

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CRR No.80 of 2014

Ashok Kumar
... Petitioner
Versus
State of Haryana
... Respondent

2. CRR No.95 of 2014

Ramesh Kumar Trishal
... Petitioner
Versus
State of Haryana
... Respondent

Date of decision: 20th April, 2024

CORAM: HON’BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Aditya Sanghi, Advocate for the petitioner
in CRR-80-2014;
Mr. Aman Arora, Advocate for the petitioner
in CRR-95-2014;
Mr. Rajesh Gaur, Addl. Advocate General, Haryana
for the respondent/State.

MANJARI NEHRU KAUL, J.

1. The petitioners by way of the instant revision petitions are impugning the order dated 08.01.2014 passed by learned Additional Sessions Judge, Rewari vide which the appeal preferred by them against the judgment of conviction and order of sentence dated 18.08.2011 passed by learned Chief Judicial Magistrate, Rewari was dismissed. Learned CJM, Rewari vide aforesaid judgment and order dated 16.08.2011/18.08.2011 convicted and sentenced the petitioners to

undergo rigorous imprisonment for six months and to pay a fine of ₹1000/- each under Section 7 punishable under Section 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as, 'the Act'); in default of payment of fine they were sentenced to further undergo RI for one month each.

2. Since both the revision petitions detailed hereinabove arise out of the same complaint, they are being taken up together for disposal by way of this common judgment.

3. Case of the prosecution may be summed up as thus:

On 07.08.2003, at about 7:30 p.m., Mr. G.S. Yadav, District Health Officer, Rewari, inspected the premises belonging to petitioner Ashok Kumar, after giving him a written notice. During inspection, 30 liters of Saras Gold Pasteurized Full Cream Milk, intended for public sale, was found in his possession.

The complainant purchased 3 sealed poly packs, each containing 500 mls of milk, for ₹24. These packs were then opened, poured into a drum, homogenized and transferred into 3 clean empty bottles in equal portion. Each bottle was then sealed with the seal of Dr.Vijay Parkash, the accompanying Medical Officer, and labelled with a paper slip bearing a code number, serial number and the signature of the Local Health Authority, Civil Surgeon, Rewari. An independent witness namely Kamal, who was present at the spot, attested to all the related documents. Five copies of Form-VII were prepared on the spot, and seal

impressions of the Medical Officer and Food Inspector were obtained.

One sealed bottle, along with a memorandum in the Form-VII, was dispatched to the Public Analyst, Haryana Chandigarh, for analysis, enclosed in a sealed wooden box. The remaining two sealed bottles were deposited with the Local Health Authority. Copies of the memorandum Form-VII and specimen impression of the seals used were separately sent to the Public Analyst, through registered post. According to the report of the Public Analyst, the sample contained 4.40% of milk fat and 7.96% of milk solids not fat, falling below the minimum specified limits of 6.0% and 9.0%, respectively, for full cream milk as per item number 'A 11.01.11' of the Prevention of Food Adulteration Rules, 1955.

Subsequently, the respondent/State filed a complaint under Sections 7 and 16 of the Act, naming petitioner No.1, the Dealer, and petitioner No.2, the Manager of the Manufacturing Company as accused.

Learned trial Court, on the basis of the evidence led and other material on record, convicted the petitioners and sentenced them as already detailed in the earlier part of this order. Aggrieved with the judgment of the learned trial Court, the petitioners appealed their conviction before the learned Court of Sessions, which also was dismissed vide the impugned judgment.

4. The petitioners Ashok Kumar and Ramesh Kumar Trishal are now impugning the aforementioned judgment on the following grounds:

- (i) Learned counsel appearing on behalf of petitioner Ashok Kumar has inter alia contended that he was merely a Dealer for Saras Dughda Utpadak Sahakari Sangh (hereinafter referred to as, 'the Company') and had stored the sample milk in its original condition. Learned counsel emphasized that the sample, admittedly even as per the case of the prosecution, had been drawn from a sealed pouch, precluding any possibility of tampering or adulteration by him. Furthermore, it was argued that there was no evidence led to show that petitioner Ashok Kumar had mishandled or sold the milk improperly; rather it was a matter of record that it had been stored as per the stipulated rules. It was still further asserted that the Courts below failed to appreciate that protection under Section 19(2) of the Act would accrue in his favour, as admittedly the petitioner was neither involved in the manufacturing of the milk nor was there even any allegation of tampering with the sealed milk packets; the learned trial Court had erroneously, thus, convicted the petitioner based only on an unsigned complaint.
- (ii) On behalf of petitioner Ramesh Kumar Trishal, it was argued that the impugned order deserved to be set aside

qua him as well. Learned counsel representing him vehemently argued that the petitioner Ramesh was working only as a Manager of the Company at Alwar (Rajasthan) and was not even named in the initial complaint. Furthermore, since the Company is a separate legal entity/juristic person, petitioner Ramesh could not be held personally liable without the Company being arraigned as an accused and being prosecuted, more so, since he was acting on behalf of the Company in his official capacity.

