

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Misc. No.M-5237 of 2011
Date of decision : 16.09.2015**

Shyam Sunder Aggarwal and another

.....Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sanjay Vashisht, Advocate
for the petitioners.

Mr. G.S. Salwara, DAG, Haryana.

ANITA CHAUDHRY, J.

This petition is at the instance of the petitioners who have been summoned in the complaint case filed under the Food Adulteration Act (here-in-after referred to as the Act).

The Government Food Inspector, Faridabad had inspected the premises in Sector – 24, Faridabad and had taken the sample of 'Haldi Powder'. The sample was taken from possession of Suresh Garg, Manager of Bikanerwala Foods Pvt. Ltd. Company, Faridabad. The sample failed and prosecution was launched and complaint Annexure P-8 was filed against Suresh Garg. Notice was issued to him and Suresh Garg had put in appearance. Notice of

accusation was served upon the accused who pleaded not guilty and claimed trial. An application was filed by Suresh praying therein that additional accused should be impleaded in his place and he named Shyam Sunder Aggarwal and Chetan Aggarwal, Directors of M/s. Bikanerwala Foods Pvt. Ltd. and sought his own deletion.

No objection was given to the application by the government Food Inspector and the application was allowed and the present petitioners were summoned as additional accused.

The petitioners seeks to challenge order dated 11.05.2010 Annexure P-13 which reads as under:-

“Accused Suresh Garg has filed his affidavit in support of his application dated 25.04.2009 for impleading the owner of the firm. Reply to that application not filed by the GFI. However, GFI has recorded no objection on that application. Heard. In view of the facts mentioned in the application and no objection recorded by GFI, the application is allowed and Sarv Shri Shyam Sunder Aggarwal and Chetan Aggarwal both sons of late Shri Jugal Kishor, residents of 37/78, Punjabi Bagh, West, New Delhi, Directors of M/s. Bikanerwala Foods (P) Ltd. Plot No.21, Sector 24, NIT, Faridabad are hereby impleaded as accused no.2 and 3 in the complaint. Amended title be filed and notice to newly added accused be issued for 3.8.2010.”

The submission made on behalf of the petitioners was that there was no averment in the complaint qua the role of the Directors and the petitioners were not the persons who were responsible as the company had nominated Suresh Garg. The counsel had referred to Annexure P-2 and also to the resolution appended along with it and had urged that the petitioners could not be summoned because they were not responsible or incharge of the affairs of the company and it was the duty of the Magistrate to ensure that the process was issued only against those persons against whom there were specific allegations in the complaint and the order be set aside. It was urged that Section 33 of the Insecticide Act is *pari materia* with the provisions contained in the Food Adulteration Act. It was urged that under Section 20-A of the Food Adulteration Act, the Court has the power to summon the additional accused but there has to be some evidence and no evidence had been led. It was urged that the petitioners had been summoned after the expiry of limitation and the chances of re-analysis will not be available to them. It was urged that in ***Dhariwal Tobacco Products Limited and others Vs. State of Maharashtra and another (2009) 2 SCC 370***, the Hon'ble Apex Court had held that the remedy under Section 482 Cr.P.C. could be availed. Reliance was also placed upon ***State of NCT of Delhi Vs. Rajiv Khurana 2010(3) RCR (Criminal) 912***.

On the other hand, the submission made on behalf of the respondent was that the petitioners were the Directors and were Incharge of the Company and the petition under Section 482 Cr.P.C.

was not maintainable and alternative remedy of revision was available which had not been availed. He also sought support from ***Dhariwal Tobacco's*** case (supra).

