
(1986) 03 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 514 of 1985

M/s. Kwaliti Ice Cream Coporation

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 03-03-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 233, 234, 235, 236, 237
Prevention of Food Adulteration Act, 1954 — Section 11, 14, 14A, 17, 17(2)

Citation : (1986) 15 ILR HP 157

Hon'ble Judges : V.P. Gupta, J

Bench : Single Bench

Advocate : D.S. Sawhney, for the Appellant; L.S. Panta, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

V.P. Gupta, J.—Shri Yudhishter Lal, Food Inspector, Municipal Corporation, Shimla purchased a sample of ice cream (Mango) for Rs. 18/- labelled as Kwaliti Ice Cream from Tarlochan Singh (hereinafter accused No. 1) on 5-6-1979. A cash memo, was obtained bearing the printing Krishna Traders, The Mall, Shimla. Shri Ashok Sharma (hereinafter accused No. 2) is allegedly the proprietor of M/s Krishna Traders. Accused No. 1 who is proprietor of Lovena Restaurant, Shimla, gave a writing to the Food Inspector that he had purchased the sample ice cream from M/s Kwaliti Ice Cream Company, Ludhiana and the sold article was kept in the same state of condition in which it was received by him from the supplier and it was properly stored. He requested that in case the sample of ice cream was not found according to the prescribed standard then proceedings should be launched against accused No. 3, i.e. M/s Kwaliti Ice Cream Company, Ludhiana (hereinafter the petitioner). Accused No. 1 also produced a bill dated 25-5-1979 regarding purchase of ice cream by M/s Lovena Restaurant, Shimla from the petitioner.

2. The sample ice cream was sent for analysis to the Public Analyst and the

public analyst gave an opinion that the milk fat was deficient by 62.5 per cent and the percentage of protein was deficient by 6% than the minimum prescribed standard. After receipt of the report of the public analyst, the Food Inspector filed a complaint against accused nos. 1 to 3 in the Court of C.J.M. Shimla on 31-12-1979. The Food Inspector attached various documents with the complaint.

3. The C.J.M. Shimla after registering the complaint issued summons to all the three accused for 13-7-1980. The accused appeared and the case was listed for evidence.

4. Accused No. 1 filed an application on 17-4-1980 with a prayer that the part of the sample kept by local health authorities at Shimla be got analysed from the Director, Central Food Laboratory, Ghaziabad, but this application was rejected vide order dated 5-5-1980 by the C.J.M. Shimla.

5. Thereafter all the three accused persons appeared before the C.J.M. on 17-7-1980 and 21-8-1980. On 21-8-1980 an application was filed on behalf of the Petitioner (accused No. 3) with a prayer that the second part of the sample be sent for analysis to the Central Food Laboratory, Ghaziabad. This application was also dismissed by the C.J.M. Shimla on 28-8-1980, and the case was listed for evidence for 23-10-1980. On 23-10-1980 the case was again adjourned to 21-11-1980 for evidence.

6. Shri H.S. Talwar was appearing on behalf of the Petitioner but he was not present on 21-11-1980. His bail bonds as such were cancelled. Shri Talwar thereafter appeared on 3-1-1981 and informed the Court that he had no connection with the Petitioner firm. The Court thus ordered issuance of fresh summons to Petitioner firm for 12-3-1981. The case was adjourned from time to time and several efforts were made to serve the petitioner. Finally on 25-3-1982 Shri Anil Joshi appeared on behalf of the Petitioner and the case was listed for prosecution evidence for 10-5-1982. Shri Anil Joshi undertook to disclose the names of the partners as well as the Chief Executive of the Petitioner firm. He finally filed a photo-stat copy of the partnership deed on 13-6-1982. After perusal of this photo-stat copy of the partnership deed the C.J.M. ordered that the partners named in the deed be summoned. The partners of the Petitioner firm could not be served although Shri Anil Joshi was appearing on several hearings. After several adjournments the service on various partners was complete on 3-10-1985 when the case was listed for prosecution evidence for 7-11-1985.

7. The Petitioner (accused No. 3) has now filed this petition u/s 482 Code of Criminal Procedure for quashing the complaint and the proceedings on several grounds.

8. I have heard Shri D.S. Sawhney, the learned Counsel for the Petitioner (accused No. 3) and Shri L.S. Panta, Deputy Advocate General for the State.

9. It was contended by the learned Counsel for the Petitioner that according to

the complaint no offence was made out against the Petitioner and, the Petitioner should not have been summoned. The order for summoning the Petitioner was bad and there was non-application of mind by the learned G.J.M. It was also contended that the Petitioner could not be tried along with the other two accused and a joint trial was bad. The further contention was that the Petitioner had not given any warranty to the distributor and proper sanction for filing the prosecution was missing. It was also contended that Shri P.L. Lamba could not be summoned and Shri H.S. Talwar had already been discharged.

