

**Ashok Kumar Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Mar-17-1997

**Reported in :** 1996(1)WLC114; 1997(1)WLN371

**Judge :** M.A.A. Khan, J.

**Appeal No. :** S.B. Criminal Misc. Petition No. 1140 of 1993 with stay petition No. 1141

**Appellant :** Ashok Kumar

**Respondent :** State of Rajasthan

**Disposition :** Petition allowed

**Judgement :**

**M.A.A. Khan, J.**

1. On January 28, 1980 the Food Inspector had purchased 'khandsari' for analysis from M/s Pawan Trading Co. Local which had purchased the same from M/s Amar Trading Co. Marsh Ganj Shamli (U.P.). The petitioner is the partner of M/s Amar Trading Co. On public Analysis reporting that the sample of 'Khandsari' was adulterated the Food Inspector filed a complaint Under Section 7/16 of Prevention of Food Adulteration Act, 1954 (the Act) against. M/s Pawan Kumar Trading Co. Losal and M/s Amar Trading Co. Shamli. The petitioner presented M/s Amar

Trading Co. in his capacity as a partner thereof but he himself was not an accused in the complaint along with his partnership firm. In the course of enquiry into the said offence the learned trial court, on 30.12.80, ordered to implied Smt. Rajni, Shri Kanwar Vir Singh & Sri Om Prakash all partners of M/s Amar Trading co. Shamli as accused in the case. However, the learned Sessions Judge, Sikar vide his order dated 27.7.82 made in Revision application No. 12 of 1981 set. aside that order of the learned Magistrate. The case therefore, proceeded against M/s Amar Trading Co. Shamli & Pawan Kumar of M/s Pawan Kumar Trading Co. Losal and on 11.12.89 both the above named accused were charged with the offence Under Section 7/16 of the Act through their respective counsel.

2. After close of complainant's evidence, Pawan Kumar accused in person and M/s Amar Trading Co. Shamli through its partner Ashok Kumar the petitioner were examined Under Section 313 Cr. P.C. on 27.3.90 and final argument in the case were heard. The case was fixed for pronouncement of judgment. The case could not be decided on the date fixed & was adjourned to 30.6.93. On 30.6.93 the learned Magistrate observed that though the above named three partners of M/s Amar Trading Co. Shamli could no longer be summoned as co-accused in the case due to the order of the learned Sessions Judge dated 27.7.82 yet since the petitioner had all along been appearing for and on behalf of the aforesaid partnership firm, he was required to be impleaded as an accused. Expressing his intention to consider the petitioner as an accused in the case in that way the learned Magistrate required the counsel to address him on the point whether charge be framed against the petitioner & he be examined Under Section 313 Cr. P.C. On 26.8.93 the learned Magistrate held that since the petitioner had put in appearance on almost all dates of hearing & was thus well acquainted of the nature of offence & character of evidence brought on record by the prosecution in support of such offence there was no necessity of either framing a charge against him or examining him Under Section 313 Cr. P.C. It is that order, as passed by the learned Magistrate, which is being challenged by the petitioner through this petition Under Section 482 Cr. P.C.

3. The learned Counsel for the petitioner urged that the impugned order besides being totally illegal and against the provisions of the Code of Criminal Procedure,

1973 and the principles of natural justice was also in the nature of gross abuse of the process of the court by the learned Magistrate. The learned Public Prosecutor simply made vain efforts to support the impugned order.

