
(1983) 10 OHC CK 0006

In the Orissa High Court

Oswal Oils and Vanaspati Industries, (Prop: Oswal Woollen Mills Ltd.) and Another

APPELLANT

Vs

The Food Inspector, Berhampur Municipality

RESPONDENT

Date of Decision : 24-10-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 233, 234, 235, 236, 237

Citation : (1984) 57 CLT 49 : (1984) CriLJ 581

Hon'ble Judges : B.N. Misra, J

Bench : Single Bench

Judgement

B.N. Misra, J.—Oswal Oils & Vanaspati Industries (Prop: Oswal Woollen Mills Ltd.). Madras and Rakesh Palta, an employee of Oswal Oils & Vanaspati Industries, have filed this petition u/s 482, Criminal P. C. for quashing the initiation of proceedings against them in 2(c) CC Case No. 24 of 1980 pending on the file of the learned Chief Judicial Magistrate, Berhampur. The two petitioners are accused Nos. 4 and 5 respectively in the aforesaid proceeding.

2. The facts of the case may be briefly noted. On 31-10-1979 the Food Inspector of Berhampur Municipality visited the wholesale grocery shop of Balabhadra Hotta, accused No. 1, situated within the limits of Berhampur Municipality. After disclosing his identity, the Food Inspector inspected the stocks of Vanaspati, groundnut oil and gingelly oil stored for sale in the said shop. The Vanaspati tins had the following paper labels over them "Om Product Luxmi, Vanaspati made from vegetable oils only, Oswal Oils and Vanaspati Industries (Prop : Oswal Wollen Mills (Ltd.), Madras-600021, 16.5 Kg. net sealed with Giny Seal". The facts relating to groundnut oil and gingelly oil need not be referred to as they do not form the subject-matter of this case. The Food Inspector opened a Vanaspati tin and on inspection suspected the same to be adulterated. After due compliance with the requirements of law, the Food Inspector purchased 1500 grams of the said Vanaspati for Rupees 17.73-vide cash bill No. 126 dated 31-10-1979 granted by accused No. 1. The Vanaspati purchased by the Food

Inspector was divided into three parts and kept in three clean dry bottles and sealed. Accused No. 1 produced credit bill Nos. 9273 dated 27-10-1979, 9284 dated 27-10-1979 and 9272 dated 27-10-1979, showing that he had purchased 25 tins of Luxmi Vanaspati from Maheswari Company, Berhampur, accused No. 2. On 1-11-1979, the Food Inspector Visited Maheswari Company, accused No. 2, and verified the credit bill No. 86 dated 26-10-1979, which showed that accused No. 2 had purchased 500 tins of Luxmi Vanaspati from one Radhashyam Sanjay Kumar, a wholesale merchant of Balangir. Thereafter the Food Inspector sent one sealed sample bottle of Vanaspati to the Public Analyst, Bhubaneswar for analysis and deposited the other two, sample bottles with the Chief District Medical Officer, Ganjam. On analysis, the Vanaspati was found to be adulterated. On receipt of the Analyst's report, the Chief District Medical Officer, Ganjam gave his written consent for prosecution of all the accused persons including the petitioners, Vide order number 1043 dated 18-2-1980 of the Chief District Medical Officer, Ganjam u/s 16(1)(a) (i) and (ii) read with Section 7(i) and Section 14 of the Prevention of Food Adulteration Act, 1953(hereinafter referred to as the Act). The Food Inspector filed the complaint against all the accused persons along with the written consent of the Chief District Medical Officer in the Court of the learned S. D. J. M., Berhampur. By order No. 1, dated 22-2-1980, the learned Magistrate took cognizance u/s 16(I) (a) (i) and (ii) of the Act and summoned the accused persons. After a few dates the case was dealt with by the learned Chief Judicial Magistrate, Ganjam Berhampur. The trial has not commenced as yet.

