

**Pawan Kumar and ors. Vs. State of Rajasthan and ors.**

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**Court :** Rajasthan

**Decided On :** Jan-17-2002

**Reported in :** RLW2003(1)Raj126; 2002(2)WLN677

**Judge :** D.N. Joshi, J.

**Acts :** [Prevention of Food Adulteration Act, 1954](#) - Sections 7, 16, 17(1) and 20A

**Appeal No. :** S.B. Cri. Misc. Petition No. 759 of 1996

**Appellant :** Pawan Kumar and ors.

**Respondent :** State of Rajasthan and ors.

**Advocate for Pet/Ap. :** D.D. Kalla, Public Prosecutor; G.K. Khatri and; Sunil Me

**Disposition :** Petition allowed

**Judgement :**

**Joshi, J.**

1. Heard learned counsel for the parties.

2. S.B. Cri. Misc. Pet. No. 759/96 has been filed by Pawan Kumar against the order of learned Additional Chief Judicial Magistrate, Ratangarh dated 25.1.1984 taking cognizance against the petitioner and for quashing the criminal proceedings against the petitioner in Slate v. Poonamchand and Ors. (1).

3. S.B. Cri. Misc. Pet. No. 473/96 has been filed by Bhanwar Lal for quashing the proceedings against him in criminal case No. 605/83 pending in the Court of learned Additional Chief Judicial Magistrate, Ratangarh. Thus, both the petitions have been filed in relation to criminal original case No. 605/83 pending in the trial Court.

4. The brief facts of the case are that Dr. R.S. Choudhary, the Food Inspector and Chief Medical & Health Officer purchased a sample of 'Til oil' from M/s. Poonamchand Pawankumar, Sujangarh on 14.4.1980 and he took three samples from the same as prescribed by the Rules and sent one sample to the Public Analyst for analysis. The Public Analyst in his report submitted that the sample was not found conforming to the standard prescribed for Til oil. Therefore, the Food Inspector filed a complaint against M/s. Poonamchand Pawankumar and its working partner Poonam Chand for an offence under Section 7/16 of the Prevention of Food Adulteration Act (for short 'Act' hereinafter) on 19.6.1981 in the Court of Chief Judicial Magistrate, Churu, who took the cognizance against the accused and ordered issue of process. The case was then transferred to the Court of Additional Chief Judicial Magistrate, Ratangarh. On 4.11.1981, accused Poonam Chahd filed an application under Section 17(1) of the Act to take cognizance against other partners in firm M/s. Poonamchand Pawankumar also being vicariously liable for the so called sale of Til oil to the Food Inspector.

5. The learned Additional Chief Judicial Magistrate, Ratangarh vide impugned order accepted the application filed by Poonamchand and took cognizance against other partners of the firm M/s. Poonamchand Pawankumar, namely Malchand, Bhanwarlal, Pawan Kumar and Smt. Vimla Devi and they were ordered to be summoned as accused in the case. It is relevant to mention here that proceedings against Malchand and Poonamchand were dropped vide order dated 23.6.1995 of the trial Court as they died during the trial. It is also relevant to mention here that no further proceedings have and could not be taken on the complaint and it is at the stage, which was on 25.1.1984.

6. Against the order of taking cognizance, accused Smt. Vimla Devi filed a revision petition in the Court of learned Sessions Judge, Churu, which was later on

transferred to the Court of learned Additional Sessions Judge. Ratangarh, was dismissed vide order dated 18.3.1984.

7. Both the petitions were admitted by this Court on 18.12.1996.

8. Heard Mr. G.L. Khatri, learned counsel for the petitioner Pawan Kumar and Mr. Sunil Mehta for the petitioner Bhanwarlal and Mr. D.D. Kalla, learned Public Prosecutor.

