

(1976) 09 J&K CK 0001
In the Jammu And Kashmir High Court

Vijay Kumar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 09-09-1976

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 252, 253, 254, 255
Prevention of Food Adulteration Act, 1954 — Section 14, 14A, 19, 20, 20A

Citation : (1977) CriLJ 1192

Hon'ble Judges : M.R.A. Ansari, C.J

Bench : Single Bench

Judgement

M.R.A. Ansari, C.J.—A complaint was filed against Inder Mohan u/s 7(1) of the Prevention of Food Adulteration Act (hereinafter referred

to as the Act) for alleged sale of adulterated turmeric powder to the Food Inspector on 29-4-1974. After the said Inder Mohan appeared in court

but before any evidence was recorded, he filed an application stating that he had purchased the turmeric powder from the firm of Messrs

Maheshwar Kumar Subash Chander of which the petitioner Vijay Kumar was a partner and that the turmeric was purchased from the said firm

under a warranty and that the petitioner may be impleaded as an accused in the case. In support of this application Inder Mohan produced the bill

alleged to have been given by the firm for the said purchase and which contained the warranty. He also produced a copy of the partnership deed

of the firm according to which Vijay Kumar was a partner of the firm. On the basis of this material the learned Magistrate issued a notice to the

petitioner to appear before the court and show cause why he should not be impleaded as a co-accused in the case. The petitioner thereupon

appeared before the court and filed his objections to the application filed by

Inder Mohan. In these objections the petitioner denied that he had sold any turmeric powder to Inder Mohan under any warranty and that there was no material on record justifying the impleading of the petitioner as a co-accused in the case. The learned Magistrate overruled these objections and held that the material placed before him made out a prima facie case against the petitioner. Justifying the impleading of the petitioner as a co-accused in the case he, therefore, passed an order purporting to be u/s 20A of the Act impleading the petitioner as a co-accused in the case. The petitioner has filed the present revision petition against the said order of the learned Magistrate.

2. The order of the learned Magistrate has been challenged before me on the following grounds : namely, (1) that the order u/s 20A of the Act could be passed only after a charge had been framed against the main accused in the case, namely, Inder Mohan, (2) that an order u/s 20A can be passed only on the basis of the evidence recorded during the course of the trial and could not be passed upon material which had not been proved as required under law, and (3) that the material on record did not justify the passing of the order u/s 20A of the Act against the petitioner. Section 20A of the Act 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 is also concerned with that offence, then, the court may notwithstanding anything contained in Sub-section (1) of Section 351 of the Cr. P. C. 189S or in Section 20 proceed against him as though prosecution had been instituted against him u/s 20.

It is now well settled that there can be a joint trial of the vendor and the manufacturer, distributor or dealer provided that the offence for which they are tried was committed during the course of the same transaction. (Vide Municipal Corporation of Delhi and Another Vs. Laxmi Narain and Another, and Bhagwan Das Jagdish Chander Vs. Delhi Administration, . It is also now well settled that a manufacturer etc., may be impleaded in a case u/s 20A of the Act only during the trial of the vendor and that he cannot be so impleaded after the trial has ended by the discharge, acquittal

or conviction of the vendor Municipal Corporation of Delhi and Another Vs. Laxmi Narain and Another, .

3. The first question for consideration is what is the meaning of the words 'during the trial' appearing in Section 20A of the Act. The learned

Counsel for the petitioner contends-that in cases which are tried under Chapter XXI of the Criminal P. C. i. e. the trial of warrant cases, the trial

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

inquiry and not a trial. In the present case the order u/s 20A was passed before the charge was framed against the main accused, Inder Mohan and

therefore according to the learned Counsel the order u/s 20A was not passed during the trial. It, is no doubt true that generally speaking the word

'trial' is understood as referring to the stage of the proceedings in a criminal case after the charge has been framed against the accused, But the

question is whether the word 'trial', is used in Section 20A as referring to the stage of proceedings after the framing of the charge. The word 'trial'

has not been defined in the Criminal P. C, and some times, the word 'trial' has been used in the Criminal P. C. itself as referring to a stage of

proceedings prior to the framing of the charge. Reference may be made to Section 494 of the Criminal P. G. which reads as follows :

Any Public Prosecutor may, with the consent of the Court, before the judgment is pronounced, withdraw from the prosecution of any person either

generally or in respect of any one or more of the offences for which he is tried ; and upon such withdrawal.