3. Mr. D. S. Sawhney, learned Counsel appearing for the petitioners, has submitted that prosecution against petitioner No. 2, has been filed on the basis that he is the nominee of petitioner No. 1, but the materials available against petitioner No. 2 do not indicate that he is a proper nominee of petitioner No. 1. On the other hand, Mr. R. C. Misra, learned Counsel appearing for the Food Inspector of Berhampur Municipality, has submitted that petitioner No. 2 is the proper nominee of petitioner No. 1 and in support of this submission he has filed in this Court true copies of the nomination and the correspondence between petitioner No. 1 and the Chief District medical Officer, Ganjam, By letter number OOOI/APJ : 2214/79 dated 28-11-1979, petitioner No. 1, returned to the Chief District Medical Officer form VIII under Rule 12B of the P.F.A. Rules duly attested and containing the nomination of petitioner No. 2 by petitioner No. 1. The true copy of form VIII shows that petitioner No, 2 was nominated by petitioner No. 1 by a resolution of the Company dated 4-9-1979. Petitioner No. 2 has himself accepted the nomination and put his signature in the form. The Chief District Medical Officer has also acknowledged receipt of the above nomination. The true copy of the resolution of the Company has also been filed. These three documents clearly establish that the nomination of petitioner No. 2 by petitioner No. 1 is valid. The objection as to invalid nomination raised on behalf of the petitioners must accordingly be rejected.

4. The next point urged by learned Counsel for the petitioners is that the Food

Inspector who filed the complaint before the Court had not been duly authorised to do so and therefore the complaint as invalid in the eye of law being in contravention of the provisions contained in Section 20 of the Act. This submission is repelled by the learned Counsel for the opposite party on the ground that the written consent for prosecution having been given by the Chief District Medical Officer, Ganjam, who is the competent authority, the filing of the complaint petition in the Court by the food Inspector along with the written consent of the concerned authority is in full compliance of the provisions contained in Section 20 of the Act. In support of this contention, reliance is placed on a decision of the Supreme Court reported in 1977(I) FAC 181 : 1977 Cri LJ 778 (Corporation of Calcutta v. Md. Omer Ali) wherein it was held (at p. 780 of Cri LJ):

...Here the complaint was filed by Food Inspector with the written consent of the Health Officer and the Health Officer was admittedly a person authorised to give written consent by the Corporation of Calcutta. The complaint was, therefore, filed with the written consent of "a person authorised in this behalf by a local authority" and the requirement of the second condition was clearly satisfied. There was, in the circumstances, no breach of requirement of Section 20 (I) in the filing of the complaint by the Food Inspector with the written consent of the Health Officer and the prosecution, was properly instituted.

This view which we are taking is fully supported by a decision of this Court in the State of Bombay v. Parshottam Kanaiyalal 1975(H) FAC 331 : 1961(1) Cri LJ 170. What happened in this case was that a complaint was filed against the respondent by the Food Inspector for selling adulterated milk after obtaining the consent in writing of the Chief Officer of the Baroda Municipality who was authorised by the Baroda Municipality to give written consent u/s 20 (I) of the Act. The respondent contended that the written consent was of no avail since it did not mention the name of the person in whose favour it was given and the Food Inspector was, therefore, not entitled to file the complaint on the basis of such written consent. This objection raised on behalf of the respondent was negatived and it was held by this Court that where a prosecution is launched on the basis of a written consent granted by the competent person or authority, it is not necessary to name the complainant in the written consent. The competent authority or person has to give his written consent to a specified prosecution and it is not necessary that the name of the complainant should be mentioned in the written consent. In fact, any person can file a complaint for an offence under the Act on the basis of written consent given by the competent authority or person, because, while giving the written consent, the competent authority or person has to apply his mind not to the question as to who should be authorised to file the complaint, but to the desirability and propriety of filing a particular prosecution and once that is done and written consent is given, the requirement of Section 20 (I) is satisfied and thereafter any person can file such prosecution. This decision clearly shows that it is not necessary that even after written consent is given by the competent authority or person, the prosecution must still be

launched by any one of the four categories of authorities or persons specified in Section 20 (I). The two conditions specified in Section 20 (I) are, as already pointed out above, in the alternative and if either of them is satisfied, it is sufficient compliance with the requirement of the section. The principles laid down in the aforesaid decision clearly apply to the facts of this case. Here the written consent has been given by the Chief District Medical Officer, Ganjam and he is admittedly a person authorised by the State Government to give written consent for prosecution. Therefore the filing of the complaint in Court by the Food Inspector after obtaining the written consent of the Chief District Medical Officer, Ganjam must be held to be in conformity with the requirements of Section 20 (I) of the Act.

