

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

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Judgment delivered on: 6th September, 2019

+ CRL.M.C. 4186/2011

1. SHRI PRAVEEN CHAND (Vendor-cum-store Manager)
2. SHRI DAMODAR MALL (Whole-time Director)
3. M/s FUTURE VALUE RETAIL LTD. (Vendor Company)

....Petitioners

Through: Mr.Sudhir K. Makkar, Senior
Advocate with Ms. Meenakshi Singh,
Ms. Saumya Gupta and Ms. Kaanan
Gupta, Advocates.

Versus

FOOD SAFETY OFFICER

....Respondent

Through: Mr. Mukesh Kumar, APP for
State.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. Instant Criminal petition under Section 482 of the Code of Criminal Procedure has been preferred by the petitioners against the summoning order dated 10.10.2011 passed by Raghubir Singh, Additional Chief Metropolitan Magistrate-II, Patiala House Courts, New Delhi in Complaint Case No. 192/11 titled as *Food Safety Officer v. Sh. Praveen Chand & Others.*

2. Brief facts stated are that on 28.05.2011 at about 3:29 PM, Food Inspector (FI) Bal Mukand purchased 3 Kg rice vide sample No.

93/1015/52/11, code no. 93/LHA/32437 from M/s KB's fair Price (A unit of M/s Future Value Retail Ltd), Shop No. F-2226 Mansarovar Garden, New Delhi-110015. At the relevant point of time, the petitioner No.1, Parveen Chand S/o Mangat Ram (vendor-cum-store Manager) was found vending the article of food at the time of taking the sample. The sample consisted of 3 Kg of rice (ready for sale) taken from an open Aluminum Drum bearing no label declaration. The sample was taken under the supervision/direction of Ms. Anju Mangla, SDM/LHA. The sample was taken after proper mixing with the help of clean and dry *Jhaba* by rotating it in all possible directions several times. The Food Inspector divided the sample of food article into three equal parts then and there by putting it into three clean and dry glass bottles. Each glass bottle containing the sample was separately packed, fastened and sealed according to the PFA Act, 1954 and Rule, 1955. He obtained signatures of vendor on LHA slip and wrapper of the bottle containing sample and notice in Form VI was given to Sh. Parveen Chand and Panchnama too was prepared at the spot. All the documents prepared by the Food Inspector were signed by Sh. Parveen Chand and by other witness Jagdish, FA was joined as witness. One counter-part of sample bearing LHA Code Number 93/LHA/32437 in intact condition along with the copy of memo in form VII and another copy of memo in Form-VII under seal and cover were sent separately to the Public Analyst, Delhi and two counter-part of the sample along with two copies of memos in Form-VII were deposited with SDM/LHA in intact condition dated 30.05.2011. All copies of Memo in Form VII bear the seal impression

with which sample parts were sealed. Public Analyst analyzed the sample and found the sample to be adulterated as it contains six living insect & one rodent excreta in whole sample and committed the offence punishable under Section 16 (1A) of the PFA Act, 1954.

3. The Court below took the cognizance on 10.10.2011 and issued summons against the present Petitioners i.e. Sh. Parveen Chand S/o Sh. Mangat Ram who was the vendor-cum-store Manager of KB's Fair Price which is a unit of M/s Future Value Retail Ltd. who look after its day to day business and as such he is in-charge of and responsible for the conduct of the business of the said unit of the company, Mr. Damodar Mall S/o Sh. Shyam Sunder Mall whole time director of M/s Future Value Retail Ltd., who look after the day to day business of KB's Fair Price and as such he is in-charge of and responsible for the conduct of the business of the said unit of the company, and M/s Future Value Retail Ltd. being a company is also liable for KB's Fair Price. The Company has its Registered Office at Knowledge House, Shyam Nagar, Jogeshwari Vikhorli, Link Road, Jogeshwari (E), Mumbai-400060.

4. Aggrieved from the order of Ld. ACMM the petitioners have preferred the present petition.

5. Ld. Senior counsel for the petitioners has submitted that the summoning order passed by the Court below is bad as petitioner No.3, M/s Future Value Retail Ltd., has already appointed Madan Lal S/o Mehar Lal as its nominee under Section 17(2) of PFA Act and submitted paper of the nomination to PFA department on 21.05.2011.

6. Ld. Senior Counsel for the petitioners further submitted that in response to letter dated 22.06.2011 of Food Safety Officer the Petitioner No.3, M/s Future Retail Value Ltd., has already sent reply to the Food Safety Officer on 26.07.2011 disclosing the name of nominee of the Company i.e. Madan Lal S/o Mehar Chand alongwith the list of the Directors of the said Company as on 22.05.2011. Therefore, the summoning order is bad in law and same be set aside.

7. The reliance is placed by the petitioners on ***Pepsico India Holdings Pvt. Ltd. v. Food Inspector and Ors.***, CRL.A. No. 836/2010 and ***Kishore Aggarwal and Ors.***, CRL.M.A. No. 7772/2011.

