
(1984) 08 P&H CK 0054

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 473-M of 1984

Ran Singh Malik

APPELLANT

Vs

State of Haryana and anr.

RESPONDENT

Date of Decision : 08-08-1984

Acts Referred:

Citation : (1984) 08 P&H CK 0054

Hon'ble Judges : M.M.Punchhi, J

Advocate : G.R. Majithia, Arun Sanghi, S.K. Mittal, Advocates for appearing Parties

Judgement

M.M. Punchhi. J. (Oral)

1. This petition under section 482 or the Code of Criminal Procedure directed against the order of the Sessions Judge, Hissar is reflective more of a fright of the petitioner rather than any substantial grievance.
2. The facts giving rise thereto are that the petitioner is a Deputy Superintendent in the Government Livestock Farm, Hissar and, of course, has some official duties to perform as assigned to him. Another employee, who is the namesake of the petitioner, (hereafter referred to as "other accused"), was detected by the Food Inspector to be selling adulterated milk. The claim of the "other accused" was that he was selling milk as the employee of the Government Livestock Farm as the milk was delivered to him for sale by the Government Livestock Farm. The Food Inspector arraigned the petitioner and also the "other accused" in his complaint alleging that the petitioner as the Deputy Superintendent was looking after the Government Livestock Farm. Both the accused persons were summoned by the Chief Judicial Magistrate, Hissar before whom the complaint was filed. After recording some precharge evidence, he ordered charges to be framed against both the accused under section 16(1)(a)(i) read with section 7 of the Prevention of Food Adulteration Act. Since that accused was not aggrieved against the said order, for he alone was found to be selling the adulterated milk, it was the petitioner alone who, feeling aggrieved, preferred a revision petition

before the Sessions Judge, Hissar.

3. Before the learned Sessions Judge, Hissar, the petitioner contended that he was merely an employee of the Government Livestock Farm like other accused". Besides "other accused", if, another one was to be held responsible vicariously then his act had squarely to fall within section 17 of the Prevention of Food Adulteration Act, 1954. That section deals with offences by companies by a drmming provision; and the word "company" has been explained to include, comprehensively other bodies as well, like firms or other associations of individuals Reliance was placed by him on *Gursharanjit Singh v. The State of Punjab*, 1982 Chandigarh Law Reporter 13, a decision rendered by D.S. Tewatia J. in which it was held as follows :

"The question that falls for consideration is as to whether a corporation or a company could be pronounced guilty of an offence without being expressly arrayed as an accused and prosecuted as such. Section 17(1)(b) makes expressly liable the company in addition to persons specified in clauses (a)(i) and (ii) of subsection (1) of section 17 of the Act." In a case where intention is to punish the company, then the company shall have to be actually prosecuted and arrayed as an accused, but where such is not the intention and where liability of the company or the corporation arises vicariously, then the company can be pronounced guilty even when it is not arrayed as an accused. In such a case, the persons made deemingly liable for the offence committed by the company could be prosecuted without prosecuting the company itself. However. as already observed, in such a case, the company cannot be punished."

The learned Sessions Judge held the aforesaid authority applicable to the case he had in hand and then concluded his judgment as follows :

".....the revision petition qua Deputy Superintendent Government Livestock Farm is allowed and the charge framed against him is quashed with the direction that the trial Magistrate shall apply his mind again by keeping in view the observations in the two authorities referred above and would thereafter proceed with the disposal of the matter in accordance with law. The petitioner would appear in the trial Court on 20th of this month."

4. The learned counsel for the petitioner is aggrieved by the direction given by the learned Judge for his appearance in the trial Court. According to him, the learned trial Magistrate would have to determine in the first instance whether the act of the other accused also attract the applicability of section 17; and for the purpose would have to determine whether the Government Livestock Farm was a company. It is then alone that the question would arise whether any person has been nominated under section 17(1)(a)(i) and subsection (2) to be incharge or responsible to the company for the conduct of the business of the company. And, where no person has been nominated, then who at the time when the offence was committed was incharge of and was responsible to the company for the conduct of the business of the company, as envisaged under section 17(1)(a)(ii).

For that purpose it is contended that the notice has to go to the Government Livestock Farm in the first instance and in no case could the petitioner have been summoned being chosen out as one of the many employees. Learned counsel for the State as against this legal proposition has nothing to say. The adulterated milk as it apparently appears to be, was being sold by an employee of the Government Livestock Farm from a container which was not sealed or packed as also not within the immediate control or view of any other officer of the Government Livestock Farm. In that situation, the task of the learned trial Magistrate, as to whether section 17 is applicable or not, is by no means easy, as before getting an additional, person in the dock, he will have to employ his judicial skill whether someone is additionally or vicariously liable. But, as has been observed above. the fright of the petitioner was justified in face of the direction of the learned Session Judge asking him to participate in the proceedings as if summoned as an accused. It goes without saying that the petitioner is as yet not an accused as is the outcome of the order of the learned Sessions Judge. He thus need be put out of fright if not for all times atleast for the present.

5. Thus, for what has been said above, the order of the learned Sessions Judge is modified to the extent that the petitioner need not put in appearance before the learned Magistrate unless the learned Magistrate in employment of section 17 of the Act, for justifiable reasons, chooses to summon him. JUDGMENTed accordingly.