It is necessary to refer to the complaint (Annexure P-8) that was filed before the CJM, Faridabad which reads as under:-

“The complainant as Food Inspector appointed under the act for all the local areas of Distt./Sub Div./Tehsil Faridabad vide Haryana Govt. Notification No. 3/29/2001-1HB-II Dated 23.08.2001 Inspected the premises of Shri Suresh Garg on 23.07.2004 at 4:00 PM at Bikanerwala Foods Pvt. Ltd. And found Shri Suresh Garg having in his possession of of about 20 grams of Haldi Powder for Public Sale contained in two iron drums and demanded a sample of Haldi Powder by giving him notice in writing on form VI prescribed under the prevention of Food Adulteration Rules 1955, 750 grams of Haldi Powder was purchased after mixing/Homogeneous/Churn/the whole contents property and made uniform for analysis from Shri Suresh Garg for Rs. 32/- Naya Paisa which was divided into three parts bottled/packed in three dry clean, empty bottles. Formalin per mls/gms were added as preservative in each bottle. The bottles/packets were stopped tightly and sealed on the neck with the aid of Medical Officer. The bottles/packets were labelled and wrapped in strong thick paper. The ends of the paper were pasted with gum. A paper slip bearing Code No. FBD-CS/F1-1/F1-2 and Sig. of local Health authority Faridabad was pasted on each bottle/packet from top to bottom. Each bottle packet was secured by means of strong

twine and sealed bottle/packet carry a part of his signature.

One sealed bottle/packet along with a memorandum in form VII was sent to the Public Analyst Haryana Chandigarh for analysis in a sealed packet through Railway parcel. The other two sealed bottles/packets of sample along with two copies of memo in form VII were deposited with the local Health Authority on 26.07.2004 vide no. GH/04/17 in a sealed packet. A copy of the memorandum in form VII and specimen impression of seals used to seals the sample box were sent to the Public Analyst Haryana/Chandigarh separately by registered Post vide post Office receipt No.882555690 dated 27.07.2004. The sample was taken in the presence of the witness whose names and addresses are given below.

The certificate of the Public Analyst Haryana Chandigarh admissible under Section 13(5) of the act is attached here with which shows that the sample is coloured with prohibited material yellow synthetic colour where as it should be free from the same as laid down for Haldi Powder under Item No.A.05.2001 of PFA Rule 1955 (2) The sample also shows the presence of Rice Starch (foreign starch) in violation of Rule 44 (H) of the PFA Rules, 1955 (3) The sample is not in packed container/condition which is contravention of Rule 24 of the Act and 49 of the PFA Rules, 1955. Hence the sample is adulterated.

The accused has also contravened the rule 50 of the Prevention of Food Adulteration Rule 1955 as he was found selling without licence.

The complainant prays that as Shri Suresh Garg has kept the said articles of food in store for sale and or was selling it he/they has/have committed an offence under Section 7 of Prevention of Food Adulteration Act 1954, action may kindly be taken against him/them under Section 16 of the said Act.

And where as I Ram Krishan Yadav Food Inspector Distt./Tehsil Faridabad have been authorised to Institute prosecution committing an offence under this Act vide Haryana Govt. Health Department Notification No.3/29/2001-14B-II dated 23.10.2001. I do here by submit this complaint for disposal according to law.

It is further prayed that as the complainant is a Govt. Servant and is required to attend several courts and has also to perform other multifarious duties in the whole of the District/Sub/Division/Tehsil so his presence on each and every date of hearing may kindly be dispensed with.”

A perusal of the above would reveal that the only allegation in the complaint was that the premises was inspected on 23.07.2004 at 4:00 PM which is Bikanerwala Foods Pvt. Ltd. and Suresh Garg was found in possession of Haldi powder meant for sale and a notice was given and then samples were drawn. Thereafter, complaint refers to the manner in which the samples were bottle packed and sealed and the steps taken thereafter, which are not relevant for the moment. There is no specific averment in the complaint that the petitioners now summoned by the Court were

stated to be incharge or responsible for day-to-day business and conduct of the Company. It is imperative to specially aver in the complaint that the petitioners were incharge and was responsible for the conduct of the business of the Company and unless clear averments are specifically incorporated in the complaint, the additional persons cannot be compelled to face the rigmarole of a criminal trial.

