(1978) 01 DEL CK 0013

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 702 of 1977

Murari Lal and Others APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 12-01-1978

Acts Referred:

Citation : (1979) 15 DLT 255

Hon'ble Judges : Yogeshwar Dayal, J

Bench : Single Bench

Advocate : D.C. Mathur, N.K. Parmar and Charanjit Talwar, for the Appellant;

Judgement

Yogeshwar Dayal, J.

(1) This is a petition for revision by Sarvshri Murari Lal. Beg Raj, Mukat Behari. Brij Lal, Rajinder Kumar s/o Brij Lali Om Prakashi Rajinder Kumar and Vijay Kumar, alleged partners of M/s Delhi Gram Flour Mills & Co., for calling for the records of the complaint filed by Union of India through Shri U. S. Sharma, Food Inspector of the Office of the Director General, Health Services, against Durga Prasad, Manager of the aforesaid firm and its ten partners and for setting aside the order dated 21.11.1977 passed by the learned Metropolitan Magistrate and also for quashing the proceedings pending before Shri J. M. Malik, Metropolitan Magistrate in relation to that complaint.

(2) The facts relating to the petition are that one M.K. Bhan, Food Inspector, visited the premises of the Delhi Gram Flour Mills & Co. on 31.3.1973 and lifted sample of ''basin'' from Durga Prasad who was the Manager at the Mill of the firm. After performing the usual formalities of getting the sample divided and tested by the public Analyst, the complaint was filed u/s 7 read with section 16 of the Prevention of Food Adulteration Act.

(3) The learned Magistrate recorded the evidence of the complainant and passed an order on 3.10.1975; for framing the charge against the accused persons. Against the said order dated 3.10.1975, one of the accused persons, Shrimati

Suman Kanodia, felt aggrieved from the said order and filed a petition u/s 482 of the Code of Criminal Procedure, 1973 read with Article 227 of the Constitution of India for quashing the order for framing of the charge. That petition came up for hearing before Gill, J. and the learned Judge by his judgment dated 26th April, 1977 quashed the charge framed by the learned trial court against the said petitioner.

(4) Gill, J. took the view after examining the record of the case that as there was no evidence that Shrimati Suman Kanodia was in-charge of the business or that she was responsible for the conduct of the business, she could not be vicariously saddled with the liability u/s 17(1) of the aforesaid Act.

(5) In view of the aforesaid findings of Gill J. the other eight accused persons also filed a petition for reviewing the order for framing of the charge against them. The learned Magistrate by order dated 21.11.1977 expressed his inability to review the order of his predecessor ,if I may say so, rightly. In view of the helplessness of the learned Magistrate, the aforesaid petitioners approached this Court by the present petition for exercise of inherent or revisional Jurisdiction for quashing the proceedings.

(6) So far as the record of the case is concerned; it is identical with the record of the case of Shrimati Suman Konodia noticed the state of evidence as under:

"In the present case, the evidence of the Food Inspector is that he had required the Commissioner of Income Tax to inform him about the names of the partners of the Delhi Gram Flour Mills & Company as per their record and that the Commissioner had sent him the names of the partners, including that of the petitioner. In cross examination, Food Inspector stated that he gave the names of the partners on the basis of the report of the Commissioner of Income Tax and that he had not investigated as to whether the partners stated to him were working or not. It is contended that the petitioner is neither in charge of the business nor she is responsible for the conduct of the business. It is a question of fact whether a particular partner is in charge of and responsible for the conduct of the business. There is absolutely no evidence to prove this fact against the petitioner."

(7) Mr. D.C. Mathur who was also the counsel in the case of Shrimati Suman Kanodia has tried to press to his advantage the observations of Gill, J. mentioned above and has contended that in view of this state of evidence, the present petitioners are also entitled to the same advantage and relief.

(8) It is most unfortunate that such serious offences of adulteration are being prosecuted in such a casual fashion. No serious afford was made by the Food Inspector who was the Investigating Officer in even eliciting information as to the composition of the firm and conduct of its business either from the Registrar of Firms or the Competent authorities under the Shops & Establishments Act. His approaching the Income Tax authorities do not maintain the records as to the conduct of the business. They are authorities only for collection of revenues and

they are concerned only with the income of the firms etc.

(9) The Food Inspector, in cross-examination, stated that one of the reasons for the delay in the prosecution was that he tried to get information from various other department of Delhi Administration and the Central Government but he did not specify from which department he made any effort to collect relevant information. One cannot imagine that one wing of the Government will not assist another wing.

(10) I would have been inclined, after quashing the proceedings, to direct further evidence being recorded u/s 540 of the old Code; but in view of the fact that the article of food of which the sample was taken is ''basin'' which was lifted practically more than four years back and that may cause prejudice to the accused persons in their defense, I am refraining from exercising those powers.

(11) For the reasons given by Gill, J., in the aforesaid case of Smt. Suman Kanodia vs. Union of India and other 1977 (1) F.A.C. 161, I hereby quash the order for framing the charge against the aforesaid petitioners only and discharge them.

