

(1986) 01 RAJ CK 0022
In the Rajasthan High Court

P.R. Neelkantham and Others etc.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-01-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

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

Citation : (1986) CriLJ 1811 : (1986) 1 RCR(Criminal) 449 : (1986) RLW 70 : (1986) 1 WLN 11

Hon'ble Judges : M.C. Jain, J

Bench : Single Bench

Judgement

M.C. Jain, J.—The above-noted three matters arise out of the prosecution against the petitioners u/s 16(1) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act").

2. Briefly stated the facts are that, Shri Shyamlal Bhati, Food Inspector, Gulabpura town presented a complaint on 4-3-76 to the Chief Judicial Magistrate, Bhilwara through the Assistant Public Prosecutor, No. 1, Bhilwara against the vendor Shri Satyanarain and M/s. Brooke Bond India Limited with the allegations that on 11-12-75 at 9.45 a.m., he visited the shop of the accused Satyanarain and purchased a sample of tea. It was put into three files. All the three files were packed and sealed and one of the files was sent to the public analyst. On examination, the Public Analyst found the sample of tea adulterated as it did not conform to the prescribed standard of purity. The accused Satyanarain disclosed that he had purchased the tea from the Agent of the Brooke Bond vide Cash Memo No. 96153-18 in packets. The cash-memo was collected by the Food Inspector from the vendor and thereafter the complaint was presented.

3. On 7-4-76, the Assistant Public Prosecutor sought time for furnishing the correct name and address of the manufacturer. On the next date as well, time was again sought by the Assistant Public Prosecutor. On behalf of the complainant, an application was presented on 29-5-76 for summoning the

Directors and the Salesman of the manufacturer Company M/s. Brooke Bond India Ltd. On 10-8-76, the Court further ordered that before summoning the Directors of the Company, the Assistant Public Prosecutor should point out as to who is the Managing Director of the Company and whether only the Managing Director is to be summoned or all the Directors are to be summoned. On 27-9-76, the case was registered only against the vendor Shri Satyanarain and the Salesman Shri Maganlal, whose name was subsequently corrected as Mangilal. Ultimately, on 11-7-78, the learned Chief Judicial Magistrate, Bhilwara, took cognizance of the offence against the seven Directors of the Company and ordered that bailable warrants in the sum of Rs. 2000/- be issued against them. S. B. Criminal Misc. Application No. 98/78 is presented by seven Directors as well as M/s. Brooke Bond India Limited for quashing the proceedings against them. S.B. Civil Writ Petition No. 662/79 is presented by the three Directors of the Company and other Directors have been impleaded as respondents. S.B. Civil Writ Petition No. 663/79 is presented by the Salesman Shri Mangilal.

4. I have heard Dr. L.M. Singhvi, learned Senior Advocate assisted by Shri N.P. Gupta, learned Counsel for the petitioner and Shri B.C. Bhansali, learned Public Prosecutor for the State.

5. The main question, which has been canvassed before me in these petitions is whether the Directors of the Company M/s. Brooke Bond India Ltd. and the Salesman of that Company have been rightly prosecuted u/s 16(1) of the Act, and whether cognizance has been lawfully taken by the learned Chief Judicial Magistrate? Section 17 of the Act deals with the offences by Companies. Under Sub-section (1) of Section 17 wherein certain persons and the Company, both can be prosecuted. Under Sub-section (1)(a) of Section 17, it is provided that where an offence has been committed by a company, the person if any who has been nominated under Sub-section (2) to be in charge of and responsible to the Company for the conduct of the business of the Company or 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 shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Sub-section (1) of Section 17 contains a deeming provision. Before applying this deeming provision, it has to be alleged that a particular person was nominated or particular persons were in charge of and were responsible to the Company for the conduct of the business of the Company. It is only when there is such an allegation in relation to the nominated person or in relation to every person, in charge of and responsible to the Company for the conduct of the business of the Company that such persons can be prosecuted and punished. In the absence of any such allegation, no prosecution can be launched.

6. Dr. Singhvi, submitted that there is no allegation worth the name in the complaint that any person was in charge of and was responsible to the Company for the conduct of the business of the Company. The necessary foundation for

taking cognizance against the Directors as well as the Salesman was not laid and in the absence of such allegation, no cognizance could have been legitimately taken by the learned Chief Judicial Magistrate, against the Directors and the Salesman of the Company. Before taking cognizance, it is the duty of the Magistrate to satisfy that there is some material to find *ex facie* that the Directors and the Salesman were in charge of and were responsible for the conduct of the business of the Company. It may be mentioned that the Court simply directed on an opportunity being sought by the Assistant Public Prosecutor to present the names and the correct addresses of those, who can answer the charge on behalf of the Company and on that basis, an application was submitted by the Assistant Public Prosecutor on 26-5-76. That application simply stated that the Court has desired the names and addresses to be furnished, so the names and addresses of the persons were submitted to the Court by the Food Inspector. There is no allegation in the application as well as to how the names of all the Directors were mentioned in the application and there is no allegation that the persons whose names are mentioned in the application are in charge of and are responsible for the conduct of the business of the Company. So far as the Directors are concerned, the learned Magistrate proceeded against them on the presumption that the, Directors are Agents of the Company and till any one is nominated specifically, after being authorised to conduct the business of the Company, every Director of the Company would be deemed to be responsible for the conduct of the business of the Company. It is on the basis of this presumption, the learned Magistrate has proceeded to take cognizance against the Directors. The learned Magistrate did not take into consideration that in the present case no such allegations were made against the Directors. I need not enter into further discussion as the matter stands concluded by the decision of the Supreme Court in *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, Their Lordships in this case have examined the matter in an application u/s 482, Cr. P.C. After considering the scope of Section 482, Cr. P.C., their Lordships dealt with the question, which arises in the present case as well. In that case, there was allegation that the accused 3 is the Manager of accused 2 and accused 4 to 7 are the Directors of accused 2 and as such, they were in charge of and responsible for the conduct of business of accused 2 at the, time of sampling. Their Lordships considered the said allegations made in that case and observed that it is true that there is no clear averment of the fact that the Directors were really in charge of the manufacture and responsible for the conduct of business but the words "as such" indicate that the complainant has merely presumed that the Directors of the Company must be guilty because they are holding a particular office. This argument found favour with the High Court which quashed the proceedings against the Directors as also against the Manager, respondent 1. Their Lordships considered the positions of the Directors as under :-

