

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc. No.M-4989 of 2011 (O&M)
Date of Decision: July 30, 2015.

Jayesh Cholera

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

with

Criminal Misc. No.M-32364 of 2011 (O&M)

Anand Vijay

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

- 1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
- 2. To be referred to the Reporters or not? Yes/No
- 3. Whether the judgment should be reported in the digest? No

Present: Mr. Alok Kumar Jain, Advocate
for the petitioner in CRM-M-4989-2011.

Mr. B.B.S. Sobti, Advocate
for the petitioner in CRM-M-32364-2011

Mr. V.P.S. Sidhu, AAG, Punjab.

ANITA CHAUDHRY, J.

1. These are two petitions filed under Section 482 Cr.P.C. for quashing of the complaint and the summoning order dated 23.05.2007, passed by the Chief Judicial Magistrate, Ludhiana in a complaint filed under Section 16 read with Section 16(1)(a)(i) of Prevention of Food Adulteration Act, 1954 (here-in-after referred to as the Act).

2. Brief facts relevant for adjudication of the petitions are that the Food Inspector along with the SMO of PHC Sahnewal, Ludhiana visited Country Inns & Suits at Ludhiana and found 5 kg. of Paneer kept in a steel tray and in possession of Anand Vijay, the F & B Manager of Country Inns & Suits, Feroz Gandhi Market, Ludhiana. The complainant disclosed his identity and demanded a sample of Paneer for analysis. A notice in writing was issued in form VI prescribed under the Act and 750 grams of Paneer was purchased for Rs.75/-, against receipt Annexure C-3 which was signed by the accused, the complainant and the witness. After the sample was purchased, it was made homogenous and divided into three equal parts and put in three dried and clean glass bottles. The necessary formalities were undertaken. It would not be relevant to detail the procedure that followed as that is not necessary. The samples were sent for analysis. The Public Analyst, Chandigarh vide its report Annexure C-6 found the samples to be adulterated and accordingly a complaint was filed. The Chief Judicial Magistrate, Ludhiana vide order dated 23.05.2007 summoned the General Manager of Country Inns & Suits and the Manager F & B.

3. The petitioner Jayesh Cholera, the General Manager had pleaded that he had no knowledge of the pendency of the complaint or the summoning order as he had left the service and he was out of Ludhiana and he learnt about it in 2011 in a meeting and inspected and verified from the record and came to know of the order. The petitioner has pleaded that there were no specific averments or allegations against him and the complaint had not been filed against the Company and therefore, the order summoning him should be quashed. It was also pleaded that the Paneer was purchased from Food and Beverage Manager and thus he would be a person deemed to have been nominated and there was no reason to array him as an accused and the proceedings against him were an abuse of the process of law.

4. The petitioner Anand Vijay had pleaded that Paneer was not for direct sale and would not bring the case within the ambit of the Act and there were no specific allegations against him as the hotel had separate Manager for purchase and for operations and the Executive Chef was responsible for the stock and his duties were to look-after the banquet and the restaurant and no offence had been committed. It was pleaded that exercising the option, the second sample was sent for analysis and report was received that the sample was 'unfit for analysis' and on receipt of the said report, the Chief Judicial Magistrate should have closed the case.

5. I have heard learned counsel for both the sides.

6. The counsel appearing for the petitioners had vehemently urged that the launching of prosecution against the General Manager and not launching prosecution against the company was wrong and the complaint could not proceed. It was urged that bald statement has been made and the Paneer is not sold by the hotel and it is consumed for the preparations made in their own kitchen. It was urged that the role of Anand Vijay is different. It was urged that there was no averment that the Paneer was meant for sale and the complaint would not be maintainable and the complaint is silent with respect to the role of Jayesh Cholera. Reliance was placed upon ***Dr. Manu Seth, Managing Director, Tata Chemicals Ltd. Vs. Food Inspector (2008) 4 RCR (Crl.) 648, Pepsico India Holdings Pvt. Ltd. Vs. Food Inspector and another 2011(1) SCC 176, M/s. Pepsi Foods Ltd. Vs. Special Judicial Magistrate 1997 (4) RCR (Criminal) 761, Subhash Chand @ Subhash K. Aggarwal Vs. State (Chandigarh Administration), Chandigarh in Crl. Misc. No. M-121 of 2006 (O&M) and Crl. Misc. No. M-1260 of 2006 (O&M) and Kunal Banerjee Vs. State of Haryana and another in Crl. Misc. No. M-42066 of 2003.***

7. The submission on the other hand was that the Food and Beverage Manager is incharge of the catering section and the Manager has been impleaded as a party as he is responsible for day-to-day working of the company and therefore, the complaint had been lodged against them and all the questions that are being raised here, can be examined by the trial Court.

