

(1981) 06 MAD CK 0030

In the Madras High Court

Case No : Criminal M.P. No. 1605 of 1980/Crl. M.P. No. 5134 of 1980

Saravana Oils

APPELLANT

Vs

Bhaskaran
M/s. Ajey and Sons Vs Food Inspector,
Tindivattam Municipality

RESPONDENT

Date of Decision : 16-06-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1982) LW(Cri) 31

Hon'ble Judges : M.A. Sathar Sayeed, J

Bench : Single Bench

Advocate : K.R. Thiagarajan for Mr. S. Shakul Hameed, for the Appellant; M. Karpagavinayagam, Govt. Advocate (No. III) for M/s. K. Venkatatwami, K. Govindarajan and A. Sivaji, for the Respondent

Judgement

M.A. Sathar Sayeed, J.—Crl. M.P. No. 1605 of 1980 is filed to set aside the order of the Sub Divisional Judicial Magistrate, Villupuram in impleading the petitioner herein as a party in C.C. No. 503 of 1979.

2. The short facts of the case are that on 29th March, 1979 one Bhaskaran, who is the accused and the first respondent in the above petition, had 15 kgs. of Vanaspathy for sale at his shop in Tindivanam. The Food Inspector, Tindivanam Municipality, who is the complainant in C.C. No. 503 of 1979, purchased from the said Bhaskaran 5 kgs. of Vanaspathy for a sum of Rs. 15. The said Vanaspathy was sent for analysis and the Analyst certified that the Vanaspathy did not conform to the standards prescribed under the Prevention of Food Adulteration Rules. Hence, the Food Inspector filed C.C. No. 503 of 1979 against the said Bhaskaran, who is the first respondent, in this petition before the Sub Divisional Judicial Magistrate, Villupuram. When summons were sent to the said Bhaskaran, he contended by filing a petition before Court that he has purchased Vanaspathy which was sold to the Food Inspector from one Ram Raj, who is the sole Proprietor of M/s. Saravana Oils having their office at No. 7, Acharappan Lane,

Madras-1. The original bill No 22363 dated 26th March, 1979 issued by Saravana Oils was produced before the Magistrate by the accused/Bhaskaran and he also filed a petition under S. 20A of Central Act 37 of 1954 to implead Saravana Oils. On this petition, a notice was issued to the complainant by the court. In view of the contention of Bhaskaran, the A.P.P.II filed a memo, in C.C. No. 503 of 1979 to implead the dealer Saravana Oils and to proceed with the case. The Magistrate on 21th October, 1979 passed an order as follows: "Permitted. Issue Summons." Thereafter, one Mr. Ram Raj, the sole proprietor of Saravana Oils, after receipt of summons appeared before the Sub Divisional Judicial Magistrate, Villupuram. He filed M.P. No. 416 of 1980 under S. 20A of Central Act 37 of 1954 commending that his firm, Saravana Oils purchased several kinds of oils and Vanaspathy, from Oswal Oil and Vanaspathy Industries, Madras-21, Ajey & Sons, Madras-1 and from Majfa provisions, Madras-1. He contended that out of the stock purchased on 23rd March, 1979 from Ajey & Sons he sold 5 tins under bill No. 22363, dt. 26th March, 1979 to Bhaskaran (the owner of Nandagopal Chetty & Sons). It was also contended by Mr. Ram Raj who is the sole proprietor of Saravana Oils, that he buys Vanaspathy in tins and sells in tins, that he does not sell Vanaspathy in loose and that no tin is opened or part of its contents sold to outsiders. According to Ram Raj, M/s. Ajey and Sons having their office at No. 149, Anna Pillai Street, Madras-1 from whom he has purchased the Vanaspathy, be proceeded against and that he may be exonerated. The learned Magistrate on 10th March, 1980 in Crl.M.P. No. 416 of 1980 passed an order "implead the manufacturer as accused". It is against this order of impleading the manufacturer M/s. Ajey & Sons, Crl. M.P. No. 5134 of 1980 is filed before this Court to set aside the said order. Thus, the above two petitions have been filed before this Court under S. 482, Crl. P.C. against the orders of the Court in impleading Saravana Oils from whom Bhaskaran has purchased oil, and Ajey & Sons who are the manufacturers. The contention of the two petitioners, Saravana Oils and Ajey & Sons is that the trial Court erred in law in impleading them as accused in C.C. No. 503 of 1979.

3. The question for consideration is, whether the impugned order passed by the trial Court in impleading Saravana Oils and Ajey & Sons as accused in C.C. No. 503 of 1979 is justified on the averments of the petition filed by Ram Raj, proprietor of Saravana Oils.