5. It is further urged on behalf of the petitioners that initiation of proceedings against the petitioners is at present premature because in this case accused number 1, who sold the Vanaspati to the Food Inspector has to first establish that he had purchased the said Vanaspati on the basis of a warranty of the petitioners and had sold the same in that very condition and that unless this issue is first determined in favour of accused No. 1, the question of prosecuting the petitioners cannot arise. In support of this contention, learned Counsel for the petitioners relies on two decisions of the Punjab & Haryana High Court reported in 1977 Cri LT 308 : 1978 Cri LJ 110 *Harish Kumar Rahwa v. State of Punjab* and (1982) LR (Cri) 709 *Garg Masala Co. v. State of Punjab*. As these reports were not available in the library, the learned Counsel has filed Photostat copies of the aforesaid two decisions which have been placed on record. In the first decision it was held:

....Though in the complaint the name of the petitioner was not specifically mentioned, it appears that the complaint was treated as a joint complaint both against Jaswant Singh accused as well as the present petitioner the Sales Manager of Messrs Oswal Vanaspati and Allied Industries, Ludhiana, and the present petitioner is also being prosecuted and tried along with the other accused Jaswant Singh, who is not a party in these proceedings before this Court, Relying on *V.N. Chodra v. The State* it has been vehemently contended by Mr. Laxmi Grover, the learned Counsel for the petitioner, that joint complaint against Jaswant Singh as well as the petitioner under the provisions of the Act was not competent and maintainable, and further that no case was made out in any manner against the petitioner from, any averment in the complaint. *Falshaw, C. J.* as he then was in *V.N. Chokra Vs. The State*, held as under:

Held, that, there is no justification for the prosecution of a person, firm or company who is alleged to have supplied goods to a dealer from whom the sample is actually purchased by the Food Inspector, in the same trial as the dealer from whom the sample was taken, It appears from Section 19(2) of the Prevention of Food Adulteration Act, that the supplier of goods can only be brought into the case in which the dealer is being prosecuted for the actual sale of the adulterated article, when the dealer sets up the defence contemplated in

the Sub-section. The question of prosecuting the supplier who had given a warranty can only arise after the trial of the actual vendor had concluded with a successful defence by him under the provisions of Section 19(2) of the Act, and the supplier of the goods to the actual vendor has been heard.

I am in complete agreement with the proposition of law that u/s 19, Sub-clause (2) of the Act, defence is available to the accused seller of the article that he had purchased the same in the packed condition from the manufacturer on the basis of a warranty and had sold the same in that very condition, and it is only after the successful decision of the case in favour of the said accused on the basis of the defence taken by him that the question of prosecuting the manufacturer can arise, so far as the present case is concerned, there is no averment even in the complaint implicating the present petitioner who is at the most a Sales Manager of the manufacturer of the Vanaspati. From the perusal of the complaint it is not even possible to conclude that the Vanaspati ghee in question had been purchased from the manufacturer of which the present petitioner was the Sales Manager and that the said ghee had been purchased from the manufacturer.

In the latter case it was held:

As is plain from the averments in the petitions and which have not been controverted, no evidence was led by the prosecution, which could give an occasion to the Court to employ the provisions of Section 20-A of the Act. It seems that it was assumed that the petitioner is the manufacturer of the adulterated articles and the retail-dealer had necessary warranties. Prima facie, from the averments made in the complaints, copies of which have been put on this record, no such specific plea is forthcoming, Thus, in the instant cases, the petitioner being impleaded as accused for this present, does not arise....

With respect, the propositions of law enunciated in the aforesaid two decisions cannot be accepted in view of the Supreme Court decision reported in Bhagwan Das Jagdish Chander Vs. Delhi Administration, The case of V.N. Chokra Vs. The State, , on which the learned single Judge has relied in his decision reported in 1977 Cr LT 308 : 1978 Cri LJ 110) has been overruled by the aforesaid decisions of the Supreme Court, The supreme Court held:

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 in 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 20A and Section 19(2) and Section 20 of the Act. A reason for Section 20A seems to be that the prosecution of a person impleaded as an accused u/s 20A in the course of a trial does not require a separate sanction.

