
(2014) 02 DEL CK 0108
In the Delhi High Court
Case No : Crl. M.C. No. 689 of 2009

PCDF Ltd. (UP)

APPELLANT

Vs

Govt. of NCT of Delhi

RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 17, 17(1), 17(1)(a)(ii), 17(2)

Citation : (2014) 4 Crimes 380 : (2014) FAJ 349 : (2014) 3 JCC 2097

Hon'ble Judges : Deepa Sharma, J

Bench : Single Bench

Advocate : Varinder Kumar Sharma, Advocate for the Appellant; O.P. Saxena, APP, Advocate for the Respondent

Judgement

Deepa Sharma, J.—The present petition has been filed by Pradeshik Co-operative Dairy Federation Limited and Sh. Amlesh Vikram Singh, Ex. M.D. Pradeshik Cooperative Dairy Federation Limited, 29, Park Road, Lucknow, UP. for quashing of complaint/proceeding in DA No. 54/2005 titled as "DA v. Biman Kumar" pending before learned Metropolitan Magistrate, New Delhi. It is alleged that the petitioner is a government undertaking co-operative society (hereinafter called as "PCDF") and selling the milk and milk products at Bulandshahar, U.P. The head office is at Lucknow and the Managing Director is also sitting at Lucknow. All the units are independently governed by the General Manager of that Unit under their own rules and regulations in terms of the Memorandum dated 2.6.1986.

2. It is further alleged that on 24th February, 2004, one M/s. Libra Enterprises, J 215, Sarita Vihar, New Delhi 110044 through its Proprietor Sh. Sunil Kant Misra entered into an agreement with the petitioner No. 1 and the said company is responsible for any deterioration in quality of the milk supplied to it. It is argued that once the goods are supplied to the company, the petitioners' control over it is lost. The officers of respondent had collected a sample of milk on 6th September, 2004 after about 24 hours of its supply. The sample was found adulterated and the respondent had decided to launch criminal prosecution

against the petitioners. It is argued that the petitioners have no role to play. Since every unit of petitioners No. 1 is an independent unit including the unit at Bulandshahar, U.P. and are independently governed by its own Managing Director, hence the Head Office and Managing Director is not liable to face any criminal liability. More so because the petitioners have already delegated its power under Section 17 of Prevention of Food Adulteration Act, 1954 to the respective General Managers and quality control Managers of all 40 units and these persons are responsible under the provisions of law. The total deputation tenure of petitioner No. 2 with PCDF was w.e.f. 25th August, 2004 to 30th June, 2005.

3. It is argued that filing of the complaint against the petitioners amounts to abuse of process of law and is liable to be quashed.

4. The respondents have filed a counter affidavit. It is submitted that the petitioners were asked to furnish the information about the persons who have been nominated by them under Section 17(1)(a)(ii) of PFA Act on the date of offence i.e. on 6th September, 2004, but the petitioners have failed to supply the name of the nominees. In view of the provisions of Section 17(1) of PFA Act, 1954, all the concerned Incharges of the company are responsible for the conduct of the business of the company and are liable to face prosecution unless the nominees are appointed under Section 17(1)(a)(ii) of PFA Act. The petitioners have not nominated any person under Section 17(1)(a)(ii) of PFA Act, hence launching of prosecution against petitioners, which is a company and its Managing Director is valid under law. It is also alleged that the Units are not independently governed but are governed and controlled by the Managing Director which fact is also clear from the document of the petitioners vide Circular No. 21 dated 1st June, 1986 Reference No. 8432/D-2/QC/d/PFA/86 (placed on record by the petitioners as Annexure-P1), which also covers the Bulandshahar unit of petitioners. It is argued that admittedly petitioner No. 2 was working as a Managing Director of PCDF on the date of offence. It is submitted that the petition is liable to be dismissed.

5. I have heard the arguments and have gone through the various documents filed by the petitioners along with the present petition. Admittedly, in the present case, the sample of milk was lifted on 6th September, 2004 which on examination was found adulterated. The respondents wrote a letter to the petitioners asking them to supply the names of the nominees appointed under PFA Act on the date of commission of offence i.e. on 6th September, 2004. The petitioners supplied two names, one of Sh. B.P. Singh, Manager, IV(QC)I/C(Q.C.) and Dr. Gulvir Singh, Incharge unit of Bulandshahar, UP as nominees of petitioners. It is an admitted fact that these persons were appointed as nominees only on 6th November, 2004. It is also apparent that no information regarding names of the nominees on the date of incident i.e., on 6th September, 2004 had been disclosed by the petitioners. Even in this petition, the petitioners have not disclosed the names of the Nominees appointed under Section 17 of PFA Act,

1954 for their Bulandshahar unit on or before 6th September, 2004 the date of offence. The petitioners have failed to satisfy this court that there was any nominee appointed under Section 17(1)(a)(ii) of PFA Act, 1954 covering date of offence.

6. Alternatively, the petitioners have relied on an agreement with M/s. Libra Enterprises, J-215, Sarita Vihar, New Delhi-110044 and argued that under this agreement, once the goods are supplied by the unit to M/s. Libra Enterprises, J-215, Sarita Vihar, New Delhi-110044, the unit ceases to have any control over the goods and thus not responsible for any adulteration.