10. The learned Deputy Advocate General contended that the present petition was mala fide and the Petitioner was delaying the proceedings unnecessarily. He contended that there was no illegality or irregularity in the proceedings and the order of summoning the Petitioner was legal and valid. A joint trial was permissible and the Petitioner being a manufacturer was liable as an accused person. The material produced before the learned C.J.M. with the complaint was sufficient for summoning the petitioner.

11. I have considered the contentions of the learned Counsel for the parties and have also gone through the records of the case.

12. Section 7 of the Prevention of Food Adulteration Act, 1954 (hereinafter the Act) provides that:

7. No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute:

(i) any adulterated food;

(ii) x x x x x x

(iii) x x x x x x

(iv) x x x x x x

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

(vi) x x xx x x

13. Section 11 of the Act provides the procedure to be followed by the Food Inspector for taking a sample of food for analysis.

14. Section 14 provides for giving a warranty by manufacturer, distributor and dealers and it reads as follows:

14. 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:

Provided that a bill, cash memorandum or invoice in respect of the sale of any article of food given by a manufacturer or distributor of, or dealer in, such article

to the vendor thereof shall be deemed to be a warranty given by such manufacturer, distributor or dealer under this section.

Explanation.-In this section, in sub-section (2) of Section 19 and in Section 20-A, the expression 'distributor' shall include a commission agent.

15. u/s 14-A of the Act a vendor has to disclose the name, address etc. of the person from whom the article of food was purchased and it reads as follows:

14-A. Every vendor of an article of food shall, if so required, disclose to the food inspector the name, address and other particulars of the person from whom he purchased the article of food.

16. Section 17 of the Act is in regard to an offence which is committed by a company while Section 19 deals with the defences which may or may not be allowed in prosecution under the Act. Section 19 reads as follows:

19. (1) x x x x

(2) A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves:

(a) that he purchased the article of food:

(i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer,

(ii) in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.

(3) Any person by whom a warranty as is referred to in Section 14 is alleged to have been given shall be entitled to appear at the hearing and give evidence.

17. In the present case the complaint was filed on 31-12-1979 by the Food Inspector and with the complaint the Food Inspector attached a report of the public analyst, cash memo, with respect to the sale of the sample for analysis along with the notices etc. given to the vendor before taking the sample and the cash memo./bill of Kwaliti Ice Cream Company (petitioner) dated 25-5-1979 in favour of Lovena Restaurant. A written application dated 5-6-1979 of accused No. 1 mentioning the purchase of the sample ice cream from the Petitioner and some other documents were also attached.

18. The judgment delivered by a Single Judge of Punjab and Haryana High Court M/s Sardari Lal and Company v. State of Punjab [1983 (1) F.A.C. 201] relied upon by the Petitioner in support of his contentions is distinguishable. In M/s Sardari Lal (supra) the Food Inspector purchased garam-masala from one Parminder Singh. This garam-masala sample was found to be adulterated. Parminder Singh was arrayed as an accused person along with M/s Sardari Lal

and Company, but it was not disclosed as to what role had been played by M/s Sardari Lal and Company. In the prayer clause of the complaint also the Food Inspector had stated that Parminder Singh had committed an offence under the Act and action be taken against him. In these circumstances, it was held that there was no valid complaint against M/s Sardari Lal and Company.

19. In Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, it has been held in para 10 of the judgment that the proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting any thing, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers u/s 482 Code of Criminal Procedure.

(emphasis supplied)

20. It is correct that in the present case the Food Inspector has not specifically mentioned that accused No. 1 had purchased the sample of ice cream from the petitioner, but the documents attached with the complaint, that is, bill dated 25-5-1979 issued by the Petitioner in favour of Lovena Restaurant and the application of accused No. 1, clearly mention that the ice cream was purchased by accused No. 1 from the petitioner. In these circumstances it cannot be said at this initial stage that there is no proper or valid complaint against the Petitioner and no offence is made out against the petitioner.

21. The documents attached and the averments in the complaint make out a case for taking cognizance of the offence and it cannot be said that the order of summoning the Petitioner is bad and there is a non-application of mind by the C.J.M.

22. The learned Counsel also raised a contention that there was no valid sanction for filing a complaint. After going through the records I find that the complainant has used an old printed form for filing the complaint in which there is a reference to Punjab Government notification of 1964. The complainant was authorised to file such complaints by the Punjab Government. A copy of that notification is filed along with the complaint. The learned Deputy Advocate General drew my attention to notification No. 2-10/69-H&FP dated 18-2-1974 published in the Himachal Pradesh Gazette on 2-3-1974. By this notification Shri Yudhishter Lal, Food Inspector (present complainant) was authorised by the Governor of Himachal Pradesh to institute prosecutions against the persons committing offences under the Act within the local areas of Municipal Corporation Shimla. As a notification was issued and published in the Gazette authorising the Food Inspector to institute a complaint and a judicial notice of this can be taken by this Court, therefore, it cannot be said that there was no valid sanction for prosecution. A copy of this notification can always be produced and the present proceedings cannot be quashed at this stage for non-filing of such a copy.

