

(1988) 03 MAD CK 0023

In the Madras High Court

Case No : Criminal R.C. 633 and 634 of 1982 (Cr. R.P. 624 and 625 of 1982)

Parrys Confectionery Ltd.

APPELLANT

Vs

Food Inspector, Ulundurpet and Others

RESPONDENT

Date of Decision : 17-03-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 247, 251, 319
Evidence Act, 1872 — Section 3

Citation : (1988) 03 MAD CK 0023

Hon'ble Judges : David Annoussamy, J

Bench : Single Bench

Advocate : N. Ganapathi, for the Appellant; T. Muniratnam Naidu, for Public Prosecutor and B. Sriramulu, for the Respondent

Judgement

1. These two petitions are by accused 4 in both the cases. One case is C.C. 153 of 1982 out of which Cr.R.C. 634 of 1982 and Cr.M.P. 5277 of

1982 arise. The other is C.C. 270 of 1982, out of which Cr.R.C. 633 of 1982 and Cr.M.P. 5279 of 1982 arise.

2. As regards the first case, viz., C.C. 133 of 1982, the Food Inspector, Town Panchayat, Ulundurpet, visited on 28-1-1982 at 11-45 a.m. the

Taj Biscuit Stall Main, Road, Ulundurpet, run by accused 1 in that case and he found he was having in his possession, for the purpose of sale

misbranded Parry's twin toffee. The Food Inspector purchased 900 grams and the same was sampled as per the procedure prescribed by law.

Upon the sample being subjected to chemical analysis it was found that it contained artificial colour matter and there was no statement on the

wrapper of the product that it contained such matter. Therefore prosecution was launched u/s 7(ii) read with Section 2(ix)(j) and (k) and Section

16(1-A)(i) of the Prevention of Food Adulteration Act 1954, hereinafter referred to as the Act, against accused 1, the vendor, accused 2, the

owner of the Fathima Fancy Stores, Ulundurpet, and accused 3, Book sellers and Stationery Elementary School Street, Kallakurichi, who are

intermediaries. ""When all the three accused appeared before the court, the accused filed a petition u/s 20-A of the Act, for impleading Messrs.

Parrys & Co., as 4th accused. The Magistrate passed an order impleading M/s. Parrys and Co. on 30-8-1982, which order is the subject matter

of Cr.R.C. 634 of 1982, praying to set aside the order and Cr.M.P. 5277 of 1982, to quash the proceedings as far as accused 4 is concerned.

3. As regards the other case viz. C.C. 270 of 1982, the Food Inspector, Town Panchayat, Ulundurpet, on 14-5-1982, at about 8 a.m. found that

accused 1, salesman of Fathima Fancy Stores, Ulundurpet, was having for sale the same product, viz., mis-branded Parry's twin toffee. Sample

was taken from accused-1. It was found to be adulterated in the same manner. Therefore proceedings were launched for offences under sections

7(ii) and 16(1)(a)(ii) read with Section 2(ix)(j) and (k) of the Act against accused 1, the salesman, and accused 2, the owner of the Fathima Fancy

Stores, Ulundurpet. When the accused appeared before court they filed a petition to implead M/s K. A. Ibrahim and Co. who is already third

accused in the first case, as the third accused in this case also and M/s Parry & Co. as the 4th accused. Order was passed by the Magistrate on

30-8-1982, impleading the accused as prayed for and they were arrayed as accused 3 and 4 in case. Aggrieved by that order, accused 4 has filed

Cr.R.C. 633 of 1982, to have the order passed by the Magistrate set aside and Cr.M.P. 5279 of 1982, for the purpose of quashing the

proceedings as far as accused 4 is concerned.

4. Learned counsel for the revision petitioner contended that for the purpose of exercise of powers under S. 20-A of the Act, four conditions were

necessary; viz.,

1. The trial for an offence should be pending;

2. There must be evidence before the court;

3. The court should be satisfied by the evidence;

4. When the trial is against a dealer, the manufacturer cannot be prosecuted.

5. Before proceeding to deal with each of the contentions seriatim, it will be useful to reproduce S. 20-A of the Act, on which all the contentions are based. That section reads as follows -

20-A. Power of court to implead manufacturer etc. Where at any time during the trial of any offence under this Act alleged to have been committed by any person, not being the manufacturer, distributor or dealer of any article of food, the court is satisfied, on the evidence adduced before it, that such manufacturer, distributor or dealer is also concerned with that offence, then, the court may, notwithstanding anything contained in sub-section (3) of Section 319, Cr.P.C. 1973 (2 of 1974), or in Section 20 proceed against him as though a prosecution had been instituted against him u/s 20"".