The submission on behalf of the petitioners were that the provisions contained in the Insecticide Act and the Food Adulteration Act are *pari materia* and Clause 4 of Section 17 of the Act specifically provides that if the offence is committed by a Company then it has to be proved that the offence has been committed with the consent or connivance or neglect on the part of the Director, Manager, Secretary or any Officer of the Company not being nominated under Sub Section 2 and there is a deeming provision against such Director, Manager and Secretary and only then the said officers can be said to be vicariously liable. It was vehemently urged that in the present case, there is no plea that the offence had been committed with the consent, connivance or neglect on the part of the petitioners who are Director of the Company.

The petitioners had placed on record the certificates of incorporation Annexure P-1 and Annexure P-2 submitted by the company wherein they had nominated Suresh Garg their Manager vide resolution dated 20.02.1994. The copy of the resolution is also available on record.

In Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Others (1983) 1 SCC 1, the Food Inspector, Municipal Corporation filed a complaint before the Metropolitan Magistrate against the respondents alleging commission of offence under Sections 5/7, Prevention of Food Adulteration Act as the sample of food article (Morton toffees) manufactured by the Company had been found by the Public Analyst to be not of the prescribed standard. The Inspector alleged in the complaint that the accused- respondents were Manager and Directors of the Company "and as such they were incharge of and responsible for the conduct of business of the Company at the time of sampling". Pursuant to the complaint the proceedings against the respondents were commenced. But the High Court quashed the proceedings against all the respondents under Section 482 Cr.P.C. on the ground that the complaint did not disclose any offence.

In State of Haryana v. Brij Lal Mittal & Others (1998) 5 SCC 343, it was held that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises if at the material time he was incharge of and was also responsible to the company for the conduct of its business. Simply because a person is a director of the company it does not necessarily mean that he fulfils both the above requirements so as to make him liable. Conversely, without being a director a person can be incharge of and responsible to the company for the conduct of its business. From the complaint in question we, however, find that except a bald

statement that the respondents were directors of the manufacturers, there is no other allegation to indicate, even *prima facie*, that they were incharge of the company and also responsible to the company for the conduct of its business.

The ratio of all the cases above are that besides the nominated person, other persons who are sought to be made an accused must be incharge of the business of the Company or responsible of the Company's business and only then they can be summoned to face trial. There are no specific allegations in the complaint, therefore, the petitioners could not be compelled to face the trial. Recourse to Section 20-A no doubt can be had to summon additional accused but if some evidence appears before the Court. Section 20-A of the Act reads as under:-

Section 20A in The Prevention of Food Adulteration Act, 1954

“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 2[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 under section 20.”

Before a Magistrate can invoke the powers vested under Section 20 of the Food Adulteration Act, there has to be acceptable evidence before it, before the person proceeded against is summoned and the Magistrate has to record his satisfaction which is not an empty formality.

It is clearly settled that the powers under Section 482 Cr.P.C. can be exercised when the Court comes to the conclusion that allowing the proceedings to continue would be an abuse of the process of the Court and where the ends of justice require then the proceedings should be quashed.

In [Keki Bomi Dadiseth and others v. State of Maharashtra](#), [2002 (3) Mh.L.J. 246], the Single Judge of the Nagpur Bench of the Bombay High Court entertained an application under Section 482 of the Code, where summons had been served under the Prevention of Food Adulteration Act, 1954, holding:-

"33. In view of the ratio laid down by the Apex Court in the above referred cases, it is well settled that inherent power under Section 482 can be invoked by the accused in the appropriate case irrespective of other factors and this Court can exercise the same in a deserving case within parametres of law and, therefore, the contentions canvassed by the learned Additional Public Prosecutor in this regard are misconceived and same are rejected."

As a sequel to the above, since there was no averment the additional persons could not be summoned. The petition is allowed and the impugned order is set aside.

16.09.2015
sunil

(ANITA CHAUDHRY)
JUDGE