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**(2015) 08 BOM CK 0042**

**In the Bombay High Court**

**Case No : Criminal Application (Apl) No. 145 of 2015**

Umesh and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

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**Date of Decision : 26-08-2015**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482  
Prevention of Food Adulteration Act, 1954 — Section 10(7), 13(2), 16, 17, 2(ia)(m)

**Citation : (2016) ALLMR(Cri) 136**

**Hon'ble Judges : V.M. Deshpande, J**

**Bench : Single Bench**

**Advocate : M.P. Khajanchi, for the Appellant; P.V. Bhoyar, APP, Advocates for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

V.M. Deshpande, J—Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2. This is an application under Section 482 of Code of Criminal Procedure for quashing Regular Criminal Complaint Case No. 678 of 2010 filed before the Chief Judicial Magistrate, Chandrapur.

3. The complaint is filed for the charge that the applicants are guilty for the offence punishable under Section 7(i) read with Section 2(ia)(m), Section 7(ii) read with Rule 32 (e)(i) punishable under Section 16 read with Section 17 of the Prevention of Food Adulteration Act, 1954 and the Rules framed thereunder.

4. Shri Praful Bhanudasji Tople, at the relevant time, was Food Inspector. He is duly appointed as such under Section 9 of The Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act for the sake of brevity).

5. On 25.3.2010 he along with panch witness one Divakar Nagobaji Narad visited the firm under the name and style as "M/s. Samadhan Marketing and Merchandised Pvt. Ltd., Chandrapur", situated at Popat Building, Jatpura Gate,

Chandrapur. The said firm is engaged in the business of repackaging, stocking for sale and selling of various food articles including "khaskhas". At the time of visit and inspection of the said premises, Govind Subhashchandra Rathi was present there and was looking after all the business of the said firm.

6. The complainant, Shri Tople, disclosed his identity to Govind Rathi and also disclosed his intention to visit the said shop. Then the complainant demanded and purchased food article "Khaskhas" from the stock of "Khaskhas" stocked and stored in the said M/s. Samadhan Marketing and Merchandised Pvt. Ltd., Chandrapur. At the time of drawing the sample, Food Inspector/ complainant followed necessary and required procedure.

7. On 26.3.2010 Food Inspector sent the sample of "Khaskhas" to the Public Analyst. On 15.6.2010 the complainant received a report of the Public Analyst bearing report No. RPHL/PFA/2010 dated 23.4.2010. As per the said report, the sample of food article "Khaskhas" was declared as genuine. Thereafter the Local (Health) Authority and Supervisor (Food), Food and Drug Administration, Chandrapur, sent another part of the sample to the District Public Health Laboratory, Konkan Bhawan, Washi, Navi Mumbai as per Section 13(2) of the Act for re-analysis on 16.6.2010. Report of such sample was received on 30.6.2010, which was received at Chandrapur on 28.7.2010. The said report opined that the sample of Khaskhas failed to conform the standard of Khaskhas as per provisions of The Prevention of Food Adulteration Rules, 1955 and, therefore, it was declared that the sample is adulterated.

8. On receipt of such report, the complainant submitted the proposal on 02.9.2010 along with all relevant papers to the Local (Health) Authority and Supervisor (Food), Food & Drug Administration, Chandrapur. The Joint Commissioner (Nagpur Division), Food & Drug Administration, Nagpur, granted administrative approval to institute prosecution against the accused.

9. The applicants in the present proceedings are shown as accused no. 2 to 9. Accused no. 1 is Govind Subhashchandra Rathi whereas accused no. 10 is "M/s. Samadhan Marketing and Merchandised Pvt. Ltd., Chandrapur", situated at Popat Building, Jatpura Gate, Chandrapur.

10. Heard Shri M.P. Khajanchi, learned counsel for applicants and Shri Bhoyar, learned APP, for State.

11. The present complaint is sought to be quashed qua present applicants on the ground that the complaint does not disclose that any of the applicants are either in-charge or responsible in respect of day to day business of accused no.10. In that view of the matter, submission is made that continuance of the complaint against the present applicants is nothing but an abuse of process of law.

12. It is further submitted on behalf of the applicants before this Court that accused no. 1 Govind Rathi is vendor and manager of accused no. 10 "M/s. Samadhan Marketing and Merchandised Pvt. Ltd., Chandrapur" and he was

looking after all the business of the said firm as it could be seen from the facts which are asserted in the complaint itself. Therefore, it is submitted by learned counsel for the applicants that the complaint deserves to be quashed insofar as the applicants are concerned.

13. It is further submitted that merely because the present applicants are partners of accused no. 10, that by itself is not sufficient for continuance of criminal case against them. In order to buttress the point, learned counsel for the applicants relied upon a reported case of this Court in *Hansraj Vallabhdas Mariwala and Others Vs. State of Maharashtra*(2015) 1 Crimes 751 ., and also the other reported and unreported judgments of this Court.