So far as the Directors are concerned, there is not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the

complainant, that there is any act committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable, In these circumstances, therefore, we find ourselves in complete agreement with the argument of the High Court that no case against the Directors (accused 4 to 7) has been made out ex facie on the allegations made in the complaint and the proceedings against them were rightly quashed.

As regards the Manager, their Lordships were satisfied that from the very nature of his duties, it can be safely inferred that he would undoubtedly be vicariously liable for the offence.

7. Reference has also been made by Dr. Singhvi to the decision of the Calcutta High Court in *G. Atherton and Co. (Pvt.) Ltd. and Others Vs. Corporation of Calcutta*, It was observed in that case that u/s 17, a Company has been made primarily liable, but to make other persons vicariously liable, it has to be shown that such persons were in charge of or were responsible to the Company for the conduct of its day to day business in the absence of any mention in the petition of complaint as to how the accused persons were concerned in the carrying on of the day to day business of the Company, process could not have been issued against them.

8. Mr. B. C. Bhansali, learned Public Prosecutor for the State has not been able to refute the contentions and has not pointed out that there is any such allegation made against the Directors or the Salesman of the Company. In the absence of such allegations, in my opinion, the learned Magistrate was not right in taking cognizance against the Directors and the Salesman.

9. The matter can further be examined from another point of view as has been put forward by Dr. Singhvi. u/s 20 of the Act, the prosecution can be instituted for an offence under the Act with the written consent of a person authorised by the Central Government or the State Government. In the absence of such written consent, the prosecution is barred u/s 20 except for an offence u/s 14A. Admittedly, no written consent was obtained for the prosecution of the Directors and the salesman. I had an occasion to consider this question in a case of *Lachhi Ram Laxmi Naraih v. Inspector Insecticides Sri Ganganagar 1979 Cri LR 73 : 1980 Cri LJ NOC 93 (Raj)*. That was a case under the Insecticides Act, wherein the provision relating to the consent was analogous to Section 20. In that statute, the provision was made u/s 31 and Section 33 of that Act, parallel to Section 17 of the Prevention of Food Adulteration Act. In that case, an argument was advanced that the consent in question should be taken to be a valid consent against all those persons, who may be in charge of or responsible for the conduct of the business of the firm. It was stated that "where a written consent is a condition precedent, in my opinion, the authority competent to give consent is required to apply its mind as to who is the perpetrator of the crime. The application of mind is not only required to be made as to what offence is committed, but also as to who has committed the same and who is to be prosecuted. Without such application of mind the very object of Section 31 would

be defeated. The consent for specified prosecution, as observed by their Lordships of the Supreme Court, would mean only as to what offence has been committed and by whom. "I am also in respectful agreement with the observations made in *Bijailal v. State* 1965 Raj LW 29 : 1965(1) Cri LJ 597 by Chhangani, J., which was relied on in that case. Admittedly, in the present case, it cannot be said that there was any application of mind by the authority giving the consent that the offence was committed by the Directors or by the Salesman of the Company. In the present case, the consent has been given only against the Company M/s. Brooke Bond India Ltd. and that consent cannot be taken as a consent against the Directors of the Company as well as the Salesman of the Company.

10. So far as the applicability of Section 20A is concerned. I may mention that this provision does empower the distributor/dealer to be impleaded as accused in the case and the prosecution can be proceeded against them. For Section 20A to be pressed into service, what is essential is that there should be some evidence before the Court and this impleading can be done only during the trial Of any offence. Such a stage has not reached in the present case. The present case was at its initial stage.

The question, at that stage was as to who is to be summoned for answering the charge and in that connection, the application was presented by the Food Inspector. So, in my opinion, in the present case, Section 20A is not at all attracted.

11. In the light of the aforesaid discussion, it would appear that the Directors and the Salesman could not be proceeded against the Company.

12. I need not consider as to whether the prosecution of the Company is justified or not. The question may arise during the trial, the learned Magistrate shall examine and decide the same on merits. Therefore, the petitions by the Directors and the Salesman deserve to be allowed.

13. Accordingly, both the petitions and the application u/s 482, Cr. P.C., to the extent of the Directors and the Salesman are allowed. The proceedings against the Directors and the Salesman are quashed and set aside. It would, however, be open to proceed against the Brooke Bond India Limited, as observed above.