

(1993) 09 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Criminal Revision Petition No. 107 of 1988

State of Himachal Pradesh

APPELLANT

Vs

Himachal Flour Mills

RESPONDENT

Date of Decision : 27-09-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251, 319(3)
Prevention of Food Adulteration Act, 1954 — Section 12, 14A, 16, 20, 20(1)

Citation : (1995) 1 RCR(Criminal) 585 : (1994) 1 ShimLC 196

Hon'ble Judges : A.L. Vaidya, J

Bench : Single Bench

Advocate : Gopal Sisodia, Law Officer, for the Appellant; Anand Sharma and Vice Counsel, for the Respondent

Final Decision : Allowed

Judgement

A.L. Vaidya, J.—Food Inspector took the sample of Atta (wheat-flour) from one Ashwani Kumar resident of Ghugar, Tehsil Palampur, on 14th February, 1986. The sample so purchased was found adulterated having moisture in excess by the prescribed limit of 14 per cent and it was not free from foreign ingredient identified as rice starch. A complaint against Ashwani Kumar was preferred by the Food Inspector before the trial Magistrate and this Ashwani Kumar when appeared before the Court pleaded that the Atta in question was purchased by him from M/s. Himachal Flour Mills Tanda Road, Kangra, accused-Respondent vide bill No. 2707 dated 23rd February, 1986. The trial Magistrate, after examining evidence in this behalf ordered the impleading of the present Respondent as one of the accused u/s 20A of the Prevention of Food Adulteration Act, 1954 (hereinafter to be called as "the Act") vide his order dated 17th December, 1986. The present Respondent preferred a revision petition assailing that order and Addl. Sessions Judge (1) Kangra Division at Dharamshala, after hearing the parties set-aside the order passed by the trial Magistrate and quashed the proceedings against both the accused, being vitiated under the law.

2. The Addl. Sessions Judge came to the conclusion that the sanction dated 16th April, 1986 u/s 20(1) of the Act issued by the Chief Medical Officer, Kangra, to launch the prosecution against Shri Ashwani Kumar was not valid as it did not contain the particulars of the offence.

3. The aforesaid order of the Sessions Judge has been assailed in the present revision petition on various grounds; the main being that the sanction for prosecution issued by the competent authority was legal and valid and no separate sanction was required for prosecuting the accused added u/s 20A of the Act. It has also been pleaded that the order under reference was illegal and unsustainable in law.

4. I have heard the learned Counsel for the parties and have also gone through the record of the case.

5. It may be very specifically referred at the very out-set that the trial is still at the very initial stage and the evidence has not yet been recorded. Only notice of accusations to the accused u/s 251 Code of Criminal Procedure has been issued.

6. The trial Magistrate, after recording the evidence on application u/s 20 of the Act, and appreciating the case on that account, directed to implead H.P. Flour Mills Tanda Road, Kangra, through its proprietor as co-accused u/s 20A of the Act. The application u/s 20A of the Act, as such, was allowed.

7. The aforesaid order was assailed in a revision before the Sessions Judge on the ground that order u/s 20A of the Act and notice u/s 251 Code of Criminal Procedure issued to accused No. 2 was against law and contrary to the facts of the case inasmuch as no prima facie case was made out against the accused and even otherwise the Food Inspector was not competent to take the sample and the entire procedure has been conducted in violation of the Rules and notification issued by the State of Himachal Pradesh.

8. The grounds of revision nowhere included specifically the alleged illegality of the sanction granted by the competent authority to prosecute accused No. 1.

9. The Sessions Judge framed the following points for determination in the revision petition pending before him:

(i) Whether the impugned order of the trial Court is invalid in view of the fact that the trial against the main accused Ashwani Kumar is vitiated on the ground of invalid sanction?

(ii) Final order.

10. While dealing with the aforesaid point No. 1 the Addl. Sessions Judge came to the conclusion that the sanction dated 16th April, 1986, u/s 20(1) of the Act issued by the Chief Medical Officer, Kangra, for launching prosecution against Ashwani Kumar was not valid as it did not contain the particulars of the offence alleged to have been committed by Ashwani Kumar accused so much so it did not refer if "Atta" the sample of which was taken from the accused was

adulterated.

11. think the aforesaid observations made by the Addl. Sessions Judge are not at all supported by the record.

12. The original sanction order is filed along with the complaint which is dated 16th April, 1986 and has been signed by the Chief Medical Officer, Kangra at Dharamsala. For the sake of convenience it is reproduced hereunder:

OFFICE OF THE CHIEF MEDICAL OFFICER KANGRA AT DHARAMSALA.