14. Learned APP, on the other hand, would submit that since the factum of the applicants being the partners of accused no. 10 "M/s. Samadhan Marketing and Merchandised Pvt. Ltd., Chandrapur" is an admitted position they cannot escape the facing of the trial and, therefore, at this stage, the complaint against them need not be quashed.

15. In view of the rival contentions, the only point that this Court is required to consider and decide is, as to whether merely because the applicants are the partners of accused no. 10 "M/s. Samadhan Marketing and Merchandised Pvt. Ltd., Chandrapur", the complaint can be allowed to be continued against them?

16. Undisputedly, Khaskhas of which the sample was drawn and sent for analysis, re-analysed is an article of food within the meaning of Section 2(v) of the Act.

17. Undisputedly, "M/s. Samadhan Marketing and Merchandised Pvt. Ltd., Chandrapur"- a firm which is joined as accused no. 10, is engaged in the business of repacking, stocking for sale and selling of various food articles including "Khaskhas" to the customers. It would be useful to reproduce the statement of facts made in the complaint itself since it would have its own impact for deciding the question which this Court is required to answer. Paragraphs 2 and 3 of the complaint read as under :

"2. That, the accused no. 1 Shri Govind Subhashchandra Rathi, aged about 29 years, is the vendor and the Manager of the firm under the name and style as of "M/s. Samadhan Marketing and Merchandised Pvt. Ltd., Chandrapur" Popat Building, Jatpura Gate, Chandrapur, doing the business of repacking, stocking for sale and selling of various food articles including "Khaskhas" to the customers.

That, the accused no. 2 Shri Umesh Surajmalji Chandak, aged about 43 years, accused no. 3 Shri Girish Surajmal Chandak, aged about 41 years, accused no.4 Dr. Sushil Shrivallabhji Mundhada, aged about 49 years, accused No. 5 Dr.Sunita Sushil Mundhada, aged about 48 years, accused no. 6 Shri Ajay Harshadray Sanghvi, aged about 40 years, accused No. 7 Smt. Shobhana Ajay Sanghvi, aged about 40 years, accused no. 8 Shri Dayalal Gindharji Popat, aged about 45 years are the partners of accused no. 10 i.e. the firm "M/s. Samadhan Marketing and

Merchandised Pvt. Ltd., Chandrapur" Popat Building, Jatpura Gate, Chandrapur, doing the business of repacking, stocking for sale and selling of various food articles including "Khaskhas" to the customers.

3. That, the complainant, on 25.3.2010 at about 12:30 hrs, along with the independent panch witness (as required under Section 10(7) of the Prevention of Food Adulteration Act, 1954, Shri Divakar Nagobaji Narad, aged about 30 years, resident of Behind Sapana Talkies, Jalnagar, Chandrapur, visited the business premises of accused under the name and style as "M/s. Samadhan Marketing and Merchandised Pvt. Ltd., Chandrapur" Popat Building, Jatpura Gate, Chandrapur." At that time accused 1 was present there and looking after all the business of the said firm. On enquiry accused no. 1 told his name as Shri Govind Subhashchandra Rathi, aged about 29 years, resident of Hospital Ward, Jatpura Gate, Chandrapur. That the complainant disclosed his identity by showing "Identity Card" and also introduced the person with him as panch witness. That the complainant also disclosed his intention of the visit to the accused No. 1. That the complainant inspected the said firm, prepared the inspection report in duplicate and handed over a copy of the same to the accused no. 1 and obtained acknowledgement of accused no. 1 on the original copy. Inspection report bears the signature of accused no.1, the complainant and the panch witness.

While inspection of the said firm complainant came to know that along with other food articles - Khaskhas was stored for sale.

That the complainant demanded and purchase three identically labeled, sealed packets of 200 gms. of Khaskhas from the stock of Khaskhas. That the complainant paid Rs. 360=00 as against the cost of so purchased 600 gms. of "Khaskhas" and obtained the cash-memo of the same from accused no.1. The cash-memo bears the signature of accused no. 1 and the panch witness."

18. Submissions are also filed on behalf of State. The said submissions are duly affirmed by A.E. Chaudhary, Food Safety Officer, Food and Drugs Administration, Chandrapur. In the said submissions also the fact has been reiterated that the present applicants are partners of the firm.

19. Section 17 of the Act deals with the offences by the Companies. Section 17 reads as under :

17. Offences by companies. -

(1) Where an offence under this Act has been committed by a Company-

(a) (i) The person, if any, who has been nominated under subsection (2) to be in charge of, and responsible to the company for the conduct of the business of the company (hereafter in this section referred to as the person responsible), or

(ii) Where no person has been so nominated, every person who at the time the offence was committed was in charge of, and was responsible to, the company

for the conduct of the business of the company; and

(b) The company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

(2) Any company may, by order in writing, authorize any of its directors or managers (such manager being employed mainly in a managerial or supervisory capacity) to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this Act and may give notice to the Local (Health) Authority, in such form and in such manner as may be prescribed, that it has nominated such director or manager as the person responsible, along with the written consent of such director or manager for being so nominated.

