

(1978) 02 RAJ CK 0009
In the Rajasthan High Court

P.R. Maheshwari and Another

APPELLANT

Vs

The Municipal Council Alwar

RESPONDENT

Date of Decision : 02-02-1978

Acts Referred:

COMPANIES ACT, 1956 — Section 291

Criminal Procedure Code, 1973 (CrPC) — Section 482

Prevention of Food Adulteration Act, 1954 — Section 14, 16, 17, 2, 20A

Citation : (1978) CriLJ 1594 : (1978) RLW 284 : (1978) 11 WLN 471

Hon'ble Judges : M.L. Shrimal, J

Bench : Single Bench

Judgement

M.L. Shrimal, J.—The petitioners, P R. Maheshwari and Jagannath Jaju through these three petitions filed u/s 482 Cr. P.C. 1973, which have been registered as S. B. Criminal Applications Nos. 1403 of 1975, 23 of 1976 and 25 of 1976, have prayed for quashing the proceedings in Criminal Cases Nos. 18/379 of 1974, 18/381 of 1974 and 18/380 of 1974, u/s 7/16 read with Section 17 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act"), pending against them in the court of learned Chief Judicial Magistrate, Alwar. As common, questions of fact and law arise in all these three petitions, they are being disposed of together by this common order.

2. The petitioners are Directors of Premier Vegetable Products Ltd., Jaipur. The Food Inspector, Alwar, inspected the shop of Mahendra Kumar, Madan Lal and Prakash Chandra on 9-10-1973 at Alwar. After disclosing his identity and serving notices in the prescribed Form No. IV, he purchased some Chetak Brand Vegetable Oil. The sample of the vegetable oil in each case was divided into three equal parts. Each part was then taken into a clean dry bottle. One sample bottle was given to the vendor, the other was sent for analysis to the Public Analyst, Alwar. The third was kept by the inspecting authority. The Public Analyst found the sample adulterated. The Food Inspector after obtaining requisite sanction, made complaints in the court of Chief Judicial Magistrate, Alwar, in all the three cases against the vendors as well as against Shri J. P. Behani. Managing Director

of the Premier Vegetable Products Ltd. Jaipur. Learned Magistrate issued processes against all the accused. It so happened that in response to a letter, issued by the Municipal Council, Alwar, the Commercial Manager of the Premier Vegetable Products Ltd., Jaipur, sent to the Municipal Council, Alwar, letter No. BBP/786, dated Sept. 27, 1974, wherein it was mentioned that J. P. Behari was not the Managing Director of the concern on the relevant date. It was further stated in the letter that there existed no office of the Managing Director in that concern. That letter was placed on record by the Municipal Council and the learned Magistrate, after considering the relevant documents in the light of Sections 16 17 and 20A, Prevention of Food Adulteration Act, 1956 ordered for initiation of proceedings against the partners of the vendors' Firm as well as against the Directors of the Premier Vegetable Products Ltd., Jaipur. A list of the partners of the vendors' Firm as also that of the Directors of the Premier Vegetable Products Ltd., Jaipur was filed. Learned Magistrate then issued processes against the partners and the Directors.

3. Aggrieved by the impugned orders, regarding issuance of processes, the two petitioners, who are the Directors of the Premier Vegetable Products Ltd., have come up before this Court and request to quash the proceedings, pending against them in the aforesaid three cases.

4. It has been urged on behalf of the petitioners that before the power to prosecute a partner or a Director or a manufacturer or dealer could be exercised with the help of Sections 17 and 20A of the Act, it was enjoined on the prosecution to substantiate that the Directors in question were in charge of and responsible to the conduct of the business of the Company. Placing reliance on *Jamail Singh v. Municipal Corporation of Delhi* (1977) 1 FAC 186 (Delhi), *Smt. Suman Kanodia v. Union of India* (1977) 1 FAC 161 (Delhi) and *Girdhari Lal Gupta Vs. D.H. Mehta and Another*, , it has been argued that learned Magistrate failed in exercising judicial powers by not keeping in view the well settled legal principles, enunciated by various High Courts, The least that was expected of the Magistrate was to have recorded the statements of vendors and peruse and scrutinise the bills and other documents relied upon. The orders of the issuance of processes in the cases under examination against the petitioners are indubitably without jurisdiction. The processes also could not have been issued against the Manufacturers on the ground that the bills were on the record or that the vendors had stated in the applications that they had purchased the goods on warranty.

