
(2003) 01 P&H CK 0228
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 2350 of 2002

Ramesh Chand

APPELLANT

Vs

Chandigarh Administration

RESPONDENT

Date of Decision : 10-01-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 482
Prevention of Food Adulteration Act, 1954 — Section 14, 16(1), 19, 19(2), 20A
Prevention of Food Adulteration Rules, 1955 — Rule 32

Citation : (2003) CriLJ 2171

Hon'ble Judges : R.C. Kathuria, J

Bench : Single Bench

Advocate : Karan Nehra, for the Appellant;

Final Decision : Dismissed

Judgement

R.C. Kathuria, J.—Ramesh Chand, petitioner seeks quashing of the order dated 2.8.2002 passed by the Chief Judicial Magistrate, Chandigarh, whereby prayer of the petitioner-accused for summoning manufacturer/dealer of Perfect Soya Sauce as accused in terms of Section 20-A of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act) was dismissed.

2. In order to decide the present controversy, a few facts need to be noticed. On 6.11.2000 at about 11.30 a.m. Food Inspector Bharat Kanojia, inspected the shop of the accused known as M/s Chand Confectioners located in Booth No. 38, Sector 11 D, Chandigarh. At the time of inspection, accused was found in possession of 10 sealed bottles of Perfect Soya Sauce of 700 gms. each for public sale. In the presence of Bimlesh Kumar, the Food Inspector purchased three bottles of Prefect Soya Sauce of 700 gms. each against the payment of Rs. 36/- for analysis. Seizure proceedings were completed at the spot in accordance with the prescribed procedure and the documents required were also prepared by him. One sample was sent to the Public Analyst, Punjab, chandigarh who in his report stated that the product had not been labelled in accordance with the

provisions of Rule 32 of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the Rules). Thereafter, prosecution against the petitioner-accused was launched on the basis of complaint lodged by the Food Inspector in the Court of Chief Judicial Magistrate, Chandigarh. During the pendency of the proceedings, the petitioner-accused filed application with a prayer to summon S.T.N. Foods Rampur Industries, Lawrence Road, New Delhi being the manufacturer of Perfect Soya Sauce and also the dealer Mr. G.S. Sodhi, Sodhi Traders, C&F Agent and Distributor based at Sector 41-D, Chandigarh. Anil Bajaj is stated to be the proprietor of the manufacturing firm. Notice of the application was given to the complainant who stated that he has no objection to the summoning of the manufacturer/distributor/dealer in terms of the requirement of Section 20-A of the Act. Thereafter, the petitioner-accused was allowed to examine Gurmeet Singh as AW-1 and himself as AW-2. Gurmeet Singh admitted that he is the supplier/dealer of S.T.N. Foods, Rampur Industries, New Delhi had manufactured the Perfect Soya Sauce. Ramesh Chand in his deposition maintained. that perfect Soya Sauce was supplied to him by M/s Sodhi Traders which is a partnership concern and on the basis of evidence so recorded. It was prayed on behalf of the petitioner-accused that the above named manufacturer and dealer be summoned.

3. Taking notice of the evidence adduced on record, the Chief Judicial Magistrate came to the conclusion that the petitioner had failed to establish that he had purchased food articles in question from the dealer/distributor or manufacturer by producing a written warranty in the prescribed form as laid down in Section 19(2) of the Act and as the provisions of Section 20-A of the Act cannot be read in isolation, no case for acceptance of his application is made out and consequently, it was dismissed. It is thereafter the present petition has been filed.

4. Primary submissions made by the counsel for the petitioner-accused while challenging the legality of the order dated 2.8.2002 passed by the Chief Judicial Magistrate, Chandigarh is that the trial Court failed to take into account the distinction between Section 19 and 20-A of the Act because Section 19 of the Act was enacted so as to give protection to the accused facing prosecution to take defence available to him whereas provisions of Section 20-A of the Act came to be introduced to allow the Court to implead the manufacturer/dealer independently as per requirements laid down in Section 19 of the Act.

5. While deciding the controversy raised in this regard notice has to be taken of the warranty rights of the parties inter se. The right given u/s 19(2) of the Act is conferred to the vendor while the benefit granted under Sub-section (3) of Section 20-A of the Act is available only to the person who had issued a warranty as referred to in Section 14 of the Act. It is the requirement of Section 14 of the Act that when a manufacturer/distributor or dealer sells articles to a vendor he should give to vendor a warranty regarding the nature and quantity of the articles. Before the vendor can seek the protection he is required not only to prove that the article of food purchased is covered by written warranty in the

prescribed form but also that articles of food while in possession were properly stored and that he sold it in the same state as he purchased it. The pre-conditions for seizure power u/s 20-A of the Act are as follows:-

(i) the trial for offence under the Act should be pending against the person other than the manufacturer, distributor or dealer of any article of food:

(ii) there must be an evidence before the Court that such manufacturer/distributor or dealer concerned with the offence with which the present concerned was charged: and

(iii) the Court should be satisfied by evidence that such manufacturer, distributor or dealer is concerned with the offence.

6. The above requirements leave no manner of doubt that before the Magistrate can invoke the powers vested in him u/s 20-A of the Act there should be acceptable evidence on record before him that the person proceeded against is also concerned with the offence. The satisfaction to be recorded by the Magistrate is not an empty formality but it should be prima facie satisfaction for the purpose of proceedings against the person involved in the commission of crime.

7. Turning to the facts of the present case, the statement of Gurmeet Singh . AW-1, who is the supplier/dealer of S.T.N. Food Ramour Industries, Lawrence Road, New Delhi have to be noticed. He claimed that he is the sole dealer of S.T.N. Food Rampur Industries, Chandigarh and had supplied "PSS" to the accused as on consignee basis. He admitted that he had obtained receipts of the bills given to him by the company. In his cross-examination, he candidly admitted that he did not issue any receipt of payment to the accused against the said bottles. He also stated that he did not issue any bill, any warrant or any notice to accused-Ramesh Chand. Rather, he tried to explain the lapse on his part by stating that as per settlement the bill was to be given after the product was sold. His statement clearly shows that he had supplied the food articles without any bill to the petitioner-accused. Ramesh Chand, petitioner-accused in his statement stated that Perfect Soya Sauce was supplied to him by M/s G.S. Sodhi Traders on consignee basis as it was given to him. He admitted that he was not in possession of any bill, invoice and warranty of the aforesaid articles of food for which sample was drawn from him. Thus, the statements of the above witnesses examined clearly indicate that the above evidence leaves no manner of doubt that requirement of Sections 19 or 20-A of the Act as such had not been established by the petitioner-accused. Taking notice of these circumstances, the Chief Judicial Magistrate was fully justified in rejecting the application of the petitioner.

8. For the aforesaid reasons, there is no merit in the petition and the same is consequently dismissed.