8. In the instant petition, the summoning order has been challenged primarily on the ground that Paneer was not meant for sale but it was a product for preparation of dishes. Another ground raised by them is that in the absence of the company, the Manager could not be prosecuted. The argument raised on behalf of the respondent was that the provisions of Section 10(2) of the Act empowers the Food Inspector to enter a place where the food is stocked for manufacture of any other article of food for sale and that would cover it.

9. The principles of quashing of a complaint or an FIR have been laid down by the Hon'ble Supreme Court in ***State of Haryana Vs. Bhajan Lal, AIR 92 Supreme Court 604.*** It has been laid down that the High Court may exercise powers under Article 226 of the Constitution of India and under Section 482 of Cr.P.C. and allow the quashing of FIR or complaint where the allegations on the face of it do not make out a case against the accused or where the allegations in the complaint taken at their face value and accepted in their entirety do not *prima facie* constitute any offence against the accused and lastly when the allegations are absurd and inherently improbable on the face of it, the complaint/FIR can be quashed. It has also been held that where a criminal proceeding is attended with *mala fides* or has been maliciously instituted with an ulterior motive, the power under Section 482 Cr.P.C. can be exercised.

10. On a perusal of the complaint, I find that the complaint is silent on the main ingredients. The company has not been impleaded. Section 17 of the Food Adulteration Act would be relevant and it reads as under:-

Section 17 in The Prevention of Food Adulteration Act, 1954

[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 sub-section (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 sub-section 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, authorise 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 sub-section 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 sub-section (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 sub-sections, 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 sub-section (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.]

11. It is clear from the Scheme of Section 17 of the Act that where a Company has committed an offence, it is the person nominated under sub-section (2) to be in-charge of, and responsible to the company for the conduct of its business shall be proceeded against unless it is shown that the offence was committed with the consent/connivance/negligence of any other officers of the Company.

12. The complaint is absolutely silent regarding the person incharge or responsible for the conduct of its business.

In ***Carborandum Universal Madras Vs. Food Inspector Thiruvettiur Municipality, 1989 (1) FAC 367***, it was held that in the absence of specific pleadings in the complaint regarding the person incharge of and responsible to the conduct of business, the prosecution launched against him is not maintainable and the same is liable to be quashed.

In ***State of Assam Vs. Paban Kumar Aggarwal, 1990(1) FAC 115***, it has been laid down that the person in-charge of the Company must be prosecuted along with the company. Continuation of criminal proceedings against the petitioner thus will be an abuse of the process of the Court.

13. From the totality of the circumstances, it is apparent that the Paneer was not for sale as per the averments in the petition. Paneer is used for manufacture of other food items. The question is whether mere search is sufficient. This aspect was considered by the Hon'ble Supreme Court in ***Municipal Corporation of Delhi Vs. Laxmi Narain Tandon etc., 1977(2) FAC 73***, wherein it was held that *the term 'store' and 'distribute' take their colour from the context and the collection of words in which they occur in Sections 7 and 16. "Storage" or "distribution" of an adulterated article of food for a purpose other than for sale does not fall within the mischief of the Section.*

14. It is clear from the above provisions of the Act that if an offence has been committed by a company that person will be deemed to be guilty of the offence and liable to be proceeded against and punished, who has been nominated to be in-charge and responsible to the conduct of the business of the company and if no person has been nominated, even then every person, who was in-charge and responsible for the conduct of the business of the company. In ***K. Sunitha Vs. State of Rajasthan, 2001(3) RCR (Criminal) 609***, it was held that, "Cognizance of the offence should not be taken against a

person unless it is shown that he was nominated under Section 17(2) of Prevention of Food Adulteration Act as incharge and responsible for conduct of business of company. No presumption can be drawn merely on basis of list of directors filed by Asst. Commercial Taxation Officer that petitioner was either nominated or *de facto* incharge of and responsible to company for conduct of business.

15. In view of the above facts and circumstances of the case and the law laid down in various judicial pronouncements, both the petitions are accepted. Consequently, the complaint and the proceedings in pursuance thereof are quashed.

July 30, 2015
sunil

(ANITA CHAUDHRY)
JUDGE