
(2010) 08 UK CK 0166

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 141 of 2006

Rajeev Arora

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 12-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319(3) , 482
Prevention of Food Adulteration Act, 1954 — Section 13(2), 14, 14A, 16, 20
Prevention of Food Adulteration Rules, 1955 — Rule 12A

Citation : (2010) CriLJ 4782 : (2010) 2 UD 221

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Judgement

Dharam Veer, J.—By means of this petition, moved u/s 482 of the Code of Criminal Procedure, 1973 (for short, Code of Criminal Procedure), the Petitioner/applicant has sought quashing of the summoning order dated 6-12-2005 passed by Chief Judicial Magistrate, Tehri in Criminal Case No. 4358 of 2005, Food Inspector v. Karam Singh, relating to offence punishable u/s 7/16 of Prevention of Food Adulteration Act, 1954 (for short, the Act).

2. Heard learned Counsel for the parties and perused the counter-affidavit and other material available on file.

3. Brief facts of the case are that Rejendra Singh Rawat, Food Inspector, Chamba, Tehri Garhwal filed a complaint in the Court of Chief Judicial Magistrate, New Tehri, Tehri Garhwal against the present applicant and two other co-accused stating therein that on 2-8-2005 at about 1 p.m. he inspected the shop of co-accused Karam Singh and found the packets of Golden Kheni, which were kept along with other articles, about which co-accused Karam Singh told that these packets are for selling purpose. Thereafter, on the spot, the complainant prepared three copies of Form VI and served notice in Form VI to the co-accused Karam Singh. It was told by the co-accused Karam Singh that the said Kheni has been purchased from Hariom Agency, Rishikesh and he requested to produce the

bill thereof later on. The complainant purchased three printed packets of Golden Kheni in Rs. 117/- for analysis and also obtained the receipt of Rs. 117/- from co-accused Karam Singh. Thereafter, all the three packets were sealed by the complainant, as per rules and the Code slip bearing No. TWL/ 2005/2007 was affixed in sealed packet and signatures of the co-accused Karam Singh were also obtained in the Code slip. On 3-8-2005, one sealed packet along with the memo form was sent to Public Analyst, Lucknow for chemical analysis by way of registered post. Rest of the two packets along with two copies of memo Form VII were deposited in the Office of CMO, Tehri Garhwal. It is further stated that as per the report of Public Analyst, Lucknow dated 12-9-2005, the sample was found adulterated. After obtaining sanction from C.M.O., Tehri and observing other formalities, the Food Inspector filed a complaint against the applicant-manufacturer and two other co-accused persons u/s 7/16 of the Act, which was registered as Criminal Case No. 4358 of 2005. After hearing learned Counsel for the complainant and perusing the material available, learned Chief Judicial Magistrate, New Tehri, vide order dated 6-12-2005 had taken the cognizance of the offence u/s 7/16 of the Act and summoned the applicant and other co-accused. Against the said order dated 6-12-2005, the present applicant has preferred this application u/s 482 of Code of Criminal Procedure. before, this Court.

4. Before any further discussion, it would be pertinent to mention Sections 14, 14A, 20 20A of the Act and Rule 12-A of Prevention of Food Adulteration Rules, 1955 (for short, the Rules), which are reproduced as under :

14. Manufacturers, distributors and dealers to give warranty.-- No manufacturer or distributor of, or dealer in any article of food shall sell such article to any vendor unless he also gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor:

[Provided that a bill, cash, memorandum or invoice in respect of the sale of any article of food given by a manufacturer or distributor of, or dealer in, such article to the vendor thereof shall be deemed to be a warranty given by such manufacturer, distributor or dealer under this section.]

Explanation.- In this section, in Sub-section (2) of Section 19 and in Section 20A, the expression "distributor" shall include a commission agent.

14A. Vendor to disclose the name etc. of the person from whom the article of food was purchased -- Every vendor of an article of food shall, if so required, disclose to the food inspector the name, address and other particulars of the person from whom he purchased the article of food.

20. Cognizance and trial of offences.-. (1) No prosecution for an offence under this, Act, not being an offence u/s 14 or Section 14A shall be instituted except by or with the written consent of the Central Government or the State Government or a person authorized in this behalf, by general or special order, by the Central Government or the State Government:

Provided that a prosecution for an offence under this Act may be instituted by a purchaser or recognized consumer association referred to in Section 12, if he or it produces in Court a copy of the report of the public analyst along with the complaint.

(2) No Court inferior to that of a Metropolitan, Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under Sub-section (1-AA) of Section 16 shall be cognizable and non-bailable.

20A. 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 of the Code of Criminal Procedure, 1973 (2 of 1974) or in Section 20 proceed against him as though a prosecution had been instituted against him u/s 20.

5. Rule 12-A of the Prevention of Food Adulteration Rules, 1955 is also essential to mention here, which is reproduced as under :

12-A. Warranty.-- Every manufacturer, distributor or dealer selling an article of food to a vendor shall give either separately or in the bill, cash memo or label, a warranty in Form VI-A."