(a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences ;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or

offences.

4. In The State of Bihar Vs. Ram Naresh Pandey, an application for withdrawal of the prosecution against one of the accused was made when the

matter was pending before the Magistrate in the committal stage and before any evidence was actually taken. The above request was accepted by

the Magistrate and the accused was discharged, and the said order was upheld by the Sessions Judge, The High Court, however, took a contrary

view. The accused appealed to the 'Supreme Court. One of the contentions raised in the Supreme Court was that in a case triable by a court of

session an application by the Public Prosecutor for withdrawal with the consent of the court does not lie in the committal stage and that such

withdrawal cannot be made until the case reaches the stage of trial in the Sessions Court. The Supreme Court negated this contention with the

following observations :

Now there can be no doubt that at least as regards these other cases, when the consent for withdrawal is given by the Court the result is either a

discharge or an acquittal, according to the stage to which that case has reached, having regard to the two alternatives (a) and (b) of Section 494

Cr. P. C, It 'follows that at least in every class of cases other than those tried by jury, the withdrawal can be at any stage of the entire proceedings.

This would include also the stage of preliminary inquiry in a Sessions case triable without a jury. It is not correct to say that the power cannot be

exercised at the preliminary inquiry stage, only as regards cases which must lead to a jury trial. There is no conceivable reason for any such

discrimination having been intended and prescribed by the Code, Section 494, Cr. P. C, cannot be construed as involving any such limitation. The

wording is perfectly wide and general and would apply to all classes of cases which are capable of terminating either in a discharge or in an

acquittal, according to the stage at which the section is invoked, The words 'tried' and 'trial' appear to have no fixed or universal meaning. No

doubt, in quite a number of sections in the Code the words 'tried' and 'trial' have been used in the sense of reference to a stage after inquiry. That

meaning attaches to the words in these sections having regard to the context in which they are used. There is no reason why where these words are

used in other context in the Code, they should necessarily be limited in their connotation and significance. They are words which must be

considered with regard to the scheme and purposes of the provision under consideration.

Then after referring to the amendments in the Cr. P. C. in 1872, 1882 and 1898, the Supreme Court observed as follows :

These various legislative changes from time to time with reference to Section 494, Cr. P. C. and the definition of the word 'inquiry' confirm the

view that Section 494 Cr. P. C. is wide enough to cover every kind of inquiry and trial and that the word 'trial' in the section has not been used in any limited sense.

5. The rule laid down by the Supreme Court in the above case was applied by the Gujarat High Court in *Pure Ice Cream (P) Ltd. v. Narendrajeet*

Singh 1975 FAJ 582. The facts of that case are similar to the facts of the case before me. In that case also the manufacturer was impleaded u/s

20A of the Act on an application filed by the vendor at an early stage of the proceedings, i. e., before a charge was framed against the vendor and

even before any evidence had been recorded in the case. An objection was taken on behalf of the manufacturer that the order u/s 20A could not

be passed before a charge had been framed against the principal accused. Applying the rule laid down by the Supreme Court in *Ram Naresh*

Pandey's case (Supra) the Gujarat High Court held that if the word trial occurring in certain sections of the Cr. P. C. cannot be limited in its

connotation and significance, there cannot be "any justification for construing the word 'trial' in Section 20A of the Act so as to mean only the stage

of a proceeding after the charge was framed.

6. A contrary view was taken by the Kerala High Court in *Fodd Inspector Vs. Seetharam Rice and Oil Mills and Others*, . In that case an order

u/s 20A 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 u/s 20A 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 u/s 20A 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 Section 20A referred only to a stage after the

charge was framed or whether it included an earlier stage of the proceedings also.

7. Section 19(2) of the Act protects a vendor from his liability for selling an adulterated article of food if the conditions laid down in the section are

satisfied. This section reads as follows ;--

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 :

(a) that he purchased the article of food,

(i) in a case where 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.

