

(1995) 09 OHC CK 0022

In the Orissa High Court

Case No : Criminal Misc Case No. 1831 of 1994

Narain Extractions Private Limited

APPELLANT

Vs

P.C. Mishra, Food Inspector

RESPONDENT

Date of Decision : 18-09-1995

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16, 17

Citation : (1996) CriLJ 736 : (1995) 2 OLR 535

Hon'ble Judges : R.K. Patra, J

Bench : Single Bench

Advocate : B.S. Mishra-1, D.S. Sawhney, M.R. Mishra, P.K. Mohanty, K.N. Pattanaik, A.K. Mohanty and S.K. Das, for the Appellant; P. Mohanty, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—By this application u/s 482 of the Code of Criminal Procedure the petitioner M/s. Narain Extractions Pvt. Ltd. seeks quashing of the proceedings in 2(c) C. C. No. 587 of 1993 pending against it in the Court of the Sub-divisional Judicial Magistrate, Cuttack.

2. On 11-4-1991 at about 4 p. m. the Food Inspector (Food Ceil), Health Directorate, Bhubaneswar visited the business premises of Usha Traders, a wholesale grocer situated" at Malgbdow, Cuttack. At that time one Krupa Sankar Chaturvedi, Sales Manager, was conducting sale transaction of different edible oils and pulses. In course of inspection, the Food Inspector suspected the stock of mustard oil (Deepak Brand) to be adulterated. After disclosing his identity, he purchased 750 gms. of the said mustard oil on payment of price demanded by the Sales Manager. He divided the oil purchased by him into three equal parts and kept each part in a separate dry glass bottle. Each bottle was air-tightened to prevent leakage and evaporation. The vendor, i. e. the Sales Manager disclosed to the Food Inspector that said mustard oil was purchased from M/s. Narain Extractions Private limited, Chandigarh (petitioner). The Food

Inspector latter sent one part of sample bottle of mustard oil to the Public Analyst who after analysing reported that the sample was adulterated. On the basis of the aforesaid allegations, the Food Inspector submitted prosecution report under -Section 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act") arraying Krupa Sankar Chaturvedi, Sales Manager of Usha Traders as accused No. 1, "Nathmal Upadhya, Proprietor, Utkal Traders" as accused No.2 and "M/s. In-charge of Narain Extractions Pvt. Ltd., Manufacturer of Edible Oils and Oil, 61 industrial Area, Phase II (Deepak Branch) Ramdarbar, Chandigarh" as accused No. 3 in the Court of Sub-divisional Judicial Magistrate. On 23-12-1993 the learned Magistrate took cognisance under Sections 16(1)(a)(i) of the Act and issued summons to the accused. The petitioner thereafter filed Criminal Misc. Case No. 141 of 1994 in this Court for quashing the proceedings initiated against it on different grounds. This Court disposed of the said matter on 14-7-1994 by giving liberty to the petitioner to move the learned Magistrate for reconsideration of the order taking cognisance. Accordingly the petitioner filed a petition dated 15-7-1994 which has come to be rejected by the learned Magistrate on 28-7-1994.

3. The learned counsel for the petitioner raised the following contention's in support of the application for quashing the proceedings initiated against it:

(i) There is delay of two years, eight months and twelve days in launching the prosecution :

(ii) In absence of allegation in the complaint as to who was in charge of and responsible for conduct of the business of the company at the time of alleged commission of offence no prosecution could have been launched against the petitioner:

(iii) There is no consent as required u/s 20(1) of the Act:

(iv) There is absolutely no allegation made against the petitioner in the complaint (prosecution report):

(v) Since the vendor M/s. Usha Traders takes shelter under the plea of warranty, there must have been some material as provided u/s 19(3) of the Act to hold that the mustard oil in question was, in fact, purchased from the petitioner:

(vi) The warranty dated 4-4-1991 refers to "mustard oil Deepak Agmark" whereas the sample which was sent for public analysis was mustard oil (Deepak Brand). As such, it cannot be said that the sample which was sent for public analysis was the product of the petitioner.

(vii) There cannot be joint trial of the petitioner along with others as there is nothing on record to show that the petitioner had " "common or connecting link to constitute the same transaction".