The warranty shall be in the prescribed Form VI-A, which is reproduced as under:

Form VI-A

(See Rule 12-A)

Form of Warranty

Invoice No..... Place..... From..... Date..... To.....

Date of sale Nature and quality of article/Branch Name, if any Batch No. or Code No. Quantity J. Price

1 2 3 4 5

I/We hereby certify that food/foods mentioned in this invoice is/are warranted to be of the nature and quality which it/these purports/purport to be.

Signature of manufacturer,

Distributor or Dealer

Name and Address of

Manufacturer/Packer

(in case of packed article).

Licence No.

(wherever applicable)

6. Learned Counsel for the applicant submitted that the present applicant is manufacturer of Golden Kheni and the summoning order dated 6-12-2005 is premature at this stage against the applicant. He further submitted that the Magistrate is empowered to summon the manufacture at any stage of trial, u/s 20A of the Act, only if any evidence is adduced before him indicating that the applicant-manufacturer is concerned with the crime. I find force in the argument put forth by learned Counsel for the applicant. As per Section 14 of the Act, no manufacturer or distributor of, or dealer in any article of food shall sell such article to any vendor unless he also gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor. Section 14 of the Act further provides that the bill, cash memorandum or invoice given by the manufacturer shall be deemed to be a warranty given by such manufacturer. Rule 12-A of the Rules also says that every manufacturer, distributor or dealer selling an article of food to a vendor shall give either separately or in the bill, cash memo or label, a warranty in Form VI-A. In the instant case, the co-accused Karam Singh has not produced any bill, cash memorandum, invoice or warranty so as to show that the said Golden Kheni was purchased from the applicant. Learned Additional Government also could not show any evidence indicating the involvement of the applicant in the alleged crime. Thus, I am of the view that at this stage when there is no evidence against the applicant, the applicant could not be summoned u/s 20 of the Act.

7. In support of his arguments, learned Counsel for the applicant has referred the decision in case of " Chet Ram Parumal Oil Mill v. State of U.P.", reported in XXXVIII (1999) ACC 938 and has relied on paras 5, 6 and 7, which read as under :

5. I have heard Mr. B.D. Mandhyan learned Counsel for the applicant and learned A.G.A. In spite of notices being served to the opposite party, no counter-affidavit has been filed. The revision is pending since 7-12-1984 and about 14 1/2 years have elapsed. Learned Counsel for the applicant contented that the name of the applicant was not disclosed by the vendor as required by Section 14 of the Act. No copy of the notice was sent by the Food Inspector in accordance with the provisions of Section 13(2) of the Act. The learned Counsel for the applicant has also referred to Section 14 of the Act, which requires the manufacturer not to sell any article of food to any vendor unless he also gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor. Section 14 of the Act, further provides that the bill, cash memorandum or invoice given by the manufacturer shall be deemed to be a warranty given by such manufacturer. Learned Counsel for the applicant contented that the applicant had neither given any warranty nor any bill, cash memorandum or invoice to the

vendor nor the vendor had purchased the oil-tins from it, therefore, the applicant could not be tried. It was next contended that by the learned Counsel that in the absence of any evidence available on the record or collected by the Food Inspector, the applicant could not be summoned. The learned Counsel also referred to Section 20A of the Act which empowers the Magistrate to summon the manufacturer at any stage of the trial if any evidence is adduced before him, that the manufacturer is also concerned with the offence."

6. Learned Additional Government Advocate could not point out any evidence indicating involvement of the applicant in the crime.

7. Considering the submissions made by learned Counsel for the parties, I find that the Magistrate committed illegality in summoning the applicant. Therefore, this revision is allowed and the impugned order dated 29-9-1984 is hereby set aside so far as it relates to the revisionist-manufacturer. The Magistrate shall proceed against the other accused persons. However, it is made clear that at any stage of the trial if any evidence is brought on record indicating that the revisionist is concerned with the crime, it shall be open to the Court concerned to summon the revisionist and proceed against him as if the prosecution had been instituted against him u/s 20 of the Act. The interim order dated 7-12-1984 is hereby vacated.

8. In view of the foregoing discussion, I find that the Chief Judicial Magistrate, New Tehri has committed an error in summoning the applicant. Therefore, the summoning order dated 6-12-2005 passed by Chief Judicial Magistrate, New Tehri as well as the proceedings in Criminal Case No. 4358/2005, Food Inspector v. Karam Singh u/s 7/16 of the Act is quashed only against the applicant. So far as the proceedings against the other accused is concerned, the proceedings shall proceed against the other accused. However, it is made clear that at any stage of the trial if any evidence is brought on record indicating that the applicant-manufacturer is concerned with the crime it shall be open to the Court concerned to summon the applicant and proceed against him.

9. With the aforesaid observations, the application preferred u/s 482 of Code of Criminal Procedure. is finally disposed of. Interim order dated 2-3-2006 stands vacated.