6. The first contention of the revision petitioner is that as per Section 20A of the Act the impleading of a new accused arises only during the trial, that the trial commences only after the framing of charges, that before that stage is reached, the court is only conducting an enquiry, that in the present case so far no charge had been framed and that therefore the trial has not yet commenced enabling the Court to implead an accused. In support of his contention, he quotes the following decisions Tangaturi Sriramulu and Nalam Krishna Rao, and Others Vs. K. Veerasalingam, ;

Ramnathan Chettiar In re. 17 MLW 412 : ILR (1923) Mad 719 : 1923 24 Cri LJ 192.

7. Learned counsel appearing for the Public Prosecutor drew my attention that as per Section 16-A of the Act, the trial is a summary one.

Therefore, there will be no formal charge framed. He further added that from the records of the case it is seen that the accused have been already apprised of the particulars of the offence as per S. 251, Cr.P.C. which corresponds to the stage of charge framing in a trial under warrant procedure.

8. Learned counsel appearing for the third accused contended that the word "trial" in Section 20-A of the Act should not be construed in a strict and restricted manner, but in its broad sense, and he placed reliance on the decision of the Supreme Court in The State of Bihar Vs. Ram Naresh Pandey, .

9. The contention of revision petitioner does not have any merit prima facie. The

word "trial" in the Criminal Procedure Code as well as in other special enactments is used in some places in a restricted sense indicating the stage after the framing of charges and in other places in a broad sense comprehending the totality of the proceedings before the court from the beginning. In fact, the heading of Chapter XIX of Criminal Procedure Code would read as "trial of warrant cases by Magistrate" and it starts from the stage of supply of copies to the accused. Then come the preliminaries before the Magistrate takes a decision whether the accused should be charged or not. The position is made quite clear by the observations of the Supreme Court in the decision relied on by the learned counsel for the third accused at page 251 (of Mad LJ (Cri)) : (at p. 573 of Cri LJ) and which are as follows -

the words "tried" and "trial" appear to have no fixed or universal meaning. No doubt, in quite a number of sections in the Code to which our attention has been drawn the words "tried" and "trial" have been used in the sense of reference to a stage after the enquiry. That meaning attached to the words in these sections having regard to the context in which they are used. There is no reason why where these words are used in another context in the Code, they should necessarily be limited in their connotation and significance. They are words which must be considered with regard to the particular context in which they are used and with regard to the scheme and purpose of the provision under consideration".

The word found in the opening sentence of Section 20-A of the Act obviously means the entirety of the proceeding including the one prior to the framing of charge. Even otherwise, on facts it is seen from the records that the stage as contemplated under S. 251, Cr.P.C. is already over as rightly pointed out by the learned counsel appearing for the Public Prosecutor. The first contention of the revision petitioner therefore fails.

10. As far as the second contention is concerned, the learned counsel for the revision petitioner stated that as per the provisions of the Criminal Procedure Code, in respect of a trial of a warrant case, instituted otherwise than on a police report there will be evidence when the complainant is examined under S. 244 of the Code or when the accused enters upon his defence and produces her evidence u/s 247 of Cr.P.C. that in the present case, none of these stages was reached and that therefore a document

produced by the other accused with a petition would not amount to evidence adduced before the court.

11. Learned counsel appearing for the revision petitioner placed reliance on a decision of the Jammu and Kashmir High Court reported in Vijay

Kumar Vs. State, , in which the single Judge of that High Court quoted two decisions. One is Sri Gopal Krishna v. State 1975 FAJ 461 (HP), in

which it was held that the minimum requirement of law is that some prima facie evidence should be adduced before the Court so that his concern

with the commission of the offence is proved and that only thereafter Section 20-A will have its application. The second decision quoted is Pure

Ice Cream P. Ltd. v. Narendrajeet Singh 1975 FAJ 582 (Guj) wherein it was held that the warranty produced by the vendor was evidence on

which the court could pass an order u/s 20-A of the Act. After quoting these two decisions the single Judge of the Jammu and Kashmir High Court

observed that the recording of evidence has to take place in accordance with the procedure embodied in Sections 252 to 259, Cr.P.C. and that in

the concerned case the court did not record any evidence of the accused-dealer before passing the order u/s 20-A of the Act, and accordingly set

aside the order which was found to be illegal.

