
(2010) 04 SHI CK 0019

In the High Court Of Himachal Pradesh

Case No : Criminal M.M.O. No. 212 of 2010

Shri Nalin Bhandari and Another

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 26-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 16(1), 20A
Prevention of Food Adulteration Rules, 1955 — Rule 12, 12B, 32, 42ZZZ

Citation : (2010) 04 SHI CK 0019

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Surinder Singh, J.—This is a petition u/s 482 of the Code of Criminal Procedure for quashing the impleadment of Petitioner Nalin Bhandari who is alleged to be the proprietor of M/s. D.S. Foods Ltd. Village and post office Raison, Kullu, District Kullu, H.P. as an accused u/s 20-A of the Prevention of Food Adulteration Act in short, "the Act" vide order dated 14.1.2008 passed by the learned Judicial Magistrate 1st Class (1) Shimla in compliant case No. 2/3 of 09/04 RBT No. 102-3/09/04 titled State v. Sushil Kumar, u/s 16(1)(a)(i) of the Act.

2. In short, facts giving rise to the present petition can be stated thus. On 17.4.2004, Shri L.D. Thakur, Food Inspector, posted in M.C. Shimla intercepted the premises of "Hotel Samrat Regency", The Mall Shimla and found accused Sushil Kumar Respondent No. 2 selling "Rohtang Natural Mineral Water". He had exhibited eight bottles of one liter each for sale to the general public.

(ii) The Food Inspector served notice on Form-VI, as required under Rule 12 of the Act to Shri Sushil Kumar aforesaid expressing his intention to take three bottles of one liter each of "Rohtang Natural Mineral Water" for the purpose of analysis, to which he purchased for Rs. 36/- and issued receipt on the prescribed proforma.

(iii) Each of the bottles were separately labeled and wrapped into a thick paper. A paper slip bearing serial number and code No. S-II/2609 issued and signed by Local Health Authority (LHA) M.C. Shimla was affixed with gum from bottom to top of each bottle. The signatures of the accused were taken in such a manner so as it appeared on the slip and the wrapper both. The bottles were fastened with a strong thread and sealed with sealing wax, as per rules. The sampling process was allegedly witnessed by Jia Lal and Charan Dass on the spot and spot memo was prepared which was signed by accused Sushil Kumar in the presence of Food Inspector.

(iv) One of the samples was sent to the Public Analyst Kandaghat along with memo in Form-VII through Sh. Charan Dass Peon in a sealed packet. A copy of memo Form VII along with impression of seal used to seal the sample was also sent separately to the Public Analyst Kandaghat in a sealed letter through the same peon on 19.4.2004. Remaining two parts of the sample along with two copies of Form No. VII, were deposited with L.H.A. in a sealed packet for record.

(v) On analysis, the public analyst found the sample mis-branded vide his report No. 203 dated 27.5.2004 which was received by the Food Inspector through L.H.A mentioning therein that "batch number, month and year of manufacture or packing" are not legible and declaration "crush the bottle after use" is not mentioned on the label. The Chief Medical Officer, Shimla on having perused the documents gave written consent to lodge the prosecution against Sushil Kumar Respondent No. 2.

3. Finding grounds to proceed against Sushil Kumar under the Act, he was summoned as a an accused and on putting appearance, he moved an application u/s 20-A of the Act with a prayer to implead "M/s. Gainda Mal Hem Raj, The Mall Shimla" as accused No. 2, since the Mineral Water, as stated in the complaint, was purchased by him from Gainda Mal Hem Raj Regency 67/68, the Mall Shimla vide bill Ext. AW1/A on 3.4.2004 which fact, at the relevant time, was brought to the notice of Food Inspector but despite that he failed to take action against the aforesaid distributor/dealer and the applicant had purchased the Mineral Water from the said Dealer and it was sold in the same condition as delivered by the said Dealer.

4. The evidence was led by accused Sushil Kumar, vide order dated 7.11.2005, Respondent No. 3 M/s. Gainda Mal Hem Raj was arrayed as accused No. 2 through its proprietor Shri Avinash Jain.

