
(2016) 05 SHI CK 0147

In the High Court Of Himachal Pradesh

Case No : Cr. MNO No. 228 of 2015 and Cr. MNO No. 229 of 2015

Mahindra Holidays and Resorts India Limited

APPELLANT

Vs

State of H.P

RESPONDENT

Date of Decision : 04-05-2016

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 17(2)

Citation : (2016) CriLJ 3513 : (2016) 4 RCRCriminal 820

Hon'ble Judges : Mr. Sureshwar Thakur, J.

Bench : Single Bench

Advocate : Ms. Jyotsna Rewal Dua, Senior Advocate with Ms. Shalini Thakur, Advocate, for the Petitioner; Mr. Vivek Singh Attri, Dy. A.G, for the Respondents

Final Decision : Allowed

Judgement

Mr. Sureshwar Thakur, J. (Oral)—The Government Food Inspector, Municipal Corporation, Shimla on 30.06.2009 at about 2.45 p.m on his inspecting the premises known as M/s Club Mohindra Whispering Pines Mashobra, Shimla found Shri Vikas Kumar to be conducting the affairs of the business of the hotel, as its Executive Sous Chef. At the aforesaid time he noticed Mr. Vikas Kumar holding possession of 2 kg. curd in a stainless steel pan drum carrying a capacity of 25 kg food item whereof was meant for sale to the public for human consumption. The complainant revealed his identity to the aforesaid and issued a notice upon him declaring his intention to take the sample of curd for the purpose of analyses. He also purchased 3x250 gms of curd made from an unindicated milk after its horizontally and vertically standing sliced from the whole curd. He made cash payment of Rs.90/- qua purchase of the aforesaid by him. The aforesaid sample purchased by the complainant from Vikas Kumar was sent through a peon in a sealed letter on 1.7.2009 to the Public Analyst, Kandaghat. The Public Analyst on analysing the sample sent to him for rendering an opinion thereon conclude the sample to be adulterated. On the mandatory consent standing afforded to the complainant by the Chief Medical Officer, Shimla

for launching prosecution against the accused, a complaint stood instituted before the JMIC-2, Shimla. On the JMIC, Court No.2, Shimla standing prima facie satisfied qua Jaiminikumar Shah committing offences punishable under Section 16(1)(a)(i) read with Section 7(i) of the Prevention of Food Adulteration Act hereinafter referred to as the Act ordered the issuance of summons upon him. On the JMIC-2, Shimla, ordering for issuances of summons upon Jaiminikumar Shah constrained him to institute the instant petition before this Court for quashing the same. A perusal of the paragraphs 8 of the apposite complaint which stands reproduced verbatim hereinafter unfolds of their being no manifestation therein of Jaiminikumar Shah holding charge of and his being responsible to the company for the conduct of its business.

"8. That the accused Sh. Vikas Kumar S/o Sh. S.C.Gupta, Executive Sous Chef of M/s Club Mohindra Whispering Pines, Mashobra, Shimla, H.P. had Curd made from unindicated milk under Section 2(ia)(m) in his possession meant for sale to general public and sold the same to me and thereby committed an offence punishable under Section 16(1)(a)(i) of PFA Act, 1954 read with Section 7 of the Act. M/s Club Mohinder Whispering Pines Mashobra, Shimla, H.P. through its prop/partners/nominee (If any)/managing directors are also liable under the act."

Cr. MMO No. 229 of 2015.

2. The Government Food Inspector, Municipal Corporation, Shimla on 30.06.2009 at about 2.15 p.m on his inspecting the premises known as M/s Club Mohindra Whispering Pines Mashobra, Shimla found Shri Vikas Kumar to be conducting the affairs of the business of the hotel, as its Executive Sous Chef. At the aforesaid time he noticed Mr. Vikas Kumar holding possession of 10 kg. Paneer in a stainless steel pan drum carrying a capacity of 25 kg food item whereof was meant for sale to general public consumption. The complainant revealed his identity to the aforesaid and issued a notice upon him declaring his intention to take the sample of paneer for the purpose of analysis. He also purchased 3x250 gms of paneer made from an unindicated milk after its horizontally and vertically standing sliced from the whole paneer. He made a cash payment of Rs.150/- qua purchase of the aforesaid by him. The aforesaid sample purchased by the complainant from Vikas Kumar was sent through a peon in a sealed letter on 1.7.2009 to the Public Analyst, Kandaghat. The Public Analyst on analysing the sample sent to him for rendering an opinion thereon conclude the sample to be adulterated. On the mandatory consent standing afforded to the complainant by the Chief Medical Officer, Shimla for launching prosecution against the accused, a complaint stood instituted before the JMIC-2, Shimla. On the JMIC, Court No.2, Shimla standing prima facie satisfied qua Jaiminikumar Shah committing offences punishable under Section 16(1)(a)(i) read with Section 7(i) of the Prevention of Food Adulteration Act hereinafter referred to as the Act ordered the issuance of summons upon him. On the JMIC-2, Shimla, ordering for issuances of summons upon Jaiminikumar Shah constrained him to institute the instant petition before this Court for quashing the same. A perusal of the paragraphs 8