4. Before going to the detailed facts of the case, let us consider S. 20A of Central Act 37 of 1954 which deals with the power of Court to implead the manufacturer, etc. The said Section reads as follows :

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 was also concerned with that offence, then, the court may, notwithstanding anything contained in Sub-s. (3) of S. 319 of the Crl. P.C., 1973 or in S. 20 proceed against him as though a prosecution had been instituted against him under S. 20.

The contention of the counsel appearing for the petitioner in Crl. M. P. No. 1605 of 1980 is that the Magistrate, while passing an order to implead the petitioner Ram Raj who is the Proprietor of Saravana Oils, has failed to issue notice to Saravana Oils. The other contention is that when no concrete facts were placed before the lower Court to implead the petitioner in Crl. M. P. No. 1605 of 1980 as a party, the lower Court has erred in impleading the petitioner as an accused. As far as these two contentions raised by the counsel are concerned I am of the view that they cannot be sustained. I find from the records that notice was issued to Saravana Oils by the Court and it cannot be contended that no notice was issued by the Court. That apart, S. 20A extracted above clearly points out that the Court, if satisfied on the evidence adduced before it that the manufacturer, distributor or dealer is concerned with the offence, then, it can, notwithstanding anything contained in Sub-s. (3) of S. 319 of the Crl. P.C. 1973, or in S. 20 proceed against those persons as though a prosecution has been instituted against them under S. 20. The conditions for issuing notice and impleading the parties as accused either to the dealer or to the manufacturer or the distributor are that the trial of the case for an offence under the Act should be pending and that there should be evidence on record to connect the manufacturer or the dealer or the distributor with the alleged offence. This view of mine is fortified by the decision of the Delhi High Court reported in Roshan Lal Singhania and Others Vs. Municipal Corporation of Delhi and Another, which is as follows:-

- (1) The trial for an offence under the Act should be pending against a person other than the manufacturer, distributor or dealer of any article of food;
- (2) there must be evidence before the Court that such manufacturer, distributor or dealer was concerned with the offence with which the person concerned was charged; and
- (3) the Court should be satisfied by evidence that such manufacturer, distributor or dealer is concerned with the offence.

Once the court, on the petitions filed by the respective parties, is satisfied that they are to be made as parties to the prosecution case, then the law raises the presumption for initiation of the prosecution against the said persons. The main object of enacting of S. 20A is, to deal with the real culprits who were mainly responsible for the adulteration of food articles. The contention of the counsel appearing for the petitioners that the Magistrate has no jurisdiction to go into the offence alleged, during the commencement of the trial against the person against whom an allegation has been leveled and that the manufacturer or distributor like petitioners herein can be impleaded only after framing a charge against the original accused cannot be sustained. In this case, according to the counsel appearing for the petitioners no oral evidence has been let in and no charge is framed against the original accused Bhaskaran and hence the order of impleading the petitioners as parties is erroneous and contrary to law. In order to substantiate this argument, reliance is placed by the respective counsel

appearing for the petitioners in these two petitions on a decision reported in *Food Inspector v. Seetharama Rice & Oil Mills*. 1974 M.L.J. (Cri.) 658 They rely on the view expressed by the Kerala High Court that the trial in a warrant case starts only after the framing of a charge and hence the cases under Central Act 37 of 1954, as amended, being warrant cases, the Court can implead the manufacturer, etc., only after framing the charge. I do not agree with the view expressed by the Kerala High Court as the same is not binding on me.

5. I may state that as far as the CrI. P.C. is concerned, "trial" is not defined, but under S. 2(g) of the Code "enquiry" has been defined. That apart, the word "trial" used in S. 20A has to be interpreted in accordance with the known intentions of the legislature, i.e., on broad lines and avoiding legal technicalities. But, in the CrI. P.C, the words "tried" and "have been" used are in the sense of reference to a stage after enquiry. The trial in a warrant case begins only after the charge is framed against the accused and the proceedings prior to the framing of the charge are only in the nature of an enquiry and not a trial. The question that the trial in warrant cases begins only after the charge is framed against the accused and that the proceedings prior to the framing of the charge are only in the nature of an enquiry and not a trial, was raised in *Vijay Kumar Vs. State*, Ansari, C.J. dealing with reference to S. 20A and on the expression in the section "on the evidence adduced before it", has pointed out at page 1196 that the words "during the trial" appearing in S. 20A of the Act do not necessarily refer to a stage of the proceedings after the framing of the charge and that they include an earlier stage also." The question that the trial in warrant cases commences only after the framing of the charge was also discussed by Ansari, C.J., at page 1194. The learned Judge observed:

A contrary view was taken by the Kerala High Court in *Food Inspector Vs. Seetharam Rice and Oil Mills and Others*, In that case an order under S. 20-A was passed against the manufacturer after the charge had been framed against the vendor and also after he had entered upon his defence. It was contended that an order under S. 20-A should be passed at the earliest point of time. While repelling this contention, the Kerala High Court observed that the trial in a warrant case commences only after the framing of a charge against the accused and that therefore, there was no force in the contention that the order under S. 20-A should be passed even before the framing of a charge against the original accused. The question however, did not directly arise for consideration before the Kerala High Court whether the word "trial" appearing in S. 20-A referred only to a stage after the charge was framed or whether it included an earlier stage of the proceedings also.

I am in agreement with the views expressed by Ansari, C.J.

6. In this case I am of the view that the words "during the trial" in the section do not put a bar that the trial should go on only after the charge is framed. Therefore, there is no force in the contention of the petitioners' counsel that the order of impleading the parties as accused under S. 20A should not have been

passed even before the framing of a charge against the original accused. This view of mine is fortified by a Bench decision reported in *M.C. Arora and Others v. Union of India and Others* I.L.R.(1978) Del 474. The question in that case was considered with respect to the scope of S. 20A and the meaning of the term "trial" as used in that section. The learned Judge observed at page 479 as follows:-

The word "trial" has no fixed or universal meaning. Its meaning has to be ascertained having regard to the context in which it is used. It is a word which must be considered with regard to the scheme and purpose of the provisions under consideration. (See *The State of Bihar Vs. Ram Naresh Pandey*, That the term "trial" has a different connotation in the Criminal Procedure Code is no reason to restrict its meaning in the Prevention of Food Adulteration Act. One statute is no guide for the interpretation of another. Words take their colour from the context. I am, therefore, inclined to interpret the term "trial" used in S. 20A in accordance with the known intentions of the legislature i.e., on broad lines and avoiding legal technicalities and Sub-levies. To limit it to a stage of proceeding after the charge is framed is to frustrate the purpose of S. 10A.

7. It is pointed out by the Supreme Court in *Bhagwan Das Jagdish Chander Vs. Delhi Administration*, :

...Considering the character of the offence and the nature of the activities of manufacturers and distributors, who generally deal in bulk, and of the ordinary vendor, who sells particular items to the consumer, the common link, which could provide the unity of purpose or design so as to weave their separate acts or omissions into one transaction, has to be their common intention that a particular article, found adulterated, should reach the consumer as food. Ignorance of the fact of adulteration is immaterial. In order to justify a joint trial of accused their common object or intention to sell the article as food is enough. In such a case strict liability created by a statute, for safeguarding public health, the mental connection between the acts and omissions of the manufacturer, the distributor, and the last vendor would be provided simply by the common design or intention that an article of food, found to be adulterated, should reach and be used as food by the consumer. Each person dealing with such an article has to prove that he has shown due care and caution by taking prescribed steps in order to escape criminal liability. Otherwise, if one may so put it, a mens rea shared by them is presumed from a common carelessness exhibited by them. Again, a sale at an anterior stage by a manufacturer or distributor to a vendor, and the sale by the vendor to the actual consumer could be viewed as linked with each other as cause and effect.

We think that the activities of the manufacturers the distributor and the retail seller are sufficiently connected, in such a case of sale of an article of food found to be adulterated, by a unity of purpose and design, and, therefore, of a transaction* so as to make their joint trial possible in a suitable case. But, at the same time, we think that, where a joinder of several accused persons concerned

with dealing in different ways with the same adulterated article of food at different stages is likely to jeopardise a fair trial, a separate trial ought to be ordered. It is not proper to acquit or discharge an accused person on this ground alone, The ordering of a separate trial in a case where prejudice to an accused from a joint trial is apprehended, is enough indeed, we can go even further and say that, ordinarily, they ought to be separately tried. But, a joint trial of such accused persons is not ab initial illegal. It can take place in suitable cases.