Section 20A 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 to 239 of Criminal Procedure Code. On the other hand, there seems no logically sound reason why if a distributor of a manufacturer can be subsequently impleaded, u/s 20A of the Act, the cannot be joined as a co-accused initially in a joint trial if the allegations made justify such a course.

In view of the authoritative pronouncement of the Supreme Court, the objection raised on behalf of the petitioners that initiation of proceedings against the petitioners is premature must be rejected. If materials are available and allegations made justify such a course, a distributor or a manufacturer can be joined as a co-accused initially along with a dealer in a joint trial.

6. It is next urged by the learned Counsel for the petitioners that the materials placed before the Court do not show that there are any connecting links between the activities of the vendor accused No. 1 and the petitioners assuming that the latter are the manufacturers of the Vanaspati in question and that therefore the proceedings against the petitioners must be quashed. In support of this contention, learned Counsel relies upon Bhagwan Das Jagdish Chander Vs. Delhi Administration, and Ram Pratap Brij Mohan and Others Vs. The State of West Bengal and Others, . In the Supreme Court case it was inter alia observed at p. 1098 of Cri LJ:

In our opinion, considering the character of the offence and the nature of the activities of manufacturers and distributors, who generally deal in bulk, and of the ordinary vendor, who sells particular "items to the consumer, the common link, which could provide the unity of purpose or design so as to weave their separate acts or omissions into one transaction, has to be their common intention that a particular article, found adulterated, should reach the consumer as food. Ignorance of the fact of adulteration is immaterial. In order to justify a joint trial of accused their common object or intention to sell the article as food is enough. In such a case of a strict liability created by statute, for safeguarding public health, the mental connection between the acts and omissions of the manufacturer, the distributor, and the last vendor would be provided simply by the common design or intention that an article of food, found to be adulterated, should reach and be used as food by the consumer. Each person dealing with such an article has to prove that he has shewn due care and caution by taking prescribed steps in order to. escape criminal liability. Otherwise, if one may so put It, a mens rea shared by them is presumed from a common carelessness

exhibited by them. Again, a sale at an anterior stage by a manufacturer or distributor to a vendor, and the sale by the vendor to the actual consumer could be viewed as linked with each other as cause and effect.

XX XX XX XX XX XX XX The result is that we think that, in a suitable case, a vendor, a distributor, and a manufacturer could be tried together provided the allegations made before the Court show that there are connecting links between their activities so as to constitute the same transaction. The connecting links, in a case such as the one before us, could be provided by : firstly, the fact that a sale at an anterior stage could be viewed as the cause of the subsequent sale; secondly, the allegation that each of the accused parted with the article of food when it was in an adulterated state; and thirdly, by the common object of the manufacturer, the distributor and the vendor that the article should reach the consumer to be used as food. The third and last mentioned link seems decisive and must tilt the balance in favour of legality of a joint trial of the parties concerned. But we are also conscious of the fact that Courts cannot ignore broader requirements of justice.

The decision of the Supreme Court has been followed by the Calcutta High Court in the latter case referred to above. After noting the principles laid down by the Supreme Court, the Calcutta High Court held :

Let us now apply these principles to the facts of this case. There is no averment in the petition of complaint that the refined rape-seed oil in question, was adulterated when the present petitioners passed it on to Messrs. Gulabchand Tarachand, through its proprietor, Tarachand Agarwalla. There are no materials to that effect on the record. There is also no averment that the said oil while it was in possession of the accused vendor, was sold to Tarachand Agarwalla in the same state as it had been stored in the godown of Ram Pratap Brij Mohan. There are no connecting links so as to constitute the same transaction or to indicate that the sale at the anterior stage can be viewed as the cause of the later sale. In the absence of such averment and the allegation that such refined rape-seed oil was sold by the alleged vendor (Amritlal Pandey), he and the partners (Hari Krishna Sarogi, Raj Kumar Saraf and Krishna Kumar Sarogi) cannot be jointly tried together with the other accused. So there is no material to show that there was unity of purpose or common object or common intention on the part of the petitioners and the accused vendor to sell or distribute adulterated food. Since on the face of the petition of complaint such link is missing, we are of opinion that they cannot be jointly tried with the other accused. Hence the submissions made by Mr. Ray are accepted.