12. Learned counsel appearing for accused 3 placing reliance on a decision of the Supreme Court in Ramnarayan Mor and Another Vs. State of

Maharashtra, , contended that the definition of the word "evidence" in the Evidence Act has to be taken into account. In the above decision the

court, while dealing with the provisions of Section 207-A Cr.P.C. held that evidence would embrace the documents and that even if they are not

proved they would be evidence for certain purposes.

13. This second contention of the learned counsel for the revision petitioner has got two aspects. The first one is that the accused on record, who

filed their petitions have not proved their allegations by entering into the box and making depositions on oath. The second aspect is that the

materials placed by the accused were not brought on record at the appropriate stage of their trial for being considered as an evidence.

14. As far as the first aspect is concerned, the word "evidence" as defined in Section 3 of the Indian Evidence Act, means and includes all

documents produced for the inspection of the court. Evidence should not be

confused with proof. As soon as a document is produced for the inspection of the court it becomes evidence, it could be acted upon, when it is proved, when it is found acceptable and then it is to be considered in conjunction with other items of evidence. In the present case, the accused have produced along with their petition before the court an invoice from Messrs Parry Confectionary Ltd., viz., accused 4 revision petitioner, duly signed in the name of accused 3. That document is certainly evidence. The Supreme Court in the decision relied upon by the learned counsel appearing for accused 3 has unequivocally held that it would be difficult to regard as evidence only those documents which are duly proved or which are admissible without proof. Learned counsel for the revision petitioner realising the weakness of his contention attempted to press into service S. 19 of the Act in contending that the vendor can get exonerated only if he proves that he purchased the article of food from a manufacturer, but that stage is not yet reached. Accused 1 to 3 have not yet applied for their discharge and such a discharge would necessarily be only upon the proof as contemplated u/s 19 of the Act. But now we are at a stage which is anterior and which consists only of impleading accused 4. Therefore, the first aspect of the contention of the learned counsel for the revision petitioner carries no merit and this would be enough to dispose of his second contention. However, since he placed reliance on a decision of the Jammu and Kashmir High Court, referred to above, I shall deal with the second part of the second contention as well.

15. The case of the revision petitioner is that the record of evidence has not yet taken place in this case, since no witness by the prosecution has been examined and therefore, there is no evidence available to the court under Chapter XIX Cr.P.C. In the first place, it is to be observed that the proceedings being in the nature of a summary trial the provisions of Chapter XIX Cr.P.C. invoked by the learned counsel for the revision petitioner have no application, only the corresponding provisions of Chapter XX would apply. Secondly, it is open to the court to implead any person in a pending criminal case in accordance with the provisions of S. 319. CrI.P.C. When the court acts thus suo motu, the only evidence which would be available before it would be the evidence produced by the prosecution and the defence in the respective stage of the trial. In addition to that

general provision, which would also apply to a proceeding under the Act, Section 20-A of the Act has been incorporated in the Act with a view to

serve the purpose of the Act, which is to see that all the real guilty parties are brought before the court and that each one gets the retribution he

deserves. In fact, in matter of food adulteration there will be a chain of persons dealing with the product and the duty of the investigating machinery

and then of the Courts to go to the source of adulteration. That such is the scheme of the Act is easily gatherable from Sections 14, 14-A, 17 and

19 of the Act. Further, the accused party already arrayed has a very valuable right under S. 19 of the Act to disculpate himself in proving that he

purchased the article of food from a manufacturer. Therefore, he is interested in arraying before the Court such a manufacturer as early as possible.

When for such purpose he files an application he will adduce evidence which will not be the evidence contemplated under Chapter XX of Cr.P.C.

but a separate evidence for the purpose of Section 20-A of the Act. Therefore, it is clear that Section 20-A appears in the Act with a specific

purpose and for that purpose there can be specific evidence by the concerned parties. Such evidence in respect of the case against the proposed

accused will be in the nature of a complaint, prior to evidence contemplated under Ch. XX of the Cr.P.C. Therefore, the ratio of the High Court of

Jammu and Kashmir is not acceptable. This contention also fails.

16. The third contention is that the order of the Magistrate is cryptic and non-speaking, that the Magistrate has not disclosed that he was satisfied

and for what reasons he was satisfied and that such an order would be void. The order of the Magistrate in both the cases reads as follows -

Bills perused Messrs Parry & Co., Madras, is impleaded as accused under S. 20-A of the P.F.A. Act.