9. Both the counsels argued on the same line. It was argued by the learned counsel that once cognizance had been taken by the learned Magistrate against the firm M/s. Poonamchand Pawankumar on 19.6.1981 for an offence under Section 7/16 of the Act, no cognizance against other accused persons could be taken prior to the state under Section 319 Cr.P.C. unless evidence had been taken by the trial wherefrom it could be said that any person not being the accused has committed any offence for which he could be tried together with the accused. The learned Magistrate took cognizance against the petitioners on the basis of partnership deed filed before him. As per argument of the learned counsel for the petitioners the order of taking cognizance against the accused- petitioners is illegal and abuse of the process of the Court.

10. It was further argued that the petitioners were not in charge of nor were actually conducting the business at the shop and as such they cannot be held liable merely because they were also partners of the firm. It was further argued that in view of the provisions of Section 17(1) of the Act, same of the person against whom the cognizance has been taken was in charge of, and responsible for the conduct of the business. There is no evidence to that effect the record and in the absence of such evidence, no criminal liability for the sale of Til oil by Poonam Chand can be fastened on the petitioner under the provisions of the Act.

11. The another argument advanced by the learned counsel was that under Section 13(2) of the Act if the food is found to be adulterated, the Local (Health) Authority is required to send a copy of the report of the Public Analyst to the person from whom the sample of the article of food was taken and that person is given a right to get the sample analysed by the Central Food Laboratory.

According to them, the learned trial Court has not applied its mind in as much as he has completely ignored the valuable right available to the petitioner under Section 13(2) of the Act for getting the sample re-tested by the Central Food Laboratory by taking cognizance after great delay of more than three years, cannot be availed of by him and there are such chances of conviction of the accused. On this ground also, the order of taking cognizance is liable to be set aside. The objection regarding valid sanction under Section 20 of the Act and quashing of the proceedings in view of Article 21 were also taken.

12. Mr. D.D. Kalla, learned Public Prosecutor has supported the order and proceedings of the trial Court.

13. To appreciate the rival contentions, it is necessary to extract the relevant Section 17 of the Act, which is as under :-

'Offences by companies-(1) Where an offence under this Act has been committed by a

(a)(i) the person, if any, who has been nominated under Sub-section (2) to be in charge of, and responsible to, the company for the conduct of the business of the company (hereinafter in this section referred to as the persons responsible), or

(ii) where 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; and

(b) the company, shall be deemed to be guilty of that offence shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

(2) Any company may, by order in writing, authorise any of its directors or managers (such manager being employed mainly in a managerial or supervisory

capacity) to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this Act and may give notice to the Local (Health) Authority, in such form and such manner as may be prescribed, that it has nominated such director as the person responsible, along with the written consent of such director or manager for being so nominated.

Explanation- Where a company has different establishments or branches or different units in any establishment or branch, different persons may be nominated under this sub-sec. in relation to different establishments or branches or units and the person nominated in relation to any establishment, branch or unit shall be deemed to be the person responsible in respect of such establishment, branch or unit.'

14. It has been held in *Sham Sunder and Ors. v. State of Haryana (2)*, as under:-

'More often it is common that some of the partners of a firm may not even be knowing of what is going on day to day in the firm. There may be partners, better known as sleeping partners who are not required to take part in the business of the firm. There may be ladies and minors who were admitted for the benefit of partnership. They may not know anything about the business of the firm. It would be a travesty of justice to prosecute all partners and ask them to prove under the proviso to Sub-section (1) of Section 10 that the Offence was committed without their knowledge. The obligation for the accused to prove under the proviso that the offence was committed without his knowledge or that he exercised all due diligence to prevent such offence arises only when the prosecution establishes that the requisite condition mentioned in Sub-section (1) is established. The requisite condition is that the partner was responsible for carrying on the business and was during the relevant time in charge of the business. In the absence of any such proof, no partner could be convicted. Thus where the documents produced by the prosecution do not indicate even remotely that all the partners were doing the business of the firm and there was no other evidence on record on this aspect, it could not be said that when the offence was committed all the partners were conducting the business of the firm. Therefore, they would not be liable for

conviction.'