Explanation-Where a company has different establishments or branches or different units in any establishment or branch, different persons may be nominated under this subsection in relation to different establishments or branches or units and the person nominated in relation to any establishment, branch or unit shall be deemed to be the person responsible in respect of such establishment, branch or unit.

(3) The person nominated under subsection (2) shall, until-

(i) further notice cancelling such nomination is received from the company by the Local (Health) Authority; or

(ii) he ceases to be a director or, as the case may be, manager of the company: or

(iii) he makes a request in writing to the Local (Health) Authority, under intimation to the company, to cancel the nomination [which request shall be complied with by the Local (Health) Authority], whichever is the earliest, continue to be the person responsible:

Provided that where such person ceases to be a director or, as the case may be, manager of the company, he shall intimate the fact of" such cesser to the Local (Health) Authority:

Provided further that where such person makes a request under Clause (iii), the Local (Health) Authority shall not cancel such nomination with effect from a date earlier than the date on which the request is made.

(4) Notwithstanding anything contained in the foregoing subsections, where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is

attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company [not being a person nominated under subsection (2)], such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation-For the purposes of this section, -

(a) "Company" means any body corporate and includes a firm or other association of individuals;

(b) "Director", in relation to a firm, means a partner in the firm; and

(c) "Manager" in relation to a company engaged in hotel industry, includes the person in charge of the catering department of any hotel managed or run by it.

20. Summoning an accused in criminal case is a serious matter. Hence, criminal law cannot be set in motion as a matter of course.

21. In the present case, there is no nomination as contemplated in Section 17. In that view of the matter, the present case will be governed by sub-clause (ii) of clause (a) of sub-section (1) of Section 17 of the Act. Sub-clause (ii) mandates that where no person is nominated, every person who at the relevant time of offence committed was in-charge will be responsible for the act of the company when it goes to prosecute the company for the offences committed under the Act.

22. In that behalf, the observations of the Hon'ble Apex Court in its authoritative pronouncement in *Pepsico India Holdings Pvt. Ltd. Vs. Food Inspector and Another*, (2011) 161 CompCas 197 : (2011) CriLJ 1012 : (2010) 12 JT 531 : (2010) 12 SCALE 136 : (2011) 1 SCC 176 : (2011) 1 SCC(Cri) 8 : (2010) 10 UJ 5070, which are reproduced hereinbelow will be a governing factor-

"50. As mentioned hereinbefore, the High Court erred in giving its own interpretation to the decision of this Court in *S.M.S. Pharmaceuticals Ltd.*'s *supra*, which was reiterated subsequently in several judgments, some of which have been indicated hereinabove, and relying instead on the decision of *Rangachari*'s case *supra*, the facts of which were entirely different from the facts of this case. It is now well established that in a complaint case against a Company and its Directors, the complainant has to indicate in the complaint itself as to whether the Directors concerned were either in charge of or responsible to the Company for its day-to-day management, or whether they were responsible to the Company for the conduct of its business. A mere bald statement that a person was a Director of the Company against which certain allegations had been made is not sufficient to make such Director liable in the absence of any specific allegations regarding his role in the management of the Company."

23. In view of the law laid down by this Court in *Hansraj Vallabhdas Mariwala*'s case, *supra*, Section 17 of the Act mandates that the person must be responsible and in charge of the company for the conduct of the business of the company.

24. As observed in the preceding paragraphs of this judgment in respect of the facts which are stated in the complaint, it is clear that the complaint is lacking from the material particular that the present applicants were in charge and responsible for the day to day conduct of accused no. 10. On the contrary, the assertion of facts disclosed in the complaint shows that accused no. 1 was looking after all the business of the said firm.

25. Even the learned APP was unable to point out about whisper of allegations about the role of the applicants in the complaint. What is expected in the complaint for making the persons like applicants vicariously liable is that the complaint should clearly state that the accused in his/their capacity as a partner were in charge and responsible for the day-to-day affairs of accused no. 10- firm. Further, in the absence of the averments in the complaint in clear words that the offence is committed with the consent and connivance or it is attributable to any neglect on the part of any person, such person cannot be held to have committed the offence under the Act.

26. After having examined the basic pleadings against the applicants, as found in the complaint and the law laid down by the Hon''ble Apex Court and this Court in Hansraj Vallabhdas Mariwala's case, it leads me to conclude that the complainant has failed to make necessary averments in the complaint vis-a-vis the present applicants that they are responsible for the day-to-day affairs of the company. Further, in absence of any material to show that there exist prima facie case nexus between the applicants and alleged crime, it is really difficult to hold that the applicants can be prosecuted. Merely because they are partners, as alleged in the complaint, the complainant cannot draw a presumption with regard to their involvement without specific averments in respect of their control over day-to-day business of the firm. That leads me to pass following order :

#### ORDER

(I) Criminal application is allowed.

(ii) Proceedings in Regular Criminal Complaint Case No. 678 of 2010 pending on the file of Chief Judicial Magistrate, Chandrapur, are hereby quashed and set aside against the applicants to their extent only and consequently it is dismissed qua them.

Rule is made absolute in above terms.