23. Regarding joint trial of the Petitioner with the other accused, I find that there is no illegality, which can justify the quashing of the proceedings. In *State of Punjab Vs. Devinder Kumar and Others*, it was contended that the dealer, manufacturer or distributor could not be prosecuted along with the vendor by impleading all of them initially as accused in a prosecution under the Act. This contention was held to be unsustainable in view of the judgment in *Bhagwan Das Jagdish Chander Vs. Delhi Administration*, in which after considering the effect of Section 19(2), Section 20 and Section 20-A of the Act, the Court observed at pages 1315 as under:

We are also unable to accept as correct a line of reasoning found in *V.N. Chokra Vs. The State*, and *Fodd Inspector Vs. Seetharam Rice and Oil Mills and Others*, and *P.B. Kurup v. Food Inspector Malappuram Panchayat* 1969 Ker. LT 845 that in every case under the Act, there has to be initially a prosecution of a particular seller only, but those who may have passed on or sold the adulterated article of food to the vendor, who is being prosecuted, could only be brought in subsequently after a warranty set up u/s 19(2) has been pleaded and shown to be substantiated. Support was sought for such a view by referring to the special provisions of Section 20-A and Section 19(2) and Section 20 of the Act. A reason for Section 20-A seems to be that the prosecution of a person impleaded as an accused u/s 20-A in the course of a trial does not require a separate sanction. Section 20-A itself lays down that where the Court trying the offence is itself satisfied that a ?manufacturer, distributor or dealer is also concerned with an offence?, for which an accused is being tried, the necessary sanction to prosecute will be deemed to have been given. Another reason seems to be that such a power enables speedy trial of the really guilty parties. We are in agreement with the view of the Delhi High Court that these special provisions do not take away or derogate from the effect of the ordinary provisions of the law which enable separate as well as joint trials of accused persons in accordance with the provisions of the old Sections 233 - 239 of Criminal Procedure Code. On the other hand there seems no logically sound reason why, if a distributor or a manufacturer can be subsequently impleaded u/s 20-A of the Act, he cannot be joined as a co-accused initially in a joint trial if the allegations made justify such a course.

24. In *Devinder Kumar* (supra) it is further observed in para 3 as follows:

Adulteration and misbranding of food-stuffs are rampant evils in our country. The Act is brought into force to check these social evils in the larger public interest for ensuring public welfare. In certain cases the Act provides for imposition of penalty without proof of a guilty mind. This shows the degree of concern exhibited by Parliament in so far as public health is concerned. While construing such food laws Courts should keep in view that the need for prevention of future injury is as important as punishing a wrong doer after the injury is actually inflicted. Merely because a person who has actually suffered in his health after consuming adulterated food would not be before Court in such cases courts

should not be too eager to quash on slender grounds the prosecutions for offences, alleged to have been committed under the Act.

25. Thus the contention of the learned Counsel for the Petitioner that the joint trial is bad cannot be accepted.

26. The proviso to Section 14 of the Act provides that when an article is sold by a vendor it shall be deemed to be a warranty given by the manufacturer, distributor or the dealer. Hence this contention of the learned Counsel also cannot be accepted.

27. The last contention of the learned Counsel for the Petitioner was that Shri P.L. Lamba could not be summoned. This contention has no force in view of the provisions of Section 17 of the Act which provides that when an offence under the Act has been committed by a company, the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. The complaint has been filed against the company and u/s 17 of the Act it is for the company to nominate the person and such nominated person under sub-section (2) of Section 17 as in charge of the company is responsible to the company for the conduct of the business of the company. If no such person had been nominated then every person who at the time of the offence was incharge 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 proceeded against and punished accordingly. In the present proceedings before this Court Shri P.L. Lamba is not the Petitioner but the firm is the only petitioner. The complaint initially was filed against accused No. 3 (Petitioner). If there is no nomination then all the partners would be liable. Hence this contention of the learned Counsel for the Petitioner can also not be accepted.

28. I may point out that the complaint was filed in the year 1979 and the Petitioner appeared before the C.J.M. through a counsel on 12-6-1980. The Petitioner at that time was possibly represented by Shri H.S. Talwar. The various orders show that the matter remained pending for a period of about more than 5 to 6 years in the Court of C.J.M. Shimla. No illegality or irregularity has been pointed out to me for quashing the proceedings at this preliminary stage even after a period of about six years. In these circumstances I do not find any ground to quash the proceedings filed against the petitioner. It is clearly pointed out that during the trial the Petitioner is at liberty to prove innocence and any remark or observation made in this judgment shall not be taken against the petitioner. The Court will be at liberty to consider all the contentions of the petitioner.

29. In view of the above discussion, the present petition is dismissed. The Petitioner is directed to appear in the Court of C.J.M Shimla on March 17, 1986. The records be sent immediately.