooden almirah (wreck) (subject matter of 1st petition, bearing C.R.M. No. M-53047 of 2007). Having completed all the codal formalities, the GFI took three samples of Moong Dal Dhooli in the presence of witnesses by giving him the notice in Form VI prescribed under the Prevention of Food Adulteration Rules, 1955 (hereinafter to be referred as "the relevant Rules"), which-were labeled and wrapped in strong thick paper. One sealed bottle alongwith memorandum was sent to Public Analyst, Haryana,

Chandigarh for analysis in a sealed box. The remaining two sealed packets of samples were deposited with the Local Health Authority (for short "the LHA"). The report of Public Analyst indicated that the label on the bottle of sample does not bear a declaration of batch number, lot number and month & year of the packing were not legible as required under Rule 32 of the relevant Rules.

2. Sequelly, having adopted the proper prescribed procedure and in the wake of examination of sample of Gatorade Thirst Quencher (Fierce) for public sale recovered from the possession of accused No. 1 (subject matter of 2nd petition, bearing C.R.M. No. M-53048 of 2007), it was also found misbranded. The product did not bear a batch number, lot number, symbol, colour code to indicate the product as vegetarian food, the month & year, in which, the commodity was manufactured of pre-packed, the product does not contain fruit juice and it is not labeled as synthetic, which is in violation of Rules 32 & 40(2) of the relevant rules and the product was misbranded. The petitioners-accused were the sellers of both the products and responsible as Directors of Fortis Health World of selling the misbranded food articles to the public.

3. Leveling a variety of allegations and narrating the sequence of events, in all, the complainant-GFI claimed that since the accused were in possession and selling the misbranded indicated food articles to the public, so, accordingly, they are liable to be prosecuted. In the background of these allegations, the GFI filed respective complaints (Annexure P1) in the prescribed form against the accused, including the petitioners, for the commission of offence punishable u/s 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter to be referred as "the Act") in the Court of CJM, Gurgaon, in the manner depicted here-in-above.

4. Instead of submitting to the jurisdiction of trial court," the petitioners-accused straightway jumped to file the instant petitions to quash the impugned complaints (Annexure P1) and all other consequent proceedings arising thereto, invoking the provisions of Section 482 Cr.P.C.

5. The case set up by the petitioners, in brief in so far as relevant, was that the complainant has launched a false prosecution against them in violation of Section 17 of the Act, as there is no allegation that they were in-charge of and responsible for the conduct of business of the company. They" are not the manufacturers of the misbranded products. Simply, the petitioners, being the Directors of the Company, cannot be prosecuted in the absence of their consent, connivance and negligence for selling the misbranded products. The initiation of criminal complaints was stated to have been made against them in violation of the statutory provisions of Section 17 of the Act and is liable to be quashed. On the strength of aforesaid grounds, the petitioners sought to quash the impugned complaints (Annexures P1) and all other proceedings arising therefrom, in the manner described here-in-be-fore.

6. The respondents refuted the prayer of petitioners and filed the reply, inter-alia

pleading that since neither the company of the petitioners duly appointed its nominee nor any such nomination was accepted by the LHA, so, all the Directors, in-charge of the company are responsible and liable to be prosecuted in this regard. The petitioners are not the manufacturers and they cannot escape their liability, being sellers of misbranded food articles to the public under sections 7, 16 & 17 of the Act and relevant rules. It will not be out of place to mention here that the respondents have stoutly denied all other allegations contained in the main petitions and prayed for their dismissal. That is how, I am seized of the matter.

7. Having heard the learned counsel for the parties at length, having gone through the material on record & legal provisions with their valuable assistance and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the present petitions in this context.

8. Ex facie, the argument of learned counsel that since it has not been specifically pleaded in the complaints that the petitioners were directly responsible for the conduct of the business of the company, so, the impugned complaints (Annexures P1) are liable to be quashed, is neither tenable nor the observations of Hon''ble Apex Court in case Aneeta Hada Vs. Godfather Travels and Tours Pvt. Ltd., are at all applicable to the facts of the instant case, wherein, while interpreting the provisions of Sections 138 & 141 of the Negotiable Instruments Act, it was observed that "the company is a juristic person, cannot claim immunity from criminal prosecution on the ground that they are not capable of possessing the necessary mens rea for commission of criminal offences. If the cheque issued by the company was dishonoured, then the prosecution of its Directors without arraying the company as accused cannot continue and arraying of company as an accused is an imperative."

9. Possibly, no one can dispute with regard to the aforesaid observations, but to me, the same would not come to the rescue of the petitioners in the present controversy.

10. As is evident from the record, that the criminal complaints (Annexures P1) were filed against the accused, including the petitioners, for the commission of pointed offences. Section 7 of the Act postulates that no person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute any article of adulterated food in contravention of any other provisions of the Act or rules made thereunder. As per its explanation, 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. According to Section 14 of the Act, no manufacturer or distributor of, or dealer in any article of food shall sell such article to any vendor unless he also gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor.

11. Sequelly, Section 16 posits that subject to the provisions of subsection (1A) if

any person whether by himself or by any other person on his behalf, imports into India or manufactures for sales or stores, sells or distributes any article of adulterated & misbranded food in contravention of any of the provisions of the Act and rules made thereunder, then, he is liable to be punished under this section.

12. Likewise, Section 17 of the Act envisages that where an offence under this Act has been committed by a company, 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 or where no person has been so 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, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

13. However, proviso to this section mandates 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. Similarly, sub-section (2) escalates that any company may, by order in writing, authorize any of its directors or managers 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 LHA, 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.

14. A conjoint and meaningful reading of these provisions would reveal that in the absence of any legally nominated person, every person, who at the time the offence was committed, was in charge of and was responsible to, the company for the conduct of its business, is liable to be prosecuted for violation of any provisions as contemplated under sections 7 & 16 (1)(a)(i) of the Act as indicated here-in-above.

15. The petitioners-accused did not produce any material on record, much less cogent, except vague letter (Annexure P2) that the company has allegedly appointed the nominee. No implicit reliance can be placed on vague letter (Annexure P2) at this stage, because it has nowhere been indicated that such nominee was legally/duly appointed as required u/s 17(1) (a) (i) or passed any order in writing authorizing any of its directors or managers to exercise such powers and gave any notice to the LHA 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, which is deeply lacking in the instant case. It is not a matter of dispute that the petitioners-accused were directors of Fortis Health World at the relevant time. Although they were not the manufacturers, but they cannot escape the liability, being the sellers of misbranded food articles to the public.

16. Meaning thereby, since the petitioners have not legally nominated any responsible person, so, they are liable to be prosecuted being in charge of and responsible to, the company for the conduct of its business for the commission of indicated offence, as contemplated u/s 17 of the Act. There is no gain saying that they would be at liberty to prove during the course of trial of main case that the offence was committed without their knowledge and that they exercised of due diligence to prevent the commission of such offence, as envisaged in the proviso to Section 17 of the Act. Be that as it may, but in any case, no ground, muchless cogent, is made out to quash the impugned Criminal complaints (Annexures P1) at this stage. Therefore, the contrary arguments of learned counsel for petitioners "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances.

17. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

18. In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trial of the main case, as there is no merit, therefore, the instant petitions are hereby dismissed as such. Needless to mention that nothing observed, here-in-above, would reflect, in any manner, on merits during the trial of the main case, as the same has been so recorded for a limited purpose of deciding the present petitions in this relevant direction. Since the matter is very old, so, the trial Court is directed to take effective steps for expeditious disposal of the main case.