It is not necessary for the purpose of this case to consider whether Section 19(2) protects the vendor even against a prosecution for selling an

adulterated article of food if he satisfies the conditions mentioned in Sub-section (2). It appears to me that this protection should be available to him

even 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 appears to me to be

unreasonable to hold that the vendor must necessarily undergo the ordeal of a prosecution and a trial before he can seek the protection of Sub-

section (2) when by virtue of Sub-section (2) he has not committed any offence. But as I stated I need not decide this point in this case. In my view

there is nothing in Section 19(2) of the Act which would deprive the vendor of the benefit of this Sub-section until a charge has been framed

against him. In the trial of warrant cases instituted otherwise than on a police report as in the present case, the court shall proceed to hear the

complainant, if any, and take all such evidence as may be produced in support of the prosecution. The examination of the accused, if any, takes

place only after taking all the evidence of the prosecution. In my view there is nothing in Section 19(2) to prevent the vendor from satisfying the

conditions mentioned in Sub-section (2) by the evidence of the prosecution itself. I can envisage a case in which a food Inspector while purchasing

an article of food from the vendor may u/s 14A of the Act require the vendor to disclose the name, address and other particulars of the person

from whom he purchased the article of food and the vendor gives such information and also produces before the Food Inspector the warranty

which he had obtained from the manufacturer by virtue of Section 14 of the Act, In such a case the warranty would form part of the record of the case and it can be very well elicited from the evidence of the Food Inspector himself that the vendor had disclosed to him the name, address and other particulars of the manufacturer and had also produced the warranty. This evidence would prima facie show that the manufacturer was also concerned with the offence for which the vendor was being prosecuted and this evidence would be sufficient for the court to pass an order u/s 20A of the Act impleading the manufacturer. When the manufacturer is thus impleaded u/s 20A, then by virtue of Section 351(2) of the Criminal P. C, the proceedings in the case have to be commenced afresh and the witnesses re-heard. After all the prosecution witnesses are examined and on making such examination, if any, of the accused as the Magistrate thinks necessary he finds that no case against the vendor has been made out which if unrebutted would warrant his conviction, the Magistrate may discharge the vendor and frame a charge only against the manufacturer. In this way a vendor may successfully invoke the protection of Section 19(2) of the Act even before a charge is framed against him. An order u/s 20A can be passed against the manufacturer before the discharge of the accused vendor, but the trial of the manufacturer may be continued even after the discharge of the vendor accused. There is nothing in Section 20A to debar the trial of the manufacturer after the discharge of the vendor accused so long as the order u/s 20A impleading the manufacturer has been passed before the discharge of the vendor accused.

8. I am, therefore, of the view that the words 'during the trial' appearing in Section 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. I cannot therefore accept the contention of the learned Counsel for the petitioner that the order of the learned trial court was illegal for the reason that it was passed before a charge was framed against the principal accused, Inder Mohan,

9. The next question for consideration is what is the meaning of the words "'on the evidence adduced before it'" appearing in Section 20A of the Act. In other words do they mean evidence as defined in the Evidence Act or whether these words are used as including any material or document

placed before the court but which has not been proved as required under the Evidence Act. Two decisions have been cited at the bar in which

directly contrary views have been expressed on this point. One decision is that of the Himachal Pradesh High Court in *Shri Gopal Krishan v.*

State 1975 FAJ 461 The facts of this case are similar to the facts of the present case. In that case a complaint was filed against a vendor for sale of

an adulterated article of food, namely Sarson oil. As soon as the vendor appeared in court, he submitted an application stating that he had

purchased the oil from the dealers Messrs Muni Lal Gopal Krishan who in their turn had purchased it from the manufacturers, Messrs Hargopal

Mal Shivji Mal. The vendor also produced a bill pertaining to the firm of Messrs Muni Lal Gopal Krishan in proof of the fact that he had purchased

the Sarson Oil from that firm. On the basis of this material the Magistrate passed an order u/s 20A of the Act impleading the dealer and the

manufacturer as co-accused in the case. The High Court quashed the order of the Magistrate with the following observations :

A perusal of Section 20A will make it clear that during the course of trial the Magistrate has to be satisfied on the evidence adduced before him

that the dealer or the manufacturer were also concerned with that offence, and only then they could be summoned as accused to stand trial along

with the original accused-dealer from whom the sample was taken, In the instant case, Munshi Ram merely put in an application and no evidence

was adduced in support of that application. The bill supposed to be written at the shop of Muni Lal Gopal Krishan was required to be duly

proved. Some one had to come and state that the sarson oil was in fact purchased from Hargopal Mal Shivaji Mal. u/s 19(3) of the Act, if a plea of

warranty was taken by the accused, the person by whom the warranty was given has a right to appear to hear him and give evidence. Thus the

person giving warranty is required to be produced as a witness-under this provision. Before he could be made an accused, the minimum

requirement of law is that some prima facie evidence should be adduced before the court so that his concern with the commission of the offence is

proved. Only thereafter Section 20A will have its application.