4. Section 17 of the Act deals with offences by companies. It says that where an offence under the Act has been committed by a company the person who has been nominated by such company to be incharge of and responsible to it for the conduct of its business or, where no person has been so nominated, every person who, at the time the offence was committed, was incharge of, or responsible to the company for the conduct of its business, shall be deemed to be guilty of the offence and shall be liable to be proceeded against & punished accordingly. As per definition of the term 'company' given in explanation below Sub-section (4) of Section 17 a Company includes a firm also. A reading of the provisions contained in Section 17 shows that it is by virtue of the deeming provisions that a person nominated to be the incharge of or responsible to, the company for conducting its business and, in his absence, every person, who, at the time the offence was committed was incharge of or responsible to it for the conduct of its business, shall be liable to be proceeded against & punished accordingly. It is settled position of law that a deeming provision in a statute should be strictly construed and its scope should not be liberally extended beyond the area it was intended to operate in. Section 17 makes, in the cases of commission of an offence under the Act, two categories of persons liable to be proceeded against & punished accordingly. In the first category fall the persons nominated to be the incharge of or responsible to the company/firm for the conduct of its business or, in the absence of such nomination, every person, who at the time the offence was committed, was incharge of and responsible to the company/firm for the conduct of business Both the types of persons in this category are mutually exclusive' in as much as that it a person has been nominated to be the incharge of and responsible to the company/firm for the conduct of its business the other type of person who may be a Director/employee of the company or a partner of the firm can not be simultaneously proceeded against & punished. This position of law is clear from the use of the conjunction 'or' between sub clauses (i) and (ii) of Clauses (a) of Sub-section (1) of Section 17 of the Act. In the second category falls the company or the firm, as the case may be. The use of the conjunction 'and' between clauses

(a) and (b) of Section (1) of Section 17 does not mean that they are mutually inclusive and must co-exist together for successful prosecutions Under Section 17. Either of the two categories of persons, mentioned in clauses (a) & (b) of Section 17(1) may, co-jointly or severally, be prosecuted and the absence of one in a prosecution would not be fatal for the prosecution of the other. The only requirement for their joint or separate trial, and even of one with no joint or separate trial of the other, is that the offence, alleged to have been committed, must be proved to have been committed by the company /firm.

5. Section 319 Cr. P.C. confers powers on a court to proceed against other persons not being accused in the case, who appear to be guilty of the offence being tried by it. Such power is required to be exercised after recording same evidence at the trial and such evidence showing the concern or involvement of 'such other person in the commission of the offence being probed by the Court. The purpose behind this provision is that guilty person should not escape punishment for the offence he is found to be concerned with or involved in.

6. A combined reading of Section 17 of the Act & Section 319 Cr. P.C. would show that only such Director of a company or a partner of a firm, then sub Director or partner has not been made co accused in the case along with the company or firm, as the case may be, who is prima facie found to be incharge of or responsible to the company or the firm for the conduct of its business, may be summoned as accused in the case. The rigors of Section 319 Cr. P.C. in fact stands relaxed in such cases in view of the nature of the offence and the nature of the duties of such persons in the areas of their functioning. If the above foundational facts are found existing in a case, such officer/employees of the company or the firm may be summoned as accused in the case.

7. In the instant case the learned Magistrate appears to have acted in total disregard of the relevant provisions of law. He overlooked the fact that a firm was a juridical person having quite an independent identity & personality of its own and was a distinct & separate entity from that of its partners. It has as such, the capability to sue & be sued in its own name but being a juridical person has to be represented by some one. The petitioner had need appearing for and on behalf of

his firm but such appearance by him did not satisfy the requirement of his being responsible to or incharge of the firm for the conduct of the business thereof. If the learned Magistrate wanted to summon the present petitioner as an additional accused in the case he must have recorded a finding to the effect that the petitioner was incharge of & responsible to the firm for the conduct of its business. There being no such finding his summoning of nay, considering, the petitioner as an accused in the case was inherently bad in law and on facts of the case.

8. The Magistrate further erred in law in directing that there was no need of framing a charge against and examining Under Section 313 Cr. P.C, a persons who was not initially arrayed as an accused in the case and was subsequently proceeded against in the case. A bare glance at the relevant provisions contained in Section 319 would clearly inform that a denovo trial is contemplated in such a situation.

9. In view of the discussion made here in above I entertain no doubt that the impugned order is, on the face of it, quite illegal besides being in gross abuse of the process of the Court. The same deserves to be vacated.

10. In the result the impugned order is set aside and proceeding initiated against the petitioner on the basis thereof quashed & dropped. The petition is allowed.

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