

(1985) 03 DEL CK 0049

In the Delhi High Court

Case No : Criminal Miscellaneous Appeal No. 79 of 1983

K.V. Kathrani and Others

APPELLANT

Vs

Delhi Administration

RESPONDENT

Date of Decision : 19-03-1985

Acts Referred:

Citation : (1985) 28 DLT 10 : (1986) 10 DRJ 104 : (1985) ILR Delhi 618

Hon'ble Judges : H.C. Goel, J

Bench : Single Bench

Advocate : O.P. Soni, Kamlesh Dutt and S.T. Singh, for the Appellant;

Judgement

H.C. Goel, J.

(1) On June 11, 1981 Shri B.K. Ahuja, Food Inspector of Municipal Corporation of Delhi purchased a sample of Orange Emulsion for analysis under the provisions of the Prevention of Food Adulteration Act, 1954 (For short the Act) and the rules made there under from the premises of M/s. Kumar Trading Company, S.P. Mukherjee Marg, Delhi. The sample was found to be misbranded on analysis by the public analysis analyst vide his report dated July 2, 1981. A complaint was accordingly filed by the Delhi Administration through the Senior Prosecutor against 17 persons u/s 7 of the Act to the Court of the Metropolitan Magistrate concerned. Krishan Kumar, accused No. 1 was prosecuted for his having sold the sample to the Food Inspector. The firm M/s. Kumar Trading Co. and its two partners Shri Ram Lal and Shri Pritam Lal were prosecuted as the firm and its two partners respectively for having stocked and sold the sample of the commodity. The further allegations in the complaint are that the firm M/s. Kumar Trading Company, accused No. 4, had purchased the sampled commodity from M/s. Gujarat Essence Mart, accused No. 13. It was alleged that this firm had no valid nomination and, Therefore, all the partners of the firm, namely, S/Shri Chunni Lal Ambaram Kathrani, Suresh V. Kathrani, Manohar Chunni Lal Kathrani and Jayant Chunni Lal Kathrani who were in-charge and responsible for the affairs of the business of the firm were also liable. It was also alleged that M/s.

Gujarat Essence Mart had in turn purchased the commodity from M/s. Asian Chemical Works, Bombay, the manufacturers thereof Accused No. 5, its seven partners Shri C.P. Kathrani and others, accused Nos. 6 to 12, were also prosecuted on the allegations that there was no valid nomination by that firm in favor of any person in accordance with the provision of the Act and, Therefore all the partners had committed the offence in question. Accused No. 14 Shri Chunni Lal Ambaram Kathrani, and accused No. 6 is one and the same person. Shri M.L. Sahni Metropolitan Magistrate on a perusal of the complaint as filed by the Food Inspector summoned all the 17 accused persons for the offences punishable u/s 7/16 of the Act. An application was thereafter moved on behalf of accused No. 6 to 12 and 15 to 17 before the learned Magistrate for discharging them in the case. It is common case that Asian Chemical Works and Gujarat Mart, accused No. 5 and 13 respectively, the two companies had sent notices to Municipal Corporation of Greater Bombay as per rules framed under the Act about their having nominated Shri Chunni Lal Ambaram Kathrani as the nominee of each of these two companies. The receipt of these nominations was acknowledged by the Assistant Health Officer Municipal Corporation of Greater Bombay on May 6, 1981 and May 7, 1981 respectively. It was contended on behalf of the applicants before the learned Magistrate that the said two companies had thus nominated Shri C.P. Kathrani as their nominee respectively. Therefore, he alone could be prosecuted under the Act besides the two companies and none of the other partners of these two companies was liable to be prosecuted and as such deserved to be discharged. The learned Magistrate relying on a decision of the Supreme Court in State (Delhi Admn.) v. I.K.Nangia & Another, 1980 (1) Fac 1 held that C.P Kathrani could not be considered to have been validly appointed as nominee for either of these two companies. "In this view of the matter he took the view that all the accused persons were liable to be proceeded against. The application of-the said accused persons was accordingly dismissed by the impugned order of Shri S.M. Chopra. Metropolitan Magistrate, who beard and decided the application.