8. Considering the aforesaid decisions cited above, we have to find out whether there is any evidence adduced in the case before the Magistrate by the accused Bhaskaran to implead the petitioners herein as accused:

9. S. 19(2) of Central Act 37 of 1954 protects the vendor against a prosecution for selling an adulterated article of food if he satisfies the conditions mentioned in Sub-s. (2). If a person is charged for adulteration of food articles, protection should be available to him against prosecution if he satisfies the Food Inspector that he had purchased the article of food from a duly licensed manufacturer, etc. or from a manufacturer, etc., under a warranty and that he had kept the article of food in the same state as when he had purchased it. It is the contention of Bhaskaran, the accused who was charged for selling adulterated article, that he has purchased the same under Bill No. 22363 dated 26th March, 1979 from Saravana Oils. The original bill was filed by the accused Bhaskaran before the Magistrate. The Magistrate having been satisfied with the bill, passed an order "Issue notice to the complainant". It is only after the receipt of the notice, A.P. P.II, filed a memo in C.C. No.S03 of 1979 before the Sub Divisional Judicial Magistrate, Villupuram, to implead Saravana Oils represented by Ram Raj. The Magistrate having satisfied with the averments of Bhaskaran, issued summons on 22nd October, 1979 to Saravana Oils represented by Ram Raj. Ram Raj in turn has filed M.P. No. 416 of 1980 contending that, he has sold Vanaspathy to the accused Bhaskaran, which was purchased from several persons and this particular Vanaspathy, which is said to be adulterated and which was seized by the Food Inspector, was purchased from M/S. Ajey & Sons, and hence, Ajey & Sons be also impleaded as a party to the proceedings. The Magistrate having gone through the petition and having satisfied himself on the petition, passed an order to implead Ajey & Sons. The order of impleading Ajey & Sons and Saravana Oils to the proceedings in C.C. No. 503 of 1979 cannot be said to be an irregular or perverse order. The real purpose of enacting S. 20A is to avoid the multiplicity of proceedings and conflicting findings. In order to avoid multiplicity of proceedings and findings, there should be a trial for an offence committed under the Act and the distributor or manufacturer or dealer must be "concerned with that offence". It is for the parties or the accused to contend and to convince the Court that they have not sold the articles to the original accused Bhaskaran as contended by him. In an offence like the present one, all the parties like the manufacturer, distributor and the retail seller should be booked, more particularly with respect to sale of an article of food which is found to be adulterated by a unity of purpose and design of the manufacturer and the wholesaler or dealer,

when such persons are booked, the said persons dealing with such article have to prove that they have not sold the articles to the vendor as alleged by him. Before the manufacturer, distributor and the vendor should be tried as in this case it should be alleged and sufficient material has to be placed before the Magistrate that the article sold by the vendor was from the purchaser which in this case appears to have been proved by filing a bill of purchase from Saravana Oils and the said Saravana Oils has in turn also filed a petition contending that the said article sold to the vendor was purchased by them from Ajey & Sons. In short, there are prima facie allegations placed before the Court by the petitioner that the Vanaspathy seized by the Food Inspector was sold by them. Thus, it is found from the petitions and the facts of the case that there are allegations to the effect that the vendor has purchased Vanaspathy from Saravana Oils who in turn purchased the same from Ajey & Sons. It is for them to prove before Court that there is no common intention or unity of purpose or common object to sell the article by them which is alleged to be an adulterated one.

10. The main contentions of the petitioners in these two petitions are that in a warrant case before a charge could be framed, parties cannot be added under S. 20A of Central Act 37 of 1954 as accused to the proceedings. In the instant case, it is clear from the averments of Bhaskaran, the accused from whom the Food Inspector has purchased Vanaspathy, that the Vanaspathy was an adulterated one. According to Bhaskaran, he has purchased Vanaspathy from Saravana Oils which in turn states that they had purchased the same from Ajey & Sons.

11. We are finding day-in and day-out, people are afflicted either of Diarrhoea or of vomiting due to adulteration of stuffs taken by them or purchased from the open market. Unless persons behind the veil who are taking active part in adulterating food stuffs, are booked and punished and unless the law is strictly enforced by punishing the person who adulterates the foodstuffs, the malady of adulteration cannot be prevented. The contention that the petitioners cannot be made as accused in C.C. No. 503 of 1979 unless there is a charge framed against the person who has sold the adulterated stuff, should not be given much weight. In economic offences, Courts should be rather severe and vigilant in finding out as to who is the real culprit who is vending adulterated articles.

12. On the facts of the case I find that the vendor has placed prima facie materials before the trial Court, as stated already, that he has purchased Vanaspathy from Saravana Oils and Saravana Oils has placed materials before the Court that the said oil sold to Bhaskaran was purchased by them from Ajey & Sons. Under the circumstances the order of the Magistrate in impleading the petitioners herein in C.C. No. 503 of 1979, on the prima facie allegations with materials, like bills, etc., placed before the Court for the purchase of oils, cannot be said to be unsustainable nor do I find any illegality in the order to warrant interference.

13. For the reasons stated above, I am of the view that these petitions deserve to be dismissed and they are accordingly dismissed.