10. A contrary view was taken by the Gujarat High Court in the case of *Pure Ice Cream Pt. Ltd.* 1975 FAJ 582 (Guj) (Supra). In that case also

the complaint had been filed only against the vendor and in response to the summons issued to him, he appeared in court and filed an application stating that he had purchased the article of food from the manufacturer under a warranty and along with the application he produced the warranty given by the manufacturer. On the basis of this material the Magistrate impleaded the manufacturer as a co-accused. A contention was raised that the manufacturer had been impleaded only on the basis of the application given by the vendor and before any evidence had been adduced in the case and that, therefore, it could not be said that the court was satisfied on the evidence adduced before it that he was also concerned with the offence. The contention was negatived and it was held that the warranty produced by the vendor was evidence on which the court could pass an order u/s 20A of the Act.

11. The present case is being tried under the warrant case procedure prescribed in Chapter XXI of the Criminal P. C. This chapter makes a clear distinction between the trial of warrant cases instituted on a police report and cases instituted otherwise than on a police report. The trial in the former is governed by the provisions of Section 251-A and in the latter by the provisions of Sections 252 to 259 of the Criminal P. C. u/s 251-A there are two stages namely (1) before the charge is framed and (2) after the charge is framed. In the first stage(c) the court does not record any evidence but only considers all the documents referred to in Section 173 Criminal P. C. and makes such examination, if any, of the accused as the court thinks necessary. If upon such documents being considered and such examination being made, and the prosecution and the accused being given an opportunity of being heard, the Magistrate is of the opinion that there is a prima facie case against the accused, he frames a charge against the accused. It is only thereafter if the accused refuses to plead or does not plead, or claims to be tried, that the Magistrate proceeds to record the evidence. But u/s 252 when the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant if any and take all such evidence as may be produced in support of the prosecution and then the Magistrate is required to ascertain from the complainant or otherwise the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution and

summon to give evidence before himself such of them as he thinks necessary. u/s 253 it is only upon taking all the evidence referred to in Section

252 and making such examination (if any) of the accused as the Magistrate thinks necessary that the court may frame a charge against the accused

or discharge him. No doubt u/s 253(2) it is open to the court to discharge an accused at any previous stage of the case, if for reasons to be

recorded by such Magistrate, he considers the charge to be groundless, But Section 253(2) does not envisage the discharge of the accused

without taking any evidence at all. Therefore unlike in the trial of a case instituted on a police report where the court may either discharge the

accused or frame a charge against him only upon consideration of all the documents referred to in Section 173 and without recording any evidence,

in the trial of a case instituted otherwise than on a police report the proceedings start with the recording of evidence and the court cannot discharge

the accused or frame a charge against him merely on the basis of documents which have not been duly proved. As the trial of the principal accused

in this case namely Inder Mohan has to be conducted in accordance with the procedure prescribed Under Sections 252 to 259 of the Criminal P.

C. the court has to proceed to record evidence as soon as the vendor accused appears in the court. It is only on the basis of such evidence

adduced before the court that an order u/s 20A can be passed if such evidence discloses that the manufacturer is concerned with the offence. In

the present case the court did not record any evidence before passing the order u/s 20A of the Act. The order of the learned Magistrate is

therefore not an order passed in accordance with law and the order has to be set aside on this ground alone.

12. In view of my finding that the order u/s 20A was not passed on the basis of any evidence adduced in the case, it is not necessary for me to

consider the further contention of the learned Counsel for the petitioner that the material on record did not make out a prima facie case against the

petitioner. The question whether this material is sufficient for the passing of an order against the petitioner u/s 20A of the Act will have to be

considered by the trial court only after the material is duly proved as required under law and when it partakes the character of evidence under the

Evidence Act.

13. In the result the order of the learned Magistrate u/s 20A of the Act is set aside. I would, however, like to make it clear that it would be open to

the Magistrate to pass a fresh order u/s 20A if he considers that the evidence adduced in the case discloses that the petitioner was concerned with

the offence.

14. With these observations the revision petition is allowed.