

(2013) 06 BOM CK 0069

In the Bombay High Court

Case No : Criminal Writ Petition No. 120 of 2001

Rajivkumar Satyapal Gupta, Satyanarayan Surajmal Gupta
and Peushkumar Shrikisan Gupta

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 14-06-2013

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 17, 17(1)(A)(I)

Citation : (2013) ALLMR(Cri) 2926

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : Deepak Dhingra assisted with Mr. B.R. Warmaa, for the Appellant;
K.S. Patil, APP, for the Respondent

Judgement

A.P. Bhangale, J.—Learned counsel for the petitioners brought to my notice that Petitioner No. 2, Satyanarayan Surajmal Gupta died during the pendency of this Petition on or about 16.5.2009. Photostat copy of the certificate of death issued by the Government of National Capital Territory of Delhi India is brought to my notice. Copy thereof shall be kept on record. In the result, therefore, Petition stood abated as against petitioner No. 2. The petitioner nos. 1 and 3 (Petitioner No. 2 is no more living) had questioned impugned order dated 8.2.2001 passed by the learned Judicial Magistrate First Class, Amalner below Exh. 14 in RCC No. 57/1998 pending on his file. The petitioners/original accused nos. 4 to 6 filed an application for their discharge from the case u/s 17(1)(A)(I) of the Prevention of Food Adulteration Act on the ground that in respect of the alleged offence resulting from sale and distribution of Tulsi Mix Gutkha, in the complaint there was no averment as required under the aforesaid section that the accused named as Director of the Company were in fact in-charge of and responsible to the company for the conduct of business of the company. Secondly, it is the case of the petitioners that on 28.2.1994 the accused No. 8 Shri Ashok Kumar Nagar was already appointed as "nominee" as in-charge and responsible to the said company and he was nominated and authorized to exercise all such powers and

take all such steps as may be necessary or expedite to prevent the commission of offence under the Act.

2. Learned counsel for the petitioners submitted that the fact that nominee was appointed is not in dispute and was in fact admitted by the prosecution. Secondly, there was no averment in the entire complaint to the specific effect that, the petitioner nos. 1 and 3 were in-charge of and were responsible to the company indicted as accused nos. 7 and 9. Learned counsel for the petitioners invited my attention to the ruling in *Nalin Thakur and Vs. State of Maharashtra* reported in 2004 (1) FAC 68 to argue that specific averment in the complaint is necessary to the effect that accused concerned is responsible for the conduct of business of the company indicted as accused. My attention is also invited to section 17 offences by companies in the Prevention of Food Adulteration Act to emphasize the submission that, when any specific accused is nominated and admitted as nominee of the company prosecuted for alleged offence punishable under the act, in that case, it is the primary responsibility of the nominee for penal liability as alleged and not for director. Even assuming that Director can be prosecuted, it is necessary that there has to be a specific averment in the complaint as stated above to the clear effect that Director concerned were in charge of and were responsible to the company for its business and liable for the offence allegedly committed.

3. Learned APP Shri K.S. Patil found it difficult to counter these submissions in the absence of such averment in the complaint and did not dispute that nominee was already declared by the company who shall be primarily responsible for the offence punishable under the Act, as alleged.

4. Considering these submissions and perusing the impugned order, it is really surprising that learned Trial Magistrate while dealing with the application for discharge overlooked or ignored absence of the specific averment in the complaint as against the accused nos. 4 to 6 who had applied for their discharge. Although, there was no specific averment to the effect that the accused nos. 4 to 6 were in charge of and were responsible for the conduct of the business of the company, learned Magistrate ventured to express unfounded view as follows:

In this case, I am of the view that to prove that fact that whether accused nos. 4 to 6 are in charge of and responsible for the conduct of the business of the firm or not, cannot be decided without recording evidence in this case. Complainant has specifically mentioned in this complaint that accused nos. 4 to 6 are distributors of the "Tulsi Gutkha" and they are holding requisite license.

Making such groundless observations ignoring that there was no specific averment to impute the penal liability to accused nos. 4 to 6, learned Judicial Magistrate First Class, Amalner proceeded to reject the application. Impugned order, therefore, is contrary to law and against the settled judicial precedents and is unsustainable, therefore, it has to be quashed and set aside. Accordingly, impugned order is quashed and set aside. Needless to state that learned Trial

Magistrate is at liberty to proceed further against rest of the accused in accordance with law and on merits. Petition is disposed of. Rule is made absolute, accordingly.