(2) Feeling aggrieved by the impugned order of the learned Magistrate the petitioners have filed this petition u/s 482 Cr. P.C. for quashing the proceedings pending against accused Nos. 6 to 12 and 14 to 17 in the court of Shri S.M. Chopra, Metropolitan Magistrate, New Delhi.

(3) Shri O.P. Soni learned counsel for the petitioners, in the first instance submitted that Shri C.P. Kathrani or Shri Chunni Lal Artibaram Kathrani who is accused No. 6 and 14 is a partner in both the companies viz. Asian Chemical Works and Gujarat Essence Mart. Asian Chemical Works, accused No. 5 is the manufacturer of Orange Emulsion and the same is marketed by this company through its sister concern Gujarat Essence Mart, accused No. 13. The nomination appointing Shri C.P. Kathrani as their nominee was duly sent by these two companies to the Health Department of the Municipal Corporation of Greater Bombay on April 1, 1981 and the nomination of Shri C.P. Kathrani was duly accepted by the Municipal Corporation of Greater Bombay by acknowledging the

receipt of those nominations at their foot on May 6, 1981 and May 7, 1981 respectively. Shri Soni contended that there was nothing in Section 17(2) of the Act or Explanation thereto to show that two companies cannot appoint one and the same person who may be a partner of both the companies as their nominee. It was submitted that the Supreme Court in I.K.Nangia's case (supra) did not, lay down that one person cannot be appointed as a nominee of more than one company in which he may be a partner or that different companies or different establishments of the same company must have different persons as their nominees. In that case the question for consideration was as to whether different establishments of a company located in different cities must appoint nominees for each of such establishments and it was held that in such a case the company must appoint nominees for each such establishments. It was contended that the learned Magistrate had thus misapplied the judgment of the Supreme Court in Nangia's case (supra) to the present case. According to Shri Soni, Shri C.P. Kathrani was thus validly appointed nominee for both the companies. As such he alone was liable to be prosecuted besides the two companies and no other partner of either of these two companies could be said to have committed the offence in question and they were thus liable to be discharged. I need not go into this contention of Shri Soni as on the view that I am taking on the alternative submissions of Shri Soni which I will deal with hereafter no case was made out for summoning any of the partners of the two companies other than Shri C. P. Kathrani in the case merely on the basis of the averments as made in the complaint. Shri Sodhi learned Standing Counsel for the Delhi Administration submitted that the nomination of Shri C.P. Kathrani on behalf of the company M/s. Asian Chemical Works was accepted by the Municipal Corporation of Greater Bombay earlier in point of time, namely on May 6, 1981 and that Shri C.P. Kathrani was thus a valid nominee for that company alone and he could not be the nominee for the other company, namely, Gujarat Essence Mart on whose behalf his nomination was acknowledged by the Municipal Corporation of Greater Bombay later in point of time by one day i.e. on May 7, 1981. Shri Soni conceded that so far as Asian Chemical Works is concerned Shri C.P. Kathrani was its duly appointed nominee. That being so, he alone could be proceeded against for the offence in question on behalf of the Asian Chemical Works besides that company as such. Accused Nos. 7 to 12, the other persons partners of Asian Chemical Works were thus wrongly summoned as accused and the order summoning them is liable to be set aside. Now as regards the partners of Gujarat Essence Mart other than Shri C.P. Kathrani, accused No. 14, is also one of its partners. The question for consideration is as to whether its other partners, namely, accused Nos. 15 to 17 were prima facie shown by the complainant to be the persons in-charge and responsible for the affairs of the business of the firm Gujarat Essence Mart (Accused No. 14 being one admittedly) Shri Sodhi in this regard has solely relied on the averments made by the complainant in the complaint wherein it was stated by him that all the partners of the firm are in-charge and responsible for the affairs and business of the firm and as such had committed the offence in question. The question as to how far such an averment in a complaint is

sufficient to warrant an order for summoning the partners of the firm came up for consideration before a Division Bench of this Court in the case *Shri Bhiku Ram Jain and others v. Municipal Corporation of Delhi & Ors.* 1977 (1) Fac 226 In that case it was stated in the complaint that all the accused persons mentioned at Sr. Nos. 5 to 17 were the directors of the accused No. 3 and all of them were in-charge-of and responsible for the conduct of the business of accused No. 3 at the time of the commission of the offence. In that case also the complainant was not examined, being a public servant and on the basis of that averment in the complaint the learned Magistrate had directed the issuance of summons against the directors of the company. The Bench observed as below :-