5. Shri Avinash Jain put in appearance before the learned trial Court and notice of accusation for the offence aforesaid was put to both the accused persons on 14.6.2006. They pleaded not guilty and claimed trial. Thereafter the case was fixed for 10.8.2006 for the evidence of the complainant, on which date another application u/s 20-A of the Act was moved by accused No. 2 to implead "M/s. Dharampal Satyapal" village and post office Raison Kullu, District Kullu as accused No. 3 through its proprietor Shri Nalin Bhandari Petitioner herein

precisely on the ground that "M/s. Gainda Mal Hem Raj" had purchased the aforesaid articles from its manufacturer mentioned above vide invoice dated 13.10.2003 attached with the application.

6. The statement of Shri Avinash Jain was recorded and after considering the matter. The impugned order dated 14.1.2008, was passed whereby Shri Nalin Bhandari aforesaid was impleaded as accused No. 3 and this order is sought to be quashed in the present proceedings.

7. Shri K.D. Sood, learned Counsel for the Petitioner vehemently argued that accused No. 2 M/s. Gainda Mal Hem Raj" could not connect the present Petitioner with the invoice dated 13.10.2003 as article in question was sold to "M/s. Avinash Brothers" Plot No. 7, Sector 3 Parwanoo and not to them. Secondly, when the alleged article was sold to the aforesaid "Avinash Brothers", at that time there was no requirement under the Rules to mention on the bottle "crush the bottle after use" as this amendment in Rule 42 (ZZZ) was inserted by GSR 831 (E) dated 21.10.2003 which came into force on and w.e.f. 1.1.2004 and also that when the Food Inspector had taken the sample of the aforesaid article of three bottles out of eight bottles it bore the distinctive batch number/lot number/code number etc. Therefore, impugned order is unsustainable.

8. Contra Shri M.A. Khan, learned Counsel appearing for Respondent No. 3 argued that it is proved on record that Petitioner is a manufacturer of the article in question, therefore, the impugned order is sustainable. Same arguments are followed by the counsel representing the other Respondents.

9. I have thoughtfully considered the rival contentions of the parties and have examined the record.

10. Primarily the invoice dated 13.10.2003 of D.S. Foods Ltd. Appears to have weighed with the learned trial Court to implead the Petitioner as accused No. 3 in the case. In fact, this invoice is in the name of "M/s. Avinash Brothers" Plot No. 7, Sector 3 Parwanoo and not in the name of "M/s. Gainda Mal Hem Raj". Therefore, in my opinion, the aforesaid invoice is not connected with the contention raised by accused No. 2 for impleading the Petitioner in the instant case.

11. Further, I also find that when the article in question was sold to M/s. Gainda Mal Hem Raj on 13.10.2003, there was no such requirement of rules requiring printing on the bottle "crush the bottle after use" as it was made effective by GSR 831 (E) dated 21.10.2003 w.e.f. 1.1.2004. Thus, it cannot be said that manufacturer had committed any offence under the Act and the rules framed thereunder or infringed Rule 42 (ZZZ), specifically.

12. In so far as breach of Rule 32(e) and (f) is concerned, for that there is also absolutely no evidence at this stage to link the Petitioners herein with the offence charged.

13. Further "M/s. D.S. Foods Ltd." Is the company duly incorporated under the

Companies Act and Mr. Sarfaraz Hussain is said to be nominated by the company by a resolution passed on 16.10.2000 to be the Incharge and responsible for the said company for the conduct of the business of the said Company or their factory located at Raisain District Kullu, as required under Rule 12-B of the Rules framed under the Act. Thus, the Petitioner Shri Nalin Bhandari is neither responsible nor concerned with the business of the company, as such at this stage, his impleadment vide impugned order is unsustainable.

14. For the reasons aforesaid, the petition is allowed, the impugned order is hereby quashed and set aside.

15. Respondents are hereby directed to be present before the learned trial Court on 30.5.2011.

16. The record of the learned trial Court be sent forthwith so as to reach there well before the date aforesaid to the Court concerned.