8. On the other hand, Ld. APP submits that local (health) authority did not receive the nomination letter till 09.06.2011 and the sample was taken on 28.05.2011 and Court below has rightly took cognizance and present petition is devoid of merit and deserves dismissal.

9. From perusal of the record it shows, that, the complaint was filed by Food Safety Officer of NCT of Delhi before the Ld. ACMM, Ld. ACMM took the cognizance and issued summons against the petitioner No.1 to 3. As per the complaint, Petitioner No.1, Sh. Parveen Chand S/o Sh. Mangat Ram was the vendor-cum-Store Manager of KB's Fair Price which is a unit of M/s Future Value Retail Ltd. who looks after its day to day business and as such is in-charge and responsible for the conduct of business of the said unit, Petitioner No.2, Mr. Damodar Mall S/o Sh. Shyam Sunder Mall whole time director of M/s Future Value Retail Ltd., who looks after the day to day business of KB's Fair Price and as such is in-charge and responsible for the conduct of the business, and Petitioner No.3, M/s

Future Value Retail Ltd., being a company, is also liable for KB's Fair Price. The Company has its Registered Office at Knowledge House, Shyam Nagar, Jogeshwari Vikhorli, Link Road, Jogeshwari (E), Mumbai-400060.

10. The sample taken was on 28.05.2011 at 3:29 PM and the same was sent to Public Analyst for analysis and was found to be adulterated as per the Public Analyst report dated 17.06.2011.

11. The notice issued to Parveen Chand and KB's Fair Price was replied. The said reply dated 22.06.2011 is reproduced as under:-

“ To

*Shri. Bal Mukund,
Food Inspector,
Dept. Of Prevention Food Adulteration
Govt. Of NCT Delhi.
A/20, Lawrence Road Indl. Area, Delhi-35*

Subject: - Sample of rice lifted of 28.05.11

Dear Sir,

The company had appointed Shri Madan Lal S/o Mr. Mehar Chand has the nominee U/S 17(2) PFA Act Submitted the papers of the said nomination to the PFA Department on 21.05.2011.

- (1) We have already provided the nominee.*
- (2) Same as above*
- (3) Not applicable*
- (4) Already provided Copy of Sales Tax Registration*
- (5) No licence has been obtained M.C.D*
- (6) List of Directors attached.*
- (7) Mr. Damodar Mall, Director will represent from company side. (address attached)*

*Your Faithfully
Sd/-*

*Anand Attri
(K.B. Fair Price)*

Date:-26.07.2011

A Unit of Future Value Retail Limited

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List of Directors as on 22/05/2011

<i>Name</i>
<i>Mr. C.P. Toshniwal</i>
<i>Ms. Rajni Bakshi</i>
<i>Mr. Shailesh Haribhakati</i>
<i>Ms. Ranjana Kumar</i>
<i>Ms. Ashni Biyani</i>
<i>Mr. Vivek Biyani</i>
<i>Mr. Damodar Mall</i>

For Future Value Retail Limited

Sd/-

Authorized Signatory.

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Address of Damodar Mall:

Damodar Mall

S/o Shayam Sunder Mall

2A, Regency Park, Eden Woods,

Thane (W), Mumbai-400601.”

12. The said reply dated 26.07.2011 does not disclose official status of nominee i.e. Madan Lal in the Company, indicating gaining of his personal knowledge for attribution to his neglect.

13. The contention of the Ld. Senior Counsel on behalf of petitioners that the petitioner No.3 has already sent nomination of Madan Lal loses its significance in presence of the reply dated 26.07.2011 of the petitioners itself. The reply dated 26.07.2011 indicates Damodar Mall (petitioner No.2) will represent on behalf of M/s Future Value Retail Limited (petitioner No.3). Petitioner No.1 is the person who was physically present at the spot on 28.06.2011 at 3:29 PM in whose presence samples were taken.

14. So far, plea of the petitioners that company has already nominated its nominee i.e. Madan Lal does not show his official status

indicating gaining of his personal knowledge for attribution to his neglect. The Lower Court Record too does not show any document indicating otherwise before filing of the present complaint by the Food Safety Officer. However, if the Company had nominated Madan Lal as its official nominee under Section 17(2) of PFA Act who is responsible for day to day conduct of the said unit, it is a matter of defense which could be available to the petitioner during the further proceedings before Lower Court. The said documents were neither available with the Food Safety Officer at the time of filing of the complaint nor with the Lower Court while taking the cognizance against the petitioners. As discussed above, the Court below on the basis of available record has rightly took cognizance and issued summons against the Petitioner Nos. 1, 2 and 3.

15. The reliance placed by petitioners on *Pepsico India Holdings* (supra) and *Kishore Aggarwal* (supra) is of no help to them.

16. Consequently, the present petition is dismissed as impugned order dated 10.10.2011 passed by the learned ACMM in Complaint Case No. 192/11 does not warrant any interference by this Court to invoke inherent powers under Section 482 Cr.P.C.

17. LCR be sent back with a copy of this judgment. Parties are directed to appear before the concerned or successive Court on 09.10.2019. No orders as to cost.

I.S.MEHTA
(JUDGE)

SEPTEMBER 06, 2019