of the apposite complaint which stands reproduced verbatim hereinafter unfolds of their being no manifestation therein of Jaiminikumar Shah holding charge of and his being responsible to the company for the conduct of its business.

"8. That the accused Sh. Vikas Kumar S/o Sh. S.C.Gupta, Executive Sous Chef of M/s Club Mohindra Whispering Pines, Mashobra, Shimla, H.P. had Paneer made from unindicated milk under Section 2(ia)(m) in his possession meant for sale to general public and sold the same to me and thereby committed an offence punishable under Section 16(1)(a)(i) of PFA Act, 1954 read with Section 7 of the Act. M/s Club Mohinder Whispering Pines Mashobra, Shimla, H.P. through its prop/partners/nominee (If any)/managing directors are also liable under the act."

3. The effect of non enunciations therein of the aforesaid predominant fact for fastening criminal culpability upon Jaiminikumar Shah is of its hence begetting non-satiation of the provisions of Section 17 sub section 2 which stand extracted hereinafter provisions whereof vividly besides graphically embody a portrayal of only those persons/any employee of the company being amenable to criminal liability emanating from commission of offences constituted under the Act who stand displayed in the apposite complaints of theirs at the apposite stage or at the stage contemporaneous to the Food Inspector concerned raiding the premises of the company, holding charge of and being responsible to the company for the conduct of the business of the company.

"Any company may, by order in writing, authorise any of its directors or managers (such manager being employed mainly in a managerial or supervisory capacity) 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 Local Health Authority 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."

4. Apart therefrom the complainant is enjoined to manifest therein of Jaiminikumar Shah at the apposite stage of the Food Inspector concerned raiding the premises of the company his colluding, conniving and holding complicity with Mr. Vikas Kumar. However, the latter factum of Jaiminikumar Shah holding connivance with Mr. Vikas Kumar is starkly amiss in the complaint. It is hence apt to conclude while relying upon a decision titled as David Mathews and others v. State of H.P. and others reported in 2010(2) Shim. LC 170 of the apposite complaints not hence satiating the aforesaid apposite statutorily enshrined legal parameters for hence fastening criminal liability upon Jaiminikumar Shah qua the offences constituted against Vikas Kumar by the Food Inspector concerned on the latter seizing adulterated curd/paneer from the premises owned by the company whereat Mr. Vikas Kumar was present, being the Executive Sous Chef of the company. The learned Deputy Advocate General has with much vigour contended of even if the apposite portrayals aforesaid stand unrecorded in the apposite complaints nonetheless even in absence of their enunciation in the

apposite complaints, would not render either proviso to Section 17 of the Act or sub section 2 thereof holding no leverage. He proceeds to contend of on this Court attracting the afore referred provisions to the facts at hand would de-facilitate Jaiminikumar Shah to exculpate criminal culpability de hors the factum of the apposite complaints omitting to constitute therein the apposite statutorily enshrined legal parameters for fastening criminal liability upon Jaiminikumar Shah. For appreciating the aforesaid contention it is deemed fit to reproduce hereinafter both the proviso to Section 17 of the Act as also its sub section 2

"17. Offences by companies (1) where an offence under this Act has been committed by a company:-

(a) (i) the person, if any, who has been nominated under subsection (2) to be incharge of, and responsible to, the company for the conduct of the business of the company (hereafter in this section referred to as the person responsible), or

(ii) 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; and

(b) the company. shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

provide that nothing contained in this sub section shall render any such person liable to any punishment provide 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.