"In the instant case the complainant was not examined being a public servant. The complaint on the face of it does not disclose that the petitioners were in overall control of the day-to-day business of the company. The Magistrate in the circumstances ought, to have inquired into the case for the purpose of deciding whether or not there was sufficient ground for proceedings as envisaged by section 202 of the Code. That having not been done, on a bare perusal of the complaint the impugned order cannot be sustained. We are unable to support the contention sought to be urged on behalf of the Corporation that because the complainant is a public servant and the complaint is in writing, the Magistrate need not examine the complainant and witnesses when the public servant acting or purporting to act in the discharge of his official duties has made the complaint. Examination of the complainant in such a case is to be dispensed with only if a perusal of the complaint prima facie makes out a case for proceeding against the accused. It cannot be said that when a complaint is bereft of material from which it is sought to be urged that prima facie case is made out to proceed against the accused the complainant should not be examined when he files a complaint in his capacity as a public servant acting or purporting to act in the discharge of his official duties."

(4) The petition of the directors of the company was accepted and the order directing the issuance of process against them was set aside. The trial court was directed to proceed in the matter and to dispose of the complaint in accordance with law on recording the statements of the complainant and witnesses, if any produced in support of the complaint. *J.D. Jain, J. sitting singly in the case Ram Kishan Rohatgi and others v. Municipal Corporation of Delhi and others*, 1980 (1) Fac 419 also took a similar view. It was held that a whole body of directors of a company cannot be said to be in charge of the day to day management and running of the business of the Company and as such they cannot be fixed with the knowledge of everyday working of the company; so only such of the officers or directors of the company who are exercising actual control over the business affairs of the company can be held vicariously liable in terms of Sub-section (1) of Section 17 of the Act. of Course, if 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 the directors, manager, secretary or other officer of the company, he shall also be deemed to be guilty of the offence as envisaged in Sub-section (2)

thereof.

(5) In that case the directors of the company that manufactured "Morton Toffees" which were found adulterated had been summoned on the basis of the allegations of the complainant food Inspector that they were the directors of the company and were in-charge and responsible for the conduct of the business of accused No. 2 company, namely. Upper Ganges Sugar Mills. It was held that such an allegation was not sufficient to hold that the directors were in-charge of and responsible for the day-to day conduct of the business of the company and the order summoning them was quashed. An appeal was taken by the Municipal Corporation of Delhi to the Supreme Court against this judgment of the learned Single Judge of this court which is reported as *Municipal Corporation of Delhi v. Ram Kishan Rohatgi and others*, 1982 (2) Fac 355 In that case the Supreme Court observed as below:-

"15. So far as the Manager is concerned, we are satisfied that from the very nature of his duties it can be safely inferred that he would undoubtedly be vicariously liable for the offence; vicarious liability being an incident of an offence under the Act. So far as the Directors are concerned, there is not even a whisper, nor a shred of evidence, nor anything to show, apart from the presumption . drawn by the complainant, that there is any act committed "by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable. In these circumstances, Therefore, we find ourselves in complete agreement with the argument of the High Court that no case against the Directors (accused Nos. 4 to 7) has been made out ex-facie on the allegations made in the complaint and the proceedings against them were rightly quashed."

(6) The Supreme Court maintained the order of the High Court in so far as it had quashed the proceedings against the directors of the company. It was observed in that case that if the prosecution can 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 can take cognizance against them and try them along with the other accused. Following these authorities I hold that the averments as made by the complainant in the complaint were not a sufficient materials on which it could be held that there was a sufficient ground for proceeding against those persons for the offence in question, so as to issue process against them as contemplated by Section 204 Cr. P.C. I accordingly accept the petition, set aside, the impugned order of the learned Magistrate summoning accused Nos. 7 to 12 and 15 to 17. It is, however, clarified that it shall be open to the complainant to give his statement in the court and to lead evidence and if at a later stage from the material as adduced on the record it prima facie stands 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.