7. It is argued that this agreement is dated 24th February, 2004 and was valid on date of commission of the offence. This argument of the petitioners is misconceived and is ill founded. The copy of the alleged agreement has been annexed as Annexure-P2 by the petitioners. Relevant portion of the agreement allegedly dated 24th February, 2004 reads as under: -

"AGREEMENT

This agreement is made on this 5th day of April, Two Thousand three between Bulandshop Dugdh Utpadak Sahkari Sangh Limited Bulandshahr (UP) through Shri M.D. Bhardwaj General Manager herein after called the first party and Libra Enterprises J-215 Sarita Vihar, New Delhi-110044, through Shri Sunil Kant Misra, Proprietor (herein after called the second party or the supply dealer). Whereas the first party wants to sell their milk and milk products and second party agree to purchase for supply of the same to institution (Hotel-Hospital, Industrial Canteen, Caterers, Education Centres, Clubbed in Delhi and adjoining areas at the terms and conditions mutually agreed upon between parties as under--

1. That the first party shall provide milk & milk products to the second party, on ex-factory, (Dairy plant situated at Bulandshar, Syna Road, Islamia) basis, during the period 01.04.2003 to 31.3.2004 at the following rates".

(Emphasis supplied)

8. From perusal of this agreement, it is clear that the agreement was executed on 5th April, 2003 and was valid during the period w.e.f. 1st April, 2003 to 31st March, 2004. The alleged incident had taken place on 6th September, 2004 and on that date this agreement was not in force. The petitioners have tried to mislead this court by relying on an outdated agreement.

9. The short question which arises for determination, therefore, is whether it was permissible to launch a prosecution under Sub-section (1) of Section 17 of the Prevention of Food Adulteration Act, 1954 against the petitioners.

10. Section 17 of the Prevention of Food Adulteration Act, 1954 has been discussed in length in a case reported as R. Banerjee and others Vs. H.D. Dubey and others, . Para 6 of this judgment is reproduced as under:--

"6. It is clear from the plain reading of section 17 that where an offence under

the Act is alleged to have been committed by a company, where the company has nominated any person to be in charge of, and responsible to, the company for the conduct of its business that person will be liable to be proceeded against and punished for the commission of the offence. Where, however, no person has been so nominated, every person who at the time of the commission of the offence was in charge of, and responsible to, the company for the conduct of its business shall be proceeded against and punished for the said crime. Even in such cases the proviso offers a defence, in that, the accused can prove his innocence by showing that the offence was committed without his knowledge and notwithstanding the exercise of due diligence to prevent it. The scheme of sub-section (1) of section 17 is, therefore, clear that cases where a person has been nominated under sub-section (2) of section 17, he alone can be proceeded against and punished for the crime in question. It is only where on such person has been nominated that every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of its business can be proceeded against and punished. The proviso, however, lays down an exception that any such person proceeded against shall not be liable to be punished if he proves that the offence was committed without his knowledge and that he had exercised all due diligence to prevent the commission thereof. Sub-section (2) of section 17 empowers the company to authorise any of its Directors or Managers 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 the Act. It further empowers the company to give notice to the Local (Health) Authority in the prescribed form that it has nominated a Director or Manager as the person responsible to the company for the conduct of its business. This has to be done with the written consent of the nominated Director or Manager. Where a company has different establishment or branches or units, different persons may be nominated in relation to the different establishments/branches/units and the person so nominated shall be deemed to be the person responsible in respect of such establishment, branch or unit. Sub-section (4) of section 17 overrides the preceding sub-section and posits that where an offence has been committed by a company and it is proved that the offence was committed with the consent or connivance of, or is attributable to any neglect on the part of any Director, Manager, Secretary or other officer of the company, other than the one nominated, such Director, Manager Secretary or other officer shall also be deemed guilty and be liable to be proceeded against and punished for the same. This sub-section, therefore, makes it clear that notwithstanding the nomination under sub-section (2) of section 17 and notwithstanding clause (a)(i) of subsection (1) of section 17, any Director, Manager, Secretary or other officer of the company, other than the nominated person, can be proceeded against and punished if it is shown that the offence was committed with his consent or connivance or negligence. It is crystal clear from the scheme of section 17 that where a company has committed an offence under the Act, the person nominated under sub-section (2) to be in charge of, and responsible to, the company for the conduct of its business shall be

proceeded against unless it is shown that the offence was committed with the consent/connivance/negligence of any other Director, Manager, Secretary or Officer of the company in which case the said person can also be proceeded against and punished for the commission of the said offence. It is only where no person has been nominated under sub-section (2) of section 17 that every person, who at the time of the commission of the offence was in charge of and was responsible to the company for the conduct of its business can be proceeded against and punished under the law".

11. In the instant case, it is clear that no nominee was appointed by the petitioners under the provisions of Section 17(2) of PFA Act. The respondents are acting under the provisions of Section 17 of PFA Act while prosecuting the petitioners.

12. It is thus apparent that launching of the prosecution against the petitioners does not amount to abuse of the process of law. The present petition has no merit in it and the same is dismissed. The Interim protection granted to the petitioners vide order dated 12th March, 2009 or on any subsequent dates stands vacated with the immediate effect. A copy of this order be sent to the trial court.