No doubt, it would have been better if the Magistrate had given an order in a slightly more detailed manner. But for that reason the order cannot

become void. The requirement of S. 20-A of the Act is that the court should be satisfied. It is not prescribed like in many other cases that the

Court should necessarily record its reasons. The very fact that the court has passed an order u/s 20-A of the Act impleading accused 4 discloses

that the court was satisfied because no reasonable judicial officer would implead an accused u/s 20-A of the Act without his being satisfied. The

Court had before it the petition of the other accused to the extent that the misbranded article was purchased from accused-4 and the invoice signed

by accused-4. The court while acting u/s 20-A of the Act is not doing anything more than taking on file a complaint by the food Inspector. The

petition and the document produced are certainly sufficient for the court to get satisfied that accused-4 also may be concerned with the offence.

No charge has been so far framed either orally or in writing as contemplated u/s 251, Cr.P.C. As per that section, it is not necessary for the court

to frame a formal charge. But nothing prevents the Court to do so. It is open to the petitioner upon being given copies of the incriminating

documents to plead that he need not be charged. But as the matter stands now I find that the court was satisfied and that there was reason for its

being satisfied to implead accused 4 in the case.

17. Learned counsel for the revision petitioner however contended that an order which is not a reasoned one would be a nullity and therefore the

order passed by the Magistrate impleading accused 4 is null and void. In this connection he placed before me two decisions of the Supreme Court,

viz., Ferozi Lal Jain Vs. Man Mal and Another, and Vasudeo Vishwanath Saraf Vs. New Education Institute and Others, . In the first decision the

court had passed a decree on the compromise arrived at between the parties in a matter in which a third one was concerned and therefore it was

held that the decree has to be held to be a nullity. Therefore, the ratio of that case has no application to the facts of the present case. In the second

decision the Supreme Court observed -

This recording of reasons in deciding cases or application affecting rights of parties is also a mandatory requirement to be fulfilled in consonance

with the principles of natural justice. It is no answer at all to this legal position that for the purpose of expeditious disposal of cases a laconic order

like "dismissed" or "rejected" will be made without passing a reasoned order or speaking order"".

These prescriptions would apply when the Court is disposing finally of a case or of an application of important nature. But, in the present case, the

court by impleading accused 4 has not done anything more than taking on file the case as against accused 4 as well. For such no reasoned order is

necessary. If any application for discharge by the accused has been disposed of

without giving any reason, the dicta of the Supreme Court in the decision quoted second would apply, but there was no such application in this case. The third contention also fails.

18. The last contention of the learned counsel for the revision petitioner is that as per Section 20-A of the Act, accused 4 should not have been added as a party along with a distributor or a dealer. In the present case, accused 1 is the vendor, accused 2 and 3 are intermediaries and accused 4 is the manufacturer. If the offence is alleged to have been committed only by a distributor or a dealer, the manufacturer cannot be impleaded under the provisions of Section 20-A of the Act. For the purpose of that section, the offence should have been committed by any person who is not a manufacturer, distributor or dealer. In this case, accused 1 is the vendor. He does not obviously fall under any of these three categories. The exact position of accused 2 and 3 is not known. The Act does not say that even if there is a vendor already arrayed as accused any distributor or dealer should not be arrayed along with the manufacturer. Therefore the condition prescribed by the Act for not impleading as accused the manufacturer with a person being the manufacturer, distributor or dealer is fulfilled in this case and hence the impleading is in order. This contention also fails.

19. The allegation made by accused 1 and 2 in their petition to have accused 3 and 4 impleaded in this case at paragraph 5 of the petition is as follows -

The Food Inspector refused to receive the Bill of K. A. Mohamed Ibrahim and Co., when produced at the time of supplying saying that it will give him unnecessary work to implicate Ibrahim and Co. and then Parrys Co., and that he had a bitter experience in this regard once before. He directed the accused to produce the Bill at the time of trial. Hence, the accused is now filing this application.

Nothing transpires from the record as it stands now about the truth or otherwise of the allegation made by the abovesaid accused. But the fact remains that though the Food Inspector even on the very face of the wrapper of the product was aware that the articles were manufactured by Parrys & Co., had failed to investigate who was the real culprit in the case and to bring him before the Court.

20. The hearing of cases under Food Adulteration Act discloses a tendency of the inspecting agency remain in the periphery to book small vendors

or retailers and to avoid digging at the source of the evil. If such a course is followed the purpose of the Act will never be achieved. It is hightime

that the Administration reviews the work of the Inspection agency to remove their fetters, if any to ensure competence and independence of

officers and to take all other steps towards effective application of the Act without causing unnecessary harassment to the production machinery.

21. In the result, both the revision cases are dismissed. The trial court is directed to proceed with the case most expeditiously.

22. Order accordingly.