4. Contention No. (iii) goes to the root of the matter. Let me therefore first take

it up for consideration. The said contention is with regard to the invalidity of the written consent as provided in Section 20(1) of the Act. Section 20(1), so far as relevant, states that no prosecution for an offence under the Act, not being an offence u/s 14 or 14A shall be instituted except by or with the written consent of the Central Government or the State Government or a person authorised in that behalf by the Central Government or the State Government. It means that necessary consent of the prescribed authority or person authorised is a condition precedent to the institution of the proceedings. To put it in other words, the required consent must precede the institution. In the instant case, there is no dispute that the Joint Director, Health Services (Public Health), Orissa, Bhubaneswar is the competent person to give the required consent. By referring to the date put below the signature of the Joint Director in the consent (sanction order), it was seriously argued on behalf of the petitioner that the Joint Director gave his consent on 25-12-1993 after two days of the filing of prosecution report in Court on 23-12-1993 and as such, the order taking cognisance and the subsequent proceeding are all without jurisdiction. The factual position with regard to the date of giving consent was stoutly disputed by Shri Mohanty, learned counsel appearing for the prosecution who submitted that the date found mention below the signature of the Joint Director is "25-8-1993". In course of the hearing of the case, an affidavit sworn to by the present Joint Director has been filed on behalf of the prosecution. The affidavit reads as follows :

"That in the instant case, the consent/sanction order was given by my predecessor Dr. S. K. Kar on 25-8-1993. Four sets of sanction order were signed by him. Out of four sets, one set was filed with the prosecution report before the learned Sub-divisional Judicial Magistrate in 2 (c) CC No. 587/93. I am acquainted with the handwriting and signature of my predecessor. Out of three sets, one set of sanction/consent order is filed herewith for perusal of this Hon"ble Court."

The consent/sanction order is at page 14 of the lower Court records. At the first flash, the date found below the signature of the Joint Director looks "25-12-1993". The factual dispute with regard to the date having thus arisen between the parties. I carefully examined the matter and on closer scrutiny, I am satisfied that the said date is "25-8-1993". The number "8" after the date "25" although looks like "12", it is in fact, "8". That the Joint Director gave his consent on 25-8-1993 finds corroboration from the letter No. 25573 dated 6-12-1993 signed by the Joint Director on 25-8-1993. It was addressed to the Sub-divisional Judicial Magistrate, Sadar, Cuttack. In the said letter, the Joint Director forwarded the prosecution report against the accused persons together with the documents mentioned therein including the consent order (sanction order). Had the joint Director signed the consent on 25-12-1993, he could not have enclosed the consent order in his letter dated 6-12-1993. For the aforesaid reasons and in view of the affidavit of the present Joint Director, I have no hesitation to hold that consent for prosecution was signed by the Joint Director on 25-8-1993 and not on 25-12-1993. The consent thus having preceded the

filing of the prosecution report in Court, there is no violation of the provision of Section 20(1) of the Act and the order taking cognisance cannot be quashed.

5. It was argued (vide contention No. (iv)) that no basis was laid in the complaint (prosecution report) against the petitioner and as such, there was no justification for issue of summons. In order to appreciate this contention, it is necessary to refer to the allegation made in the prosecution report against the petitioner which reads as follows:

"The vendor disclosed that the said mustard oil was purchased from M/s. Narain Extractions Pvt. Ltd. Chandigarh."

The aforesaid allegation finds mention in the prosecution report because the vendor took the plea of warranty. It appears from the records that in the letter dated 25-4-1991 the vendor, Usha Traders furnished a xerox copy of the petitioner's Bill No. 1394 dated 4-4-1991 to the Food Inspector. The said Bill containing written warranty is the foundation for making the allegation against the warranter, i. e., the petitioner. It is, therefore, not a case where there is no allegation against the warranter. The material on record was sufficient to take cognisance and to issue summons to the warranter. I, therefore, do not find any merit in this contention.

6. The contention Nos. (v) and (vi) being inter-linked are taken up together for consideration. According to the petitioner, in absence of an material as provided under-Section 19(3) of the Act to hold that the mustard oil in question was purchased from the petitioner, no cognizance could have been taken nor summons issued against the petitioner. It was argued that the warranty dated 4-4-1991 mentions mustard oil "Deepak Aag Mark" whereas the sample which was sent from the vendor was mustard oil "Deepak Brand". In my considered opinion the question whether "Deepak Brand" of "Deepak Aag Mark" is one and the same thing or are different depends on evidence which has to be gone into at the stage of trial and cannot be decided at this preliminary stage.

7. Contention No. (vii) that the joint trial of the petitioner along with others is illegal, has no substance. As the vendor has taken the plea of warranty, the vendor as well as the warranter are liable to be jointly tried. Whether there was connecting link between the vendor, Usha Traders and the Warranter, i. e., the petitioner, is a question of fact which has to be decided on the basis of evidence to be adduced in course of trial.

8. Contention No. (ii) is with regard to the validity of arraignment of the petitioner as accused No. 3 in the prosecution report as "in charge of M/s. Narain Extractions Pvt. Ltd.....Chandigarh". It was submitted that in view of deeming provision contained in Section 17(1). a person nominated or any other person in-charge of or responsible to the company for conduct of its business should have been arrayed as accused before invoking the deeming clause.