No. 70 Dated 16-4-1986

I, Dr. K.L. Chadha, Chief Medical Officer of District Kangra at Dharamsala having been authorised by Government of Himachal Pradesh vide Notification No. HFW-H (B) (a) 3-1/81 dated 17th October, 1983 and after going through the report of Public Analyst and other relevant documents in respect of sample of Atta taken from Shri Ashwani Kumar by Shri Dwarka Dass Food inspector, Distt. Kangra on 14-2-1986 at Palampur and also after applying my mind fully to the case am of the opinion that it is a fit case for launching prosecution u/s 7/16 of the P.F.A. Act, 1954.

Therefore I authorise Shri Dwarka Dass Food Inspector to launch the prosecution u/s 20(1) of the said Act.

Sd/- Chief Medical Officer Kangra at Dharamsala HP

Dated 16-4-1986.

13. The aforesaid sanction order clearly included the reference of the report of the Public Analyst and other relevant documents in respect of the sample of Atta taken from Ashwani Kumar and those relevant documents along with the report of the Public Analyst have also been filed with the complaint. On a bare reading of the report of the Public Analyst filed with the complaint it appears that the sample was adulterated one and the alleged opinion of the Public Analyst had been included in the complaint itself. One of the retained sample was also sent to the Director Central Food Laboratory who opined that the sample did not conform to the standard laid down for Atta under the Act and the rules framed thereunder. it says:

(a) Moisture content exceeds the maximum specified limit of 14%;

(b) It is not free from the presence of foreign ingredient identified as rice starch

14. It is correct that at the time of the sanction only report of the Public Analyst was there on the basis of which the sample of Atta taken from accused No. 1 was found to be adulterated.

15. The aforesaid sanction order again very specifically included the fact that after applying the mind fully to the case the sanctioning authority was of the opinion that it was a fit case for launching the prosecution u/s 7/16 of the Act.

16. Sections 7 and 16 deal with the offences for selling adulterated food stuff also.

17. Thus, it cannot be said on any ground whatsoever that as observed by the Addl Sessions Judge the sanction order issued by the Chief Medical Officer, Kangra at Dharamsala, on the face of it, was not valid on the grounds referred to by the Addl. Sessions Judge in his order under reference.

18. The learned Counsel for the Respondent has tried to support his arguments regarding the sanction being invalid on the basis of certain decisions.

19. *State of Himachal Pradesh v. Des Raj* 1993 (1) Sim LC 158 has been cited to find support for the aforesaid contention that the sanction was invalid. I think such a support is not at all available from this case especially when in the cited case the findings were arrived at after the evidence had been examined and appreciated accordingly. It was only thereafter that the Court made the observation that the sanctioning authority, under the circumstances proved in the case, could not be said to have applied its mind in legal parlance inasmuch as the element of milk having been made homogeneous by proper stirring, was missing.

20. In the present case the point of application of mind can be considered when the document regarding the sanction is proved by the competent authority being examined on oath during the trial. At this stage the contents of the sanction order have to be prima facie accepted in the background of the entire case. In so far as the stirring of the sample was concerned, this was not required in the present case as in the reported case article of food was milk the homogeneous sample of which was very much essential for connecting the accused with the adulteration.

21. *Dharam Pal and Anr. v. The State of Himachal Pradesh* 1991 (1) Sim LC 79 has also been relied upon by the learned Counsel for the Respondent. In this case it was observed that filling up of the blank columns of a cyclostyled form by someone else clearly established that the sanction was not according to law and as such proceedings in the trial Court were quashed. These observations again were made after the entire evidence and more so with respect to the grant of sanction had been examined before the trial Court. At this stage of the present case there is nothing on record to suggest that the sanctioning authority simply signed the sanctioned order after the same had been filled up by some other person. In order to come to that conclusion the facts must be there on record for drawing such an inference. Let the document be proved during the trial and then later on an inference can be drawn of that evidence. This ruling again was not at all applicable to the facts of the present case.

22. In *Shahniwaj v. State of Himachal Pradesh* 1990 (1) Sim LC 105 it was held that there was no order of sanction on the record of the case as was required u/s 20 of the Act and for want of sanction proceedings under the Act were without jurisdiction and liable to be quashed. Again, there is no dispute to the proposition that sanction u/s 20 of the Act is the pre-requisite of filing of a complaint in a

Court of law under the provisions of the Act. The present case is, absolutely, not of that nature, hence the aforesaid ratio is not at all applicable.

