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**THE HIGH COURT OF DELHI AT NEW DELHI**

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**Crl. MC No.1488/2011 & Crl. MA 5446/2011 (stay)**

**Reserved on: 25.01.2012**

**Pronounced on: 30.01.2012**

**RAGHAV GUPTA & ORS.**

**..... Petitioners**

Through: Ms. Geeta Luthra Senior Advocate  
with Mr. Harish Malik, Advocates

Versus

**FOOD INSPECTOR**

**..... Respondent**

Through: Ms. Fizani Husain, APP for State  
with Mr. N.N. Sharma, Food  
Inspector.

**CORAM:**

**HON'BLE MR. JUSTICE M.L. MEHTA**

**M.L. MEHTA, J.**

1. This petition under Section 482 Cr.PC has been preferred by the petitioners for quashing of complaint case bearing no.26/2010 titled as "Food Inspector vs. Jogi Rawal & Ors." and for setting aside the summoning order dated 2.3.2010 passed by learned ACMM, Delhi.

2. The aforesaid complaint was filed by the Food Inspector (PFA), Govt. of NCT of Delhi alleging therein that on 19.5.2008, a sample of "Snapple", an article of food, was taken from Jogi Rawal for analysis. The sample consisted of 3x473 ml. of "Snapple" taken as three originally sealed glass bottles bearing identical label declaration. The main declaration was noted by FI on Form VI. The sample after analysis was reported by Public Analyst as misbranded. As

many as 15 persons were arrayed as accused in the said complaint. Vide order dated 2.3.2010, the learned ACMM while dropping proceedings against five accused, issued summons against the remaining eight. Four of them have challenged the said order by way of instant petition. The four petitioners herein are arrayed as accused no.10,11, 13 and 14. The allegations against accused no.10 and 11 were as under:

*“M/s A&M Enterprises is a partnership firm having two partners namely – 1. Sh. Manish M. Vyas Loganathan and as such both the above said partners are in-charge of and responsible for day-to-day conduct of its business. Being a partnership firm, M/s A&M Enterprises is also liable.”*

3. The allegations against accused no.13 and 14 were as under:

*“The sampled article of food “Snapple” was imported in India by M/s V&V Beverages Pvt. Ltd. 8107 DLF, Phase-IV Gurgaon-122002 having registered office at B-14, Lajpat Nagar-III, New Delhi 110013 and supplied to M/s A&M Enterprises. M/s V&V Beverages Pvt. Ltd. is a company having two directors namely Shri Raghav Gupta son of Shri Brij Lal Gupta and 2. Sh. Deepak Kumar s/o Shri Vinod Sharma and as such both the above said Directors are in-charge of and responsible for day-to-day conduct of its business. Being a company M/s V&V Beverages Pvt. Ltd. is also liable.”*

4. The only contention that was raised by learned Senior Counsel for the petitioners was that the averments in respect of petitioner Manish M. Vyas and Anand Loganathan (accused no.10 and 11) was that they were partners of M/s A&M Enterprises and that against petitioners Raghav Gupta and Deepak Kumar (accused no.13 and 14) were that they were directors of M/s V&V Beverages Pvt. Ltd. and that it was only “as such” that they were alleged to be incharge and responsible for conduct of day-to-day business of the firms. In

other words, the submission was that the petitioners were not in-charge and responsible for conduct of day-to-day affairs and, therefore, they ought not to be arrayed as accused persons in the complaint. Reliance in this regard was placed on *Municipal Corporation of Delhi v Ram Kishan Rohtagi and others* [(1983) 1 SCC 1].

5. Per contra, learned APP for the State contended that as per Section 17 of the Prevention of Food Adulteration Act (“the Act” for short), in the absence of any person having been nominated, other persons who was/were in-charge and responsible for the conduct of day-to-day affairs of the company/ firm at the time of offence, shall be deemed to be proceeded and punished accordingly. She submitted that the petitioners having chosen not to nominate a single person, leaves no doubt that they were incharge and responsible for conducting day-to-day affairs of the company and thus would be liable to be prosecuted for the offence.

6. I have heard learned senior counsel for the petitioners as also the learned APP for the State and perused the record. Admittedly, no person was nominated by M/s A&M Enterprises as also by M/s V&V Beverages Pvt. Ltd. as nominee who could be taken to be incharge and responsible for conducting their day-to-day affairs of the business and consequently could be covered under Section 17(a)(ii) of the Act. From the wording of this provision, it would be seen that the complaint should make a specific averments as to whether anyone of the partners or all the partners or directors of the firm were incharge and responsible for conducting day-to-day business of the firm and unless and until such averment is specifically made in the complaint, the offence against the partners or the directors cannot be said to be made out prima facie and such an omission was therefore, fatal to the prosecution case. In the case of

***Municipal Corporation of Delhi v Ram Kishan Rohtagi and others*** (supra), the Supreme Court held as under:-

*“14. Reliance has been placed on the words 'as such' in order to argue that because the complaint does not attribute any criminal responsibility to accused Nos. 4 to 7 except that they were incharge of and responsible for the conduct of the business of the company. It is true that there is no clear-avermnt of the fact that the Directors were really incharge of the manufacture and responsible for the conduct of business but the words 'as such' indicate that the complainant has merely presumed that the Directors of the company must be guilty because they are holding a particular office. This argument found favour with the High Court which quashed the proceedings against the Directors as also against the Manager, respondent No. 1.”*

7. This Court in the case of ***Shyam Sunder Bhartia & Ors v State (Through Food Inspector Govt. of NCT of Delhi)*** [2009(1) JCC 518 and ***Subhash Chand Gupta and others v State*** [2009(3) Crimes 310 (Del.) and also ***Padam Chand Jain v State*** [ILR 1978 Delhi 116], following the case of ***Municipal Corporation of Delhi v Ram Kishan Rohtagi and others*** (supra) proceeded to quash the complaints against the partners and directors on identical facts.

8. In the case of ***Municipal Corporation of Delhi v Ram Kishan Rohtagi and others*** (supra) while absolving the directors and upholding the quashing order, Supreme Court, however, observed as under:

*“19.....We would, however, make it plain that the mere fact that the proceedings have been quashed against respondents no.2 to 5 will not*

*prevent the court from exercising its discretion if it is fully satisfied that a case for taking cognizance against them has been made out on the additional evidence led before it.”*

9. In view of my above discussion and having regard to the fact that the petitioners in the present case have been arrayed as accused persons for their being partners and directors of the respective firms and there being no independent averment or material of their being incharge and responsible for conducting day-to-day business of their firms, the petition is consequently allowed and complaint case bearing no.26/2010 titled as “Food Inspector vs. Jogi Rawal & Ors.” and the summoning order dated 2.3.2010 passed by learned ACMM, Delhi qua them are hereby quashed. It is clarified that this order shall not prevent the Trial Court from exercising its discretion if it is satisfied that a case for taking cognizance against them is made out under Section 319 CrPC on the additional evidence led before it.

10. The petition stands disposed of accordingly.

**M.L. MEHTA, J.**

**January 30, 2012**

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