

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1016 OF 2016

1. A.R. Pratap,
Age : 78 years, Occ. Business,
r/o. 81/82, Khushnuma Apartments,
29A, M.L.Dahanukar Marg,
Mumbai 400 026
2. Virendra Pratap,
Age : 82 years, Occ. Business,
r/o.Sneh Sadan CHS Ltd.,
2nd Floor, Flat No.8,
Opp. Ritz Hotel,
Churchgate Reclamation,
Mumbai 400 020
3. Smt. Anjali Pratap,
Age : 48 years, Occ. Business,
r/o. 81/82, Khushnuma Apartments,
29A, M.L.Dahanukar Marg,
Mumbai 400 026
4. B.R. Pratap,
Age : 86 years, Occ. Business,
r/o.Sneh Sadan CHS Ltd.,
2nd Floor, Flat No.8,
Opp. Ritz Hotel,
Churchgate Reclamation,
Mumbai 400 020
5. M/s. The Meadows Hotels and
Resort Pvt. Ltd.,
A Private Limited Company
registered under the
Companies Act, 1956,
having business at

Gat No.156 and 136,
Mitmita Parisar,
Aurangabad

..Petitioners

Vs.

1. The State of Maharashtra

2. Food Inspector,
Food and Drugs Administration,
Aurangabad,
Nath Super Market,
Aurangpura, Aurangabad

..Respondents

Mr.Vijay Sharma, Advocate for petitioners

Ms.R.P.Gaur, APP for respondents

CORAM : SANGITRAO S. PATIL, J.

DATE : JULY 16, 2018

ORAL JUDGMENT :

Rule, made returnable forthwith. With the consent of the parties, taken up for final hearing.

2. Petitioner nos.1 to 4, who were Directors of petitioner no.5, a private limited company, have prayed for quashing of the criminal prosecution initiated against them, bearing Summary Criminal Case No.106 of 2011, for the offences punishable under

Sections 7(i) read with Section 2(ia)(a) and Section 2(ia)(m) punishable under Sections 16 and 17 of the Prevention of Food Adulteration Act, 1954 ("the Act", for short).

3. The case of respondent no.2 - Food Inspector, in short, is that accused no.1 is the General Manager, the present petitioner nos.1 to 4 (i.e. accused nos.2 to 5) and the deceased accused no.6 are Directors of petitioner no.5 (i.e. accused no.7 - company), while accused no.8 is the person, who used to supply the food articles to accused no.7 - Company. The Food Inspector visited the premises of accused no.7 - Company on 30.06.2010 and took samples of some food articles. Out of those food articles, Synthetic Vinegar was found to be adulterated, since it was found in the report of the Public Analyst that acidity level thereof was 2.70% m/v., which was below the prescribed norm i.e. 3.75% m/v. After obtaining necessary sanction for prosecution, respondent no.2 filed a complaint before

the learned Judicial Magistrate, First Class, (Corporation Court), Aurangabad, for the above-mentioned offences. The learned Judicial Magistrate, First Class issued process against the petitioners. The petitioners have challenged their prosecution for the above-mentioned offences.

4. The learned Counsel for the petitioners submits that petitioner no.5 (accused no.7) is a private limited company. Petitioner nos.1 to 4 are the Directors thereof. Nobody was nominated by them as the person to be in-charge of the company for the conduct of its business and therefore, as per Section 17(1)(ii) of the Act, when 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, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. He submits that the complaint is totally silent about the role of

petitioner nos.1 to 4. There is no mention that these petitioners were in-charge of and responsible to petitioner no.5 (accused no.7) for the conduct of its business. Relying on the judgment in **Pepsico India Holdings Pvt. Ltd. Vs. Food Inspector and anr., AIR 2011 SC (SUPP.) 562**, he submits that in the absence of the specific roles attributed against these petitioners in the management of petitioner No.5 (accused No.7), the proceeding against them for the above-mentioned offences, is liable to be quashed and set aside. He, therefore, prays that the prosecution against the petitioners may be quashed and set aside.

5. The learned APP strongly opposed the petition on the basis of the contentions raised in the reply filed on behalf of the respondents. She submits that since petitioner nos.1 to 4 are the Directors of petitioner no.5 (accused no.7 – company), they are vicariously liable for commission of the above-mentioned offences. She, therefore,

prays that the Writ Petition may be dismissed.

6. In paragraph 39 of the judgment in the case of **Pepsico India Holdings Pvt. Ltd.** (supra), cited by the learned Counsel for the petitioners, it is observed as under :-

“.....It is now well established that in a complaint 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.”

7. I went through the contents of the complaint. In paragraph 2 thereof, there is a mention that accused nos.2 to 6 (including the present petitioners) are the Directors of petitioner no.5 (accused no.7) company. Except this averment, nothing is against these petitioners. There is no whisper that these petitioners were the in-charge of and were responsible to accused no.7 for the conduct of its business at the time of commission of the above-mentioned offences. If that be so, in view of the provisions of Section 17(1)(ii) of the Act and in view of the judgment in the case of **Pepsico India Holdings Pvt. Ltd.** (supra), cited by the learned Counsel for the petitioners, the prosecution against the petitioners for the above-mentioned offences, is liable to be quashed and set aside.

8. In the result, I pass following order :-

O R D E R

(1) The Writ Petition is allowed.

- (2) The proceedings initiated against the present petitioner nos.1 to 4, for the offences under the Prevention of Food Adulteration Act, 1954, bearing Summary Criminal Case No.106 of 2011, pending in the Court of the learned Judicial Magistrate, First Class, (Corporation Court), Aurangabad, is quashed and set aside.
- (3) Rule is accordingly made absolute.
- (4) The Writ Petition is disposed of.

[SANGITRAO S. PATIL, J.]