5. I find myself unable to agree with the contention of learned Counsel for the petitioners. No doubt upto now the prosecution has not produced any evidence according to law, nor has examined any witness in these cases. Perusal of the complaints, however, (disclose) that the tins of Chetak Brand vegetable oil, manufactured by Premier Vegetable Products Ltd., Jaipur, had been purchased by accused-vendors. The purchases had been made in pursuance of the orders and permits issued by the District Supply Officer, Alwar. The allegations in the

complaints stand supported by the bills issued in favour of the vendors by the Premier Vegetable Products Ltd., Jaipur and the permits issued by the District Supply Officer. It has not been challenged by the petitioners at any stage of the proceedings that the tins out of which the samples had been taken by the Food Inspector on the relevant dates, belonged to their Concern.

6. In *Pure Ice Cream (1967) Pvt. Ltd. v. Narendrajit Singh Sant Singh* 1975 FAJ 582 (Guj) the accused vendor submitted to the trial court that he had purchased the Ice Cream from the Company under a warranty given by it. Thereupon the learned Magistrate impleaded the Company as accused No. 2 and processes were duly issued against the Company. The learned Counsel appearing on behalf of the Company argued before the Gujarat High Court that according to Section 20A of the Act before any manufacturer, distributor or dealer could be impleaded as the co-accused, the court should be satisfied on the evidence adduced before it that such manufacturer, distributor or dealer was also connected with the offence. It was further urged before the High Court that orders to issue processes in that case were passed merely on the basis of the application given by accused No. 1 and it was difficult to deduce that before the petitioner was impleaded as co-accused, the Court was satisfied on the evidence before it that he was also concerned with the crime. The High Court, repelling this argument, observed that the learned Magistrate had taken into consideration the warranty before deciding to issue processes against the accused No. 2. It was further held by the Court that for the purpose of issuing processes it was difficult to conclude that the bill produced in the case could not be treated as a prima facie evidence. It was open to the petitioner to raise proper contentions at the subsequent stage of the trial to show that the warranty in question had not been proved. The revision filed on behalf of the Manufacturer in the case was accordingly dismissed. I respectfully agree with the *raison d'être* of the Gujarat High Court and hold that at the stage of initiating the proceedings (i) bills issued by the Premier Vegetable Products Ltd., Jaipur, (ii) the authority letter and permits issued by the District Supply Officer, and (iii) letter No. 286, dated July 27, 1974 purported to have been issued under the seal and signature of the Commercial Manager, Premier Vegetable Products Ltd., are the prima facie evidence to connect the petitioners with the alleged crimes.

6A. The facts noted above reveal that there are only three Directors in the Concern, Premier Vegetable Products Ltd., Jaipur and there is no post of Managing Director. In the absence of a Managing Director the liability of allowing sale of adulterated articles or neglecting to check such sale prima facie is attributable to the Directors, Celebrated author of Pennington's Company Law, 3rd Edition, page 522, observes as under:

If there is no Managing Director, all the Directors are liable if they allow the Company's fund to be used in paying a debt which Company does not owe or in paying a purchase price for assets without making sure that the assets will be transferred to it.

In Jowits Dictionary of English law, while defining the word "Director" the learned author at page 616, writes:

Director, a person elected by the shareholders or otherwise appointed to superintend the management of a Company's affair.

The way in which Section 17 of the Act has been worded indicates that the anxiety of the Legislature was that every person who at the time of the commission of the offence, was in charge of, or was responsible to the Company for the conduct of the business of the Company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. The words in Section 17 are comprehensive enough to include the Directors of a company in charge of or responsible for the conduct of its business. If an offence under this Act is committed by the Company, the Director of the Company is also prima facie answerable for the same, unless he proves to the satisfaction of the Court that the offence was committed without his knowledge; or that he exercised "all due diligence to prevent the commission of such an offence. The neglect to check the selling of adulterated Chetak Brand vegetable oil is prima facie attributable to the three Directors. Section 291 of the Indian Companies Act, 1956 imposes certain responsibilities and liabilities on the Directors.

7. When a Company commits an offence, the question of knowledge or mens rea cannot be said to be of much significance. Adulteration of food stuff is so rampant and the evil has become so widespread and persistent that nothing short of a somewhat drastic remedy provided in the Act can change the situation. Only a concerted and determined onslaught on this most anti-social behaviour can bring relief to the nation : vide Statements of Objects and Reasons of the Act. Public Welfare offences are to be essentially standardised. Criminal law used as means of securing the social standard of correct trading and social welfare behaviour necessarily has to enforce the principle of vicarious liability. Emphasis is laid on the importance of not doing what is prohibited and the method of business must be arranged on individual alertness in trade or calling. Rescoopound has made the following observations:

The good sense of courts has introduced a doctrine of acting at one's peril with respect to statutory crimes which expresses the need of society. Such statutes are not meant to punish the vicious will but to put pressure on the thoughtless and inefficient to do their whole duty in the interest of public health or safety or morals.