(2). Any company may, by order in writing, authorise any of its directors or managers (such manager being employed mainly in a managerial or supervisory capacity) 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 Local Health Authority 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."

The impact of the proviso which stands extracted herein above is of its merely saving a person/accused from the rigour of punishment qua the charge as stands fastened against him only on his proving of the apposite penal act standing committed without his knowledge and despite his exercising all due diligence to prevent its commission. The phraseology of the proviso as exists after sub section (1) of Section 17, is a vivid communication of the factum of its holding operation and sway only on the conditions displayed hitherto in Section 17 of the Act standing attracted against him. Furthermore, the import of the proviso is of, unless the satiation of the parameters in Section 1 of Section 17 of the Act stand begotten satiation whereof would ensue only on a graphic display manifested in the apposite complaint instituted by the Food Inspector concerned, of the person

upon whom criminal liability is concerted to be fastened, holding charge or his being responsible for the day to day business of the company. For reiteration on occurrence of the aforesaid apposite phraseology in the complaint would its invocation occur. In other words unless the categories of persons enshrined in sub section 1 of Section 17 of the Act stand subjected to trial theirs thereat alone hold the statutory leverage to avail of the defence enshrined in the proviso to sub section (1). The ensuing implication whereof is of the apt proviso only manifesting a defence to the categories of persons reflected in sub section 1 of Section 17 defence whereof can stand propagated by them only on theirs standing subjected to trial contrarily when they stand not subjected to trial the proviso would hold any sway.

Consequently when workability of the proviso would not occur qua Jaiminikumar Shah who impeaches the summoning orders issued against him by the learned trial Court on the anchor of the apposite complaint/complaints omitting to vividly display in satiation of the parameters enshrined in sub section 2 of Section 17 of the Act of his holding charge of the affairs of the company at the apposite stage nor displays therein of his being responsible to the company for the conduct of its business predominantly hence for non display thereof in the complaint, no penal culpability for any act of Vikas Kumar in the offence allegedly committed by the latter can stand fastened upon Jaiminikumar Shah nor obviously he would stand hence subjected to trial besides obviously cannot avail the benefit of the apt proviso. Be that as it may, even otherwise both the apt proviso and the statutory provisions preceding thereto in exception whereof the proviso stands engrafted have to be read conjunctively rather than disjunctively. On theirs standing read conjunctively and harmoniously would beget an inference of the provisions preceding the proviso warranting indispensable satiation whereupon alone the proviso would stand invoked. Contrarily in accepting the submission of the learned Deputy Advocate General for on its anvil fastening criminal culpability to Jaiminikumar Shah dehors the non enunciation or non display in the apposite complaints of the apposite ingredients encapsulated in the statutory provisions preceding it, would sequel this Court unwarrantedly besides untenably reading them in a disjunctive and fragmentary manner whereupon workability of both provisions would stand redundant. The submission addressed on its anvil by the learned Deputy Advocate General stands rejected.

5. The learned Deputy Advocate General with much force contends qua efficacy of the sub section 2 of Section 17 of the Act being un-amenable to its standing undermined, as in the face of the company omitting to beget compliance to its mandate comprised in its communicating to the local health authority concerned qua its nominating/authorizing any of its director or manager as the person incharge and responsible to the company for the conduct of its business foments an inference of the company acquiescing to Jaiminikumar standing nominated by it to be incharge of and responsible for the company for the conduct of its business. However, the aforesaid submission holds no vigour as any omission on the part of the company to within the ambit of sub section 2 of Section 17 of the

