
(2001) 04 AHC CK 0116
In the Allahabad High Court
Case No : Criminal Revision No. 2019 of 1990

O.P. Joshi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-04-2001

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16, 17(2), 7

Citation : (2001) 2 ACR 1865

Hon'ble Judges : Bhagwan Din, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Bhagwan Din, J.—This criminal revision has been directed against the order dated 18.1.1990 passed by Judicial Magistrate, Ghaziabad, summoning the applicants in Criminal Case No. 240 of 1990 u/s 7/16, Prevention of Food Adulteration Act (hereinafter called the Act).

2. In the complaint, the Food Inspector has arrayed M/s. Mercury Protein Products (P.) Limited, F-11, Sector 11, Noida, Ghaziabad, through its Directors, O. P. Joshi, Arun Joshi, S. P. Joshi and Bhanu Prakash Joshi.

3. The contention of the learned Counsel for the applicants is that Section 17 of the Act prohibits the implication of the company and all the Directors of the Company in the cases under the Act. The only Director can be implicated as an accused who is authorised under Sub-section (2) of Section 17 of the Act.

4. Section 17 of the Act is reproduced below:

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 Sub-section (2) to be incharge of, and responsible to, the company for the conduct of the business of the company (hereinafter 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:

Provided that nothing contained in this Sub-section shall render any such person liable to any punishment provided 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 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.

5. It is thus clear that the Director who has been authorised to exercise all such powers and take all such measures as may be necessary or expedient to prevent the commission by the company of any offence under this Act. The Food Inspector has arrayed the company and four directors as accused persons in this case. The directors so implicated in the case are not authorised u/s 17(2) of the Act. By a resolution dated 2.2.1989, the Board of Directors of M/s. Mercury Protein Products (P.) Limited had authorised Mr. A. M. Joshi to look after the prevention of food adulteration and food department and shall be fully responsible for marketing on behalf of the company and will send the documents as may be required. Mr. A. M. Joshi has not been implicated as an accused in this case. Therefore, the order of summoning dated 18.1.1990, contained in Annexure-3 to the memo of revision, is not in consonance with the provisions of Section 17(2) of the Act and, therefore, deserves to be quashed.

6. The revision is allowed. The order dated 18.1.1990 summoning the applicants is set aside.