The three cases Jarnail Singh's case (1977) 1 FAC 186 (Delhi); Smt. Suman Kanodia's case (1977) 1 FAC 161 (Delhi) and Girdhari Lal Gupta Vs. D.H. Mehta and Another, relied upon by the petitioners, are not of much avail to the petitioners. They are clearly distinguishable on facts. In Girdhari Lal Gupta v. D.N. Mehta (supra) the accused was convicted, as he had admitted that he alone had looked after the affairs of the firm. The cases relied upon are those in which the accused had proved that they had not been connected with the business of

the Concerns and had not by consent, connivance or neglect contributed to the commission of the offence. In the case on hand the trial court is only at the stage of initiation of the proceedings against the Directors of the Company who have not yet even stated by affidavit or otherwise that they were not in charge of or responsible to, the conduct of the business of the Company.

8. In *Smt. Suman Kanodia v. Union of India* (supra) charges framed against the accused were quashed, because the initial onus resting on the prosecution could not be discharged. It was contended therein that the petitioner was neither in charge of the business nor was she responsible for the conduct of the business of the Concern. In the same case it was further observed : "it is a question of fact whether a particular partner is in charge of or responsible for the conduct of the business." Thus the decision in that case turned upon its peculiar facts and circumstances. Likewise the case in *Jarnail Singh v. M.C.D.* (supra) is manifestly distinguishable and the grounds need not be repeated or reiterated.

9. In the applications filed before this Court u/s 482, Cr. P.C., 1973 it has not been mentioned that the petitioners were not concerned with the day to day management of the business. Neither it has been alleged that their function was only to settle down the policy of the Company nor has it been stated that both of them or either of them was not in Jaipur on the days on which the transactions of the adulterated article had taken place,

10. Equally devoid of merits is the contention that Directors of a manufacturing concern could be added as party u/s 20A of the Act only when there was positive evidence and allegation on record that the article of food, found to be adulterated was kept in the same condition in which it had been sold by the manufacturer. The bills issued by the manufacturing Company, Premier Vegetable Products Ltd., Jaipur along with the permit, under which the sales were made to the vendor's Concern, are sufficient for the issuance of the processes u/s 20A of the Act. It would be for the vendor to prove when he enters on his defence, that the article of food, out of which the sample had been taken while in his possession, was properly stored and that he sold it in the same condition in which he had purchased it. Thereafter, in order to rebut the evidence it would be for the petitioner to establish that the tins from which the samples were taken were tampered with in-between the selling of the articles by the manufacturer and taking of samples by the Food Inspector. It is open to the petitioners to defend themselves at the appropriate stage of their trial. I am unable to accept at this stage the submission of learned Counsel for the petitioners that processes were issued against them in contravention of law.

11. The contention that the vendor, distributor or the manufacturer cannot be prosecuted together is equally devoid of substance. It is clear from Section 16 of the Act that a manufacturer as well as a distributor can be penalised provided he contravenes the provisions of the Act. The definition of "sale" as given in Section 2(xiii) of the Act is wide enough to cover every kind of seller. Every seller can be prosecuted of an offence u/s 7, which prohibits manufacture for sale or store or

sell or distribute any adulterated article of food. The mere fact that for the purpose of Section 14 the person who could be the last seller in the sense that he sells to the actual customers is described as the Vendor" could not affect a liability for an offence u/s 7 of the Act of a sale of an article of food which is found to be adulterated. A sale of an article of food by a manufacturer, distributor or dealer is a distinct and separable offence. Section 14 of the Act does not exempt a distributor or a manufacturer, who sells articles of food found to be adulterated. Reference in this connection is made to Bhagwan Das Jagdish Chander Vs. Delhi Administration, .

12. The standard of test in judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter for issuance of processes or for framing of charges. At that stage the Court is not to see whether there is sufficient ground for convicting the accused or whether the trial is to end in his conviction or acquittal. At the initial stage if there is prima facie case which leads the Court to think that there are grounds for presuming that the accused has committed an offence, then the accused has to be tried. It is not open to the Court to assume at the initial stage that no proceedings should be conducted against the accused against whom there is a prima facie case.

13. It is neither necessary nor advisable to mention in detail the facts of the prosecution case against the petitioners or refer to all the materials and the authorities on the point under discussion. An endeavour towards this direction may prejudice either the prosecution case or the defence. Here, it will be apposite to mention that no observation made in this order will guide the trial court nor will it prejudice the case of either party at the trial.

14. For the reasons stated above, I find no force in these petitions and they are hereby dismissed. Keeping in view the fact that the offences were committed as far back as in the year 1974, I direct that the court concerned should dispose of these cases expeditiously i.e. within a period of four months.

15. The applications stand dismissed.