Section 17 takes care of offences committed under the Act by a company on the

principle of "deemed guilt". "Company" means any body corporate and includes a firm or other association of individuals (vide its explanation). The said section, so far as relevant, provides that where an offence under the Act has been committed by a company, the person who has been nominated under Sub-section (2) to be in-charge of, and responsible to the company for the conduct of its business or in absence of any such nomination every person who at the time the offence was committed was in-charge of, and responsible to, the company for the conduct of its business shall be deemed to be guilty of the offence. For commission of offence by a company, the company itself can also be prosecuted by virtue of Section 17(1)(b). In the present case, the mention of the expression "in-charge of" while describing accused No. 3 in the complaint (prosecution report) demonstrates that prosecution did not want the company to be prosecuted. On the other hand, it indicates that the prosecution wants to prosecute the person who was supposed to be in-charge of and was responsible to the petitioner for conduct of its business at the time of commission of offence. Non-mention of any specific person and use of the word "in-charge of" goes to show that the prosecution is not sure if any person had been nominated or there was any other person in-charge of and responsible to the petitioner for conduct of its business at the time of commission of the offence so as to bring him/them within the mischief of Section 17(1)(a)(i) or Section 17(1)(a)(i). The scheme of Section 17 postulates that the prosecution must make specific averments as to who has committed the offence, whether it was the company its self and/or any nominated person or any other person who was in-charge of and was responsible to the company for the conduct of its business. The person who is to be prosecuted must be unerringly described in the complaint/prosecution report and it cannot be left in vacuum to be filled in during course of trial. In view of the aforesaid, I am inclined to hold that the proceeding against accused No. 3 is liable to be quashed.

9. Let me now take up the first contention. It was strenuously contended that the proceeding should be quashed on account of the delay in launching the prosecution. In this connection, the learned counsel for the petitioner has referred to the following judgment of the Supreme Court and Punjab and Haryana High Court:

- (1) 1980 (II) FAC 191 (Supreme Court) *Nebh Raj v. The State (Delhi Administration)*
- (2) 1990(1) FAC 147 (*Sewa Ram v. The State of Punjab*)
- (3) 1990(1) FAC 150 (*Nand Lal v. The State of Punjab*)
- (4) 1990(1) FAC 156 (*A. K. Roy v. The State of Punjab*)

In *Nebh Raj* (supra), the accused was convicted u/s 16 read with Section 7 of the Act on the allegation that he was selling adulterated "dal biji". As it appears, the sample of "dal biji" was sent for public analysis three years after it was taken from the shop of the accused. Because of such long gap, the increase of free

fatty acid content of the sample by oxidation during the storage could not be ruled out. In view of this, the Supreme Court while setting aside the conviction of the accused observed in the concluding paragraph of the judgment as follows :

".....We desire to add that there was no justification whatever for launching the prosecution more than two years after the sample was taken and after obtaining the report of the Public Analyst. To launch a prosecution at such a belated stage may result in causing harassment to the accused in some cases and may also result in genuine offenders escaping punishment. We are unable to see why simple cases under the Prevention of Food Adulteration Act should be launched so late. Tardiness in these matters is inexcusable".

In *Sewa Ram (supra)*, a Single Judge of the Punjab and Haryana High Court relying on the aforesaid observation of the apex Court quashed the proceedings against the accused on the ground that period of two years lapsed in between the taking sample and institution of the complaint.

In *Nand Lal (supra)*, the Punjab and Haryana High Court relying on the observation of the Supreme Court in *Nebh Raj (supra)* quashed the criminal proceeding on account of unexplained delay of two years in launching prosecution after the sample was taken.

In *A. K. Roy (supra)*, similarly the criminal proceeding was quashed by the Punjab and Haryana High Court in view of the fact that the prosecution was launched after about three years from the date of taking sample.

A "look" at the facts of the present case shows that on 11-4-1991 the sample of the mustard oil was taken by the Food Inspector. It was sent on 12-4-1991 to the Public Analyst who after analysing it submitted the report on 18-5-1991. Thereafter commenced tradiness. The Joint Director gave consent for prosecution of the accused persons on 25-8-1993. The prosecution took four months to file the prosecution report in the Court which was done on 23-12-1993 although the same was signed by the Food Inspector on 13-3-1992. No reason has been indicated in the prosecution report for the delay in launching the prosecution although the report of the Public Analyst was made available about two years and eight months ago. Launching of prosecution at snail's pace was disapproved by the apex Court in *Nebh Raj (supra)*. In the premises, the prosecution cannot be allowed to continue further. I may note here that the initiation of the proceeding is not challenged by other accused persons but the common relief on account of the delay in lodging the prosecution to which the petitioner is entitled to, cannot be denied to them.

10. In the result, for the reasons mentioned in the aforementioned paragraphs 8 and 9, the entire proceeding in 2(c) CC No. 587 of 1993 pending in the Court of the Sub-divisional Judicial Magistrate, Cuttack cannot be sustained in law which is hereby quashed.

The Application is allowed.