
(2002) 01 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 14584-M of 1990

Shri Krishan Das Suresh Kumar

APPELLANT

Vs

State of Haryana and anr.

RESPONDENT

Date of Decision : 25-01-2002

Acts Referred:

Citation : (2002) 2 AICLR 324 : (2002) 1 CLR 308 : (2002) 2 RCR(Criminal) 19

Hon'ble Judges : V.M.Jain, J

Advocate : None Mr. Ashok Aggarwal, Senior Advocate with Mr. Vikram Aggarwal, Advocate., Advocates for appearing Parties

Judgement

V.M. Jain, J.

1. This is a petition under Section 482 Cr.P.C. filed by the petitioner, seeking quashment of the order dated 6.9.1990 passed by the Addl. Sessions Judge (vide which the order dated 13.1.1990 passed by the Addl. C.J.M. was set aside), whereby the petitioner was ordered to be summoned as accused, in a case under the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act), filed by the State through Government Food Inspector, against Niranjana Lal, accused. By way of present petition, the petitioner is also seeking quashment of the subsequent order dated 5.10.1990, passed by the Addl. C.J.M., ordering summoning of the present petitioner as accused, in pursuance of the aforesaid order dated 6.9.1990, passed by the Addl. Sessions Judge.

2. Facts, in brief, are that the Food Inspector had taken the sample of dal from the premises of accused Niranjana Lal. Since the said dal was found adulterated, on analysis by the Public Analyst, the complaint was filed against accused Niranjana Lal. During the pendency of the said complaint, accused Niranjana Lal moved an application before the trial Court, alleging therein that he had purchased the said dal from M/s Shri Krishan Das Suresh Kumar, Nai Mandi, Narnaul, vide bill No. 1149 dated 21.1.1985 and that Suresh Kumar was proprietor of the said firm. It was further alleged that the (Niranjana Lal) had not changed the said dal after its purchase and the sample was taken by the Food

Inspector from the said dal, which was purchased by him from M/s Shri Krishan Das Suresh Kumar. It was further alleged that accused Niranjana Lal had also produced bill No. 1149 dated 21.1.1985 before the Food Inspector, at the time of taking the sample and the Food Inspector had also put his initials on the said bill. It was prayed in the said application that accused Niranjana Lal may be discharged and the firm M/s Shri Krishan Das Suresh Kumar be summoned as accused in the said case. The said application of accused Niranjana Lal was contested by the Food Inspector, as also by the firm M/s Shri Krishan Das Suresh Kumar (to whom the notice was also issued). They contested the said application, alleging therein that the sample was not taken from the sealed container and it was not possible to prove that the dal, which was allegedly sold by wholesale dealer to the accused, was the same dal, from which the sample was taken by the Food Inspector. It was alleged that admittedly the sample was not taken from a sealed container and it was not possible to prove that the dal, while in possession of the accused, was properly stored and that he had sold it in the same condition in which he had purchased it and that the wholesale dealer thus could not be summoned as accused in this case. After hearing both sides, learned Judicial Magistrate, vide order dated 13.1.1990, dismissed the aforesaid application of accused Niranjana Lal. Aggrieved against the said order of the learned magistrate, accused Niranjana Lal filed revision petition before, the Sessions Court. The learned Addl. Sessions Judge, without issuing notice to the present petitioner, but after hearing the counsel for the accused Niranjana Lal and the State through Food Inspector, vide order dated 6.9.1990, accepted the revision petition, set aside the order dated 13.1.1990 passed by the Judicial Magistrate and directed the trial court to summon the firm M/s Shri Krishan Das Suresh Kumar through its proprietor as accused for facing trial. In compliance of the aforesaid order, the learned Judicial Magistrate, ordered summoning of the present petitioner M/s Shri Krishan Das Suresh Kumar as accused, vide order dated 5.10.1990. Aggrieved against the aforesaid order of the learned Addl. Sessions Judge and the subsequent order of the Addl. Chief Judicial Magistrate, the present petition under Section 482 Cr.PC has been filed by the petitioner M/s Shri Krishan Das Suresh Kumar, seeking quashment of the aforesaid orders.