- (iii) Learned counsel, while placing reliance upon '**Aneeta Hada vs. M/s Godfather Travels and Tours Pvt. Ltd.**' **2012(2) RCR (Criminal) 854**, further asserted that it had been held in unequivocal terms that it is only when the Company is prosecuted, the persons mentioned in other categories, e.g. the petitioner in this case, who was a Manager of the Company, could be held vicariously liable. Learned counsel argued that the impugned judgments were patently erroneous and in the teeth of settled law as the petitioner Ramesh could not have been called upon to face trial without the Company being implicated as an accused. Still further, learned counsel argued that petitioner Ramesh Kumar Trishal, as a Manager, was not even responsible for the day to day operations or quality control of the milk products, which

fell under the purview of the Company's Quality Control Team. The absence of any specific averment against the petitioner in the complaint in question was contrary to the well settled law by Hon'ble the Supreme Court in '***S.M.S.Pharmaceuticals Ltd. vs. Neeta Bhalla & Another***' (2007) 4 SCC 70. Learned counsel asserted that it had been held in **SMS Pharmaceuticals' case** (ibid) that the Company's vicarious criminal liability could not be transferred on to its Director, Manager or any other official without specific allegations being levelled regarding their involvement in the alleged offence. Once the Company, i.e. the principal offender, had not been called to face trial, prosecuting and convicting the officials under Section 17 of the Act on the basis of vicarious liability, would not arise.

- (iv) Learned counsel also vehemently argued that the complainant neither in the complaint dated 17.04.2004 nor during the testimony of any witness, deposed that the milk samples in question pertained to the place where the petitioner Ramesh Kumar Trishal was working as a Manager, so much so even the label on the samples lacked any batch number or identification linking it to the work place of petitioner Ramesh.

5. Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, did not dispute the factum of the Company not being made an accused in the original complaint. It was also not disputed that the petitioner Ramesh Kumar Trishal was not the Quality Control Manager nor was he in any manner responsible for the quality of the milk products; learned State counsel also did not dispute that the Manager responsible for the quality control had not been arraigned as an accused in the complaint in question nor was ever proceeded against. However, he reiterated the allegations levelled in the complaint in question and submitted that it stood proved that the petitioners were guilty of adulteration of milk and therefore, they had been rightly convicted.

6. I have heard learned counsel for the parties and perused the relevant material on record.

7. Hon'ble the Supreme Court, in **Aneeta Hada's case (supra)**, has held as under:

“42. We have referred to the aforesaid passages only to highlight that there has to be strict observance of the provisions regard being had to the legislative intendment because it deals with penal provisions and a penalty is not to be imposed affecting the rights of persons whether juristic entities or individuals, unless they are arrayed as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the company. The learned counsel for the respondents have vehemently urged that the use of the term “as well as” in the Section is of immense

significance and, in its tentacle, it brings in the company as well as the director and/or other officers who are responsible for the acts of the company and, therefore, a prosecution against the directors or other officers is tenable even if the company is not arraigned as an accused. The words “as well as” have to be understood in the context. In **Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others** it has been laid down that the entire statute must be first read as a whole, then section by section, clause by clause, phrase by phrase and word by word. The same principle has been reiterated in **Deewan Singh and others v. Rajendra Prasad Ardevi and others and Sarabjit Rick Singh v. Union of India**. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the company” appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.

43. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the

touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh (supra) which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal (supra) does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada (supra) is overruled with the qualifier as stated in paragraph 37. The decision in Modi Distilleries (supra) has to be treated to be restricted to its own facts as has been explained by us hereinabove.”

8. Thus, as per the settled law, when a Company is accused of an offence, as in the instant case, then the natural person would be liable only by virtue of the principle of vicarious liability. In case the principal offender, i.e. the Company, has not been called upon to face trial, the question of prosecuting and convicting the natural persons of an offence by holding them vicariously liable under Section 17 of the Act would not arise.

9. In the present case, it is undisputed by the learned State counsel that the principal accused, i.e. the Manufacturing Company, was neither made a party nor proceeded against in the complaint in question. Consequently, petitioner Ashok Kumar, who was merely a Dealer, and petitioner Ramesh Kumar Trishal, was employed as a Manager in the Company, could not have been prosecuted or convicted for the alleged offence, in the absence of the Company being made a party to the proceedings.

10. Furthermore, in **SMS Pharmaceuticals’s case (ibid)**, the issue of vicarious liability in criminal law was examined and it was

held that a Director cannot automatically held accountable for the actions of the Company unless there are explicit and categoric allegations levelled against him in the complaint. A perusal of the complaint in this case reveals the absence of any specific averment regarding the roles played by both the petitioners in maintaining or being incharge of the quality of the products, as mandated under Section 17 of the Act. Therefore, the Courts indeed erred in overlooking the aforementioned crucial facts. This Court also finds force in the submissions made by learned counsel for the petitioner Ashok Kumar that since the samples were drawn from a sealed packet, which even as per the case of the prosecution, were un-tampered packets, the defence under Section 19(2) of the Act would be available to him.

11. In the light of law laid down by Hon’ble the Supreme Court in **Aneeta Hada’s case (supra)** and **SMS Pharmaceuticals’ case (supra)**, the instant revision petitions are allowed; the impugned orders convicting the petitioners are set aside and they are acquitted of the charges framed against them.

(MANJARI NEHRU KAUL)
JUDGE

April 20, 2024
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No