23. In *Rattan Lal etc. etc. v. Mehar Chand etc. etc.* (1990) 1 Sim. L.C. 126 it has been held that where the nature of difference in the report of the Public Analyst and the certificate of the Director Central Food Laboratory is such that it completely alter the specie of the offence for which the offender is being prosecuted on the basis of a written consent initially given fresh application of mind on the part of the appropriate authority envisaged by Section 20(1) of the Act, to the facts and circumstances of the case, in the light of the findings of the Director, is necessary before the prosecution against the offender can be continued any further.

24. In the present case, I, do not find complete alteration of the specie of the offence between the two reports inasmuch as both the reports opined that the sample did not conform to the standards laid down for Atta under the Act and the Rules framed thereunder. There is no doubt that while giving the presence of different constituents of the Atta the slight variations in per centage of different ingredients have been noticed. For example, the public Analyst's report observed moisture present as 16.2% while in the Director's report it was 16.1 per cent by weight. Similarly, the total ash has been found to be 1.4% and 1% by the Public Analyst and the Director Central Food Laboratory respectively. In the Director's report the additional factor pointed out has been that on the basis of microscopic examination of the sample it was revealed that there was presence of structures of wheat starch and rice starch.

25. Thus, while going through the two reports it cannot be said on any ground whatsoever that there has been complete change in the two reports pertaining to the specie of the offence. This ruling, as such, will not be of any help to the case.

26. In *Om Parkash v. State of Himachal Pradesh* (1990) 1 Sim. L.C. 263 it has been held that the sanction was in a printed form columns of which have been filled in, though elaborately, by someone else and the sanctioning authority has simply appended its signatures thereon and on that court the sanction was not accepted to be a valid one. Again at the cost of repetition it may be pointed out that in the present case it cannot be said at this stage of the trial and otherwise also while going through the sanction order that someone else has filled in the blank columns and not the sanctioning authority. This matter could be of some help only when the evidence to that effect is brought on record and not at this stage.

27. Thus, the aforesaid cases cited on behalf of the Respondent, in view of the peculiar facts of the present case where the evidence has not yet been recorded, will not at all be helpful in appreciating the point of sanction, as has been stressed on behalf of the accused-Respondent.

28. Needless to say, sanction is to be granted for prosecution u/s 20 of the Act which runs as under:

20. Cognizance and trial of offence - (1) No prosecution for an offence under this Act, not being an offence u/s 14A shall be instituted except by, or with the written consent of the Central Government or the State Government or a person authorised in this behalf by general or special order, by the Central Government or the State Government:

Provided that a prosecution for an offence under this Act may be instituted by a purchaser referred to in Section 12, if he produces in Court a copy of the report of the Public Analyst along with the complaint....

29. Section 20A on the basis of which accused No. 2 was added as a party runs as under:

20A. Power of Court to implead manufacturer, etc.-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 is also concerned with that offence, then, the Court may, notwithstanding anything contained in Sub-section (3) of Section 319 of the Code of Criminal Procedure, 1973 (2 of 1974) or in Section 20 proceed against him as though a prosecution had been instituted against him u/s 20.

30. There is no doubt to the proposition that no prosecution of an offence under the Act can be instituted without there being any legal sanction provided u/s 20 of the Act. The provision of Section 20A of the Act which empowers the Court to implead manufacturer etc. as one of the accused comes into play at any time during the trial of an offence under the Act alleged to have been committed by any person, not being the manufacturer etc. In the present case it was during the trial that accused No. 1 submitted an application u/s 20A of the Act and after recording evidence the trial Magistrate came to the conclusion that accused No. 2 supplied Atta in question to accused No. 1 meaning thereby accused No. 2 was the distributor or dealer of the said Atta. Allowing of this application does not require fresh sanction, as has been discussed earlier also Section 20A itself lays down that where the Court trying the offence is itself satisfied that a manufacturer/dealer is also concerned with the offence for which an accused is being tried, necessary sanction to prosecute him will be deemed to have been given. Any way, in view of the ratio laid down in Rattan Lal's case (supra), the fresh sanction, under the circumstances present in this case, as already referred to above, shall not be required.

31. Apart from the point of sanction which had not been specifically taken in the grounds of revision before the Addl. Sessions Judge, no other point has been stressed in the present revision on behalf of the accused-Respondent.

32. In view of the foregoing reasons, the order under reference passed by the Addl. Sessions Judge is not only illegal but otherwise unsustainable on any ground whatsoever and requires interference by this Court. The present revision petition, as such, is accepted and the order under reference is set aside. The file

of the trial Court be sent to that Court without undue delay to enable the learned Magistrate to proceed further in the matter in accordance with law.

The parties are directed to appear before the trial Court on 10th November, 1993.