Act communicate to the Local Health Authority concerned, of any of its officer standing nominated by it to be incharge and responsible to the company for the conduct of the business of the company would not ipso facto beget any inference of Jaiminikumar standing hence acquiesced by it to be the person incharge and responsible to the company for the conduct of its business moreso when the mandate of sub section 2 of Section 17 of the Act is of a communication made in writing by the company to the Local Health Authority concerned embodying therein its nominating any of its director or manager to be incharge and responsible for the company for its affairs, any withholding whereof by it of the apposite information qua the facet aforesaid from the local health authority concerned or its omitting to comply with its mandate no inference can stand drawn of its tacitly acquiescing of Jaiminikumar holding the apposite capacity, especially when the apposite nomination by the company concerned is by its making a communication to the local authority concerned with a depiction therein of its nominee holding the capacity aforesaid hence obviously warrants it being express rendering oustable any inference of Jaiminikumar Shah standing implicitly or impliedly nominated by it in the apposite capacity in purported compliance with the mandate of sub section (2) of Section 17 of the Act. Even otherwise the Food Inspector concerned before proceeding to institute a complaint before the Magistrate concerned was enjoined to unearth evidence in display of Jaiminikumar though standing purportedly nominated by the company to be the person incharge and responsible for the conduct of its affairs besides in consonance therewith he stood also entailed with a statutory obligation to manifest besides embody in the apposite complaints the aforesaid factum. However, with the aforesaid apposite enunciations remaining unembodied in the apposite complaints gives leeway to an inference of Jaiminikumar standing not nominated by the company within the ambit of sub section 2 of Section 17 of the Act to be the person responsible for the conduct of the business of the company. The omission aforesaid though rears an inference of the ingredients enunciated in clause (a) of sub section (1) of Section 17 of the Act remaining un-satiated nonetheless there would be occasion yet for hence satisfaction standing begotten by the Food Inspector concerned with the ingredients enshrined in sub section 2 of Section 17 of the Act inasmuch as even when no person stands nominated by the company being in charge of and responsible to the company for the conduct of the business of the company at the time contemporaneous to the offence standing committed satiation thereof would occur by his displaying in the apposite complaints of Jaiminikumar Shah being responsible to the company for the conduct of its business at the time contemporaneous to the alleged offence standing committed in the premises of the company. However, the said factum remains undisplayed in the apposite complaints.

Consequently, with the provisions of sub section a(i) of Section 17 warranting theirs being conjointly read with the provisions of sub section a(ii) thereof especially with the ingredients of the provisions engrafted in Section 17(1)(a)(i) fastening penal culpability upon a person nominated within the ambit of sub

section 2 of Section 17 of the Act qua a penal act committed upon the premises of the company yet when for reasons afore-stated stand unattracted against Jaiminikumar Shah nonetheless their unattraction qua the latter cannot per se render unworkable qua him the provisions of Section 17(1)(a)(ii) of the Act especially when the latter provision occurs in a distinct clause than sub section 17(1)(a)(i) of the Act unless there is no vivid display in the apposite complaints of Jaiminikumar Shah being responsible for the conduct of its affairs at the apposite stage contemporaneous to the commission of the offences in the premises owned by the company whereas with a palpable non enunciation therein of the apt factum probandum for hence fastening criminal culpability upon Jaiminikumar Shah qua the alleged penal act committed by Vikas Kumar renders it hence hereat unworkable qua Jaiminikumar Shah. In other words, even if there is no nomination of Jaiminikumar Shah for reasons aforesaid within the ambit of sub section 2 of Section 17 as the person incharge and responsible to the company for the conduct of its business any omission thereof would render redundant or inoperative qua Jaiminikumar Shah only the provisions encapsulated in sub section 17(1)(a)(i) of the Act. However, when in sub section 17(1)(a)(ii) penal culpability also stands fastened upon a distinct category of persons vis.a.vis persons enshrined in sub section 17(1)(a)(i) of the Act, the former provision still remain alive or awakened, with the consequential sequel of the Food Inspector concerned standing yet enjoined to mete compliance to the provisions engrafted in sub section 17(1)(a)(ii) of the Act inasmuch as his displaying in the apposite complaints of Jaiminikumar Shah holding charge of the company and his being responsible for its affairs for hence penal liability being fastenable upon him, provisions whereof for reasons afore-stated stand unsatiated.

6. For whatever has been stated above and based on the aforesaid reasoning these petitions are allowed. The orders of the learned trial Magistrate in summoning Jaiminikumar Shah are quashed in their entirety. Jaiminikumar Shah shall not be considered as being an accused in the aforesaid complaints.

7. This judgment, however, shall not come in the way of the respondent in moving an appropriate application strictly in accordance with the provisions of the Prevention of Food Adulteration Act, 1954 read with the relevant provisions of Code of Criminal Procedure for summoning any nominated person or persons as accused by motioning the learned trial Court based upon all the relevant legal provisions that such person or persons indeed at the relevant time were in charge of as well as responsible to the company for the conduct of the business of the company hence his/their impleadment as an accused along with Vikas Kumar is necessary.