3. I have heard the learned counsel for the respondent No. 2 (Niranjana Lal) and have gone through the record carefully.

4. In the present petition inter alia it was alleged on behalf of the petitioner that no case for summoning present petitioner as accused was made out, on the facts and circumstances of the present case. It was alleged that if accused Niranjana Lal had purchased some dal from present petitioner M/s Shri Krishan Das Suresh Kumar, as per bill No. 1149 dated 21.1.1985, even then there is nothing on record to show that the sample which was taken by the Food Inspector from the shop of accused Niranjana Lal was taken from the same dal which was purchased by accused Niranjana Lal from the present petitioner. It was alleged that the dal which was allegedly purchased by accused Niranjana Lal from M/s Shri Krishan Das Suresh Kumar, was in loose condition and similarly dal from which Food

Inspector had taken sample was also in loose condition. It was further alleged that no case, whatsoever, was made out for ordering the summoning of the present petitioner as accused.

5. There is considerable force in this allegation made in the petition, on behalf of the petitioner. Sections 14A and 19 of the Act read as under :

"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.

19. Defences which may or may not be allowed in prosecution under this Act. (1) It shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale.

[(2) A vendor shall not be deemed to have been committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves :

(a) that he purchased the article of food

(i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer;

(ii) in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.]

(3) xxxxx xxxxx xxxxx xxxx xxxxxx

6. Rule 12A of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the Rules) reads as under :

"[12A. 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 VIA.]"

7. From a perusal of the above, it would be clear that under Section 14A of the Act, 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. Under Section 19(2) of the Act, it is provided that a vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves that he purchased the article of food from any manufacturer, distributor or dealer, with a written warranty in the prescribed form and that the article of food while in his possession was properly stored and that he sold it in the same state as he

purchased it. Under Rule 12A of the Rules, it is provided 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 VIA.

8. In the present case, admittedly, the sample of dal was taken from the dal which was lying with accused Niranjana Lal, in loose condition. It is not the case of accused Niranjana Lal that the sample was taken from any sealed container. Similarly, it is not the case of the accused Niranjana Lal that he purchased the dal from M/s Shri Krishan Dass Suresh Kumar in any sealed container. The question as to whether the article of food (dal) while in possession of accused Niranjana Lal, was properly stored and that he sold it in the same state as he purchased it, in my opinion, has to be proved by accused Niranjana Lal, after producing the evidence in this regard. Under Section 19(2) of the Act, accused Niranjana Lal is entitled to take this defence at the time of his prosecution in the present case. This, he would be able to do at the time of trial. However, on the basis of the allegations made by him in this regard, the present petitioner could not be summoned as accused, especially when the dal, allegedly purchased by Niranjana Lal from the present petitioner, was not in sealed container, nor the Food Inspector had taken the sample of dal from the premises of accused Niranjana Lal from any sealed container. In my opinion the question of prosecuting the present petitioner, as accused, on the facts and circumstances of the present case, would not arise. However, so far as accused Niranjana Lal is concerned, he would be at liberty to take up the defence in this regard, as required under Section 19(2) of the Act at the appropriate stage.

9. In my opinion, the learned Addl. Sessions Judge erred in law in ordering the summoning of the present petitioner as accused, merely on the basis of the cash memo No. 1149 dated 21.1.1985, referred to above.

10. For the reasons recorded above, the present petition is allowed. JUDGMENT dated 6.9.1990 passed by the Addl. Sessions Judge and the subsequent order dated 5.10.1990 passed by the Addl. C.J.M., summoning the present petitioner as accused, are hereby set aside and the application filed by accused Niranjana Lal, for summoning the present petitioner as accused is hereby dismissed. The trial shall now proceed against accused Niranjana Lal, in accordance with law.