The principles laid down in the aforesaid decisions may now be applied to the facts of "this case. As already noted, the petition of complaint discloses that accused No. 1 had purchased 25 Luxmi Vanaspati tins from accused No. 2 and the latter had purchased 500 tins of Luxmi Vanaspati from one Radhashyam Sanjay Kumar, a wholesale merchant at Balangir. These sales may be said to be linked with each other. However, the last named person is not before the Court.

Nothing is known as to who had sold the Luxmi Vanaspati to Radhashyam Sanjay Kumar. There is no material before the Court to show that the present petitioners had manufactured the Vanaspati in question or had sold the same to Radhashyam Sanjay Kumar or accused No. 2 or accused No. 1. Assuming that the petitioners are the manufacturers of Luxmi Vanaspati, there is no material on record to show that the said vanaspati was adulterated when the petitioners "had passed it down the line. There are no connecting links so as to constitute the same transaction or to indicate that any sale by the petitioners at the anterior stages could be viewed as the cause of the later sales.

7. Learned counsel appearing for the opposite party has urged that at this stage the Court is to see whether there is a prima facie case against the petitioners and that evidence regarding involvement of the petitioners with the present offence will be led in course of the trial. In support of this contention, reliance is placed on a decision of the Supreme Court reported in *State of Punjab Vs. Devinder Kumar and Others*, wherein it was held At p. 984 of Cri. L. J.;

Before concluding we should observe that the High Court committed a serious error in these cases in quashing the criminal proceedings in different Magistrate's Courts at a premature stage in exercise of its extraordinary jurisdiction u/s 482, Criminal Procedure Code. These are not cases where it can be said that there is no legal evidence at all in support of the prosecution. The prosecution has still to lead its evidence. It is neither expedient nor possible to arrive at a conclusion at this stage on the guilt or innocence of the accused on the material before the Court. While there is no doubt that the onus of proving the case is on the prosecution, it is equally clear that the prosecution should have sufficient opportunity to adduce all available evidence.

As already noted, in the present case neither the complaint petition nor any of the materials placed on record so far indicate that the petitioners were the manufacturers of the Vanaspati in question or that they had supplied the said vanaspati in an adulterated state to the other accused persons. Further, another significant point to be noted is that the Vanaspati tin from which sample was purchased by the Food Inspector and the paperlabel on the tin showing the name of petitioner No. 1, have not been seized by the Food Inspector. In these circumstances, it must be held that there is no material or evidence on record to show that the petitioners were in any way connected with the offence. Learned counsel for the opposite party has further submitted that involvement of the petitioners with the offence may be inferred from the fact that petitioner No. 1 had after its appearance before the Court asked for an analysis of the sample of Vanaspati by the Central Food Laboratory and the analysis report is that the sample is adulterated. This submission must be rejected as the action of petitioner No. 1 in getting the sample analysed by the Central Food Laboratory cannot be said to evidence making out a prima-facie case against it.

8. In the result, this petition is allowed. The order of the learned Magistrate taking cognizance against the petitioners and the proceedings in so far as they

relate to the present petitioners only are quashed for the ends of justice and to prevent abuse of the process of Court. However, I would add and make it clear that if in course of the trial further materials are brought on record against the present petitioners, the learned trying Magistrate will be at liberty to invoke the provisions contained in Section 20-A of the Act.

9. Another important point merits mention. Cognizance in the present case has been taken under Sub-section (1) of Section 16 of the Act and the trial is yet to commence. Section 16A of the Act inter-alia provides that all offences under Sub-section (1) of Section 16 shall be tried in a summary way by a Judicial Magistrate of the First Class, specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of Sections 262 to 265 of the Criminal P. C. shall, as far as may be, apply to such trial. I am informed that the State Government is yet to empower the Judicial Magistrate of the First Class of the State to try offences u/s 16(I) of the Act in a summary way. Section 16A was brought into the statute book by amendment in 1976 and it is unfortunate that although seven years have passed the State Government have not yet empowered the Judicial Magistrate of the First Class to try cases u/s 16(I) of the Act in a summary way. In the present case, the trial should be held in a summary way by a Magistrate competent to do so under the provisions contained in Section 16A of the Act.