15. The learned counsel relied upon the judgment of the Apex Court in *Municipal Corporation of Delhi v. Ram Kishan Rohtagi and Ors.* (3). In that case it has been held that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under Section 482. It has been further held in that case that the complaint clearly contains the allegations regarding the sample taken by the Inspector from a shop which was sent to the Public Analyst, was manufactured by the Company in question and that the Public Analyst found the samples to be adulterated. The complaint was filed against the company, its Directors and the Manager. So far as the Directors are concerned, there is no even a whisper nor a shadow of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any act committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable. In these circumstances, the Directors have been made out accused *ex facie* on the allegations made in the complaint and the proceedings against them were rightly quashed by the High Court.

16. It was also held in the above case that Section 319 of Cr.P.C. gives ample powers to any Court to take cognizance and add any person not before an accused before it and try him along with the other accused. In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the Court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the Court can take cognizance against them and try them along with the other accused. But, this is really an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken.

17. In Smt. Manibai and Anr. v. The State of Maharashtra (4), it has been held as under :-

'For the sale of adulterated coconut oil by Pranjivan, a co-licensee of the shop, his mother Manibai, who was not in charge of nor was she actually conducting the business at the shop, cannot be held liable merely because she was the licensee of the shop. Even assuming that the business was owned by a firm or an association of individuals and Manibai was a partner of the firm or a member of the association, Manibai would not be liable for the sale under Section 17(1) as she was not in charge of, and responsible for the conduct of the business.' (18). The learned counsel has also placed reliance on the following decisions on the above point :-

(1) Devi Chand and Ors. v. State of Raj. and Ors. (5)

(2) Mohd. Hussain Abdul Hussain and Ors. v. State of Raj. (6)

19. The Hon'ble Apex Court in its latest decision in Orn Prakash Shivprakash v. K.I. Kuriakose and Ors. (7) has held as under:-

'Power of the Court to implead the manufacturer, distributor or dealer, in cases involving offences under the Act, is envisaged in Section 20-A of the Act. The provision overrides the ban contained in Section 20 of the Act that no prosecution shall be instituted for the offences under the Act except by or with the consent of the authorities mentioned in the Section. One of the differences between Section 319 of the Code and Section 20-A of the Act is that, while in the former even if it appears to the Court from the evidence (either during inquiry or trial of the offence), that another person is to be tried along with the already reigned accused, then the Court can proceed against that other person, while in the latter the satisfaction of the Court that such manufacturer (distributor or deafer), is also concerned with that offence must.be gathered from 'the evidence adduced before it during the trial'. In other words, the power under Section 20-A cannot be invoked, until the trial beings and after the trial ends. The trial of offences under the Act begins when the Magistrate asks the accused whether he pleads guilty or not as envisaged in Section 251 of the Code, if the Magistrate opts to hold

summary trial. Hence, evidence in a trial under the Act can be adduced only after recording the plea of the accused as envisaged in the said section. Thus, it is clear that a Magistrate can implead any person under Section 20-A of the Act only after reaching the stage envisaged in Section 254(1) of the Code. The power cannot be invoked before stage of adducing evidence in trial, nor can it be invoked after conclusion of trial.'

20. It was further held in the above case as under :

'Therefore, where the accused soon after entering appearance in the Court filed a petition to implead the appellant firm as an accused in the case on the premise that accused purchased the Toor Dhall from the appellant company and at that stage the plea of any of the accused was not recorded nor even asked by the Magistrate before the ordered in pleadment of the appellant, the impleadment of appellant firm is premature and hence the action is without jurisdiction.'

21. It has also been held in *K. Sunitha v. State of Rajasthan* (8), as under:-

'Prosecution has nor produced any documentary evidence or otherwise or even has not made any averment that the petitioner was liable to be proceeded against the punished being in charge of and responsible for the conduct of the business of the company. There is no averment also that she was nominated by the company in the prescribed manner with a notice to the Local (Health) Authority as envisaged under Sub-section (2) of Section 17 of the P.F.A. Act. No presumption can be drawn merely on the basis of the list of directors filed by Assistant Commercial Taxation Officer that the petitioner was either nominated or defacto in charge of and responsible to the company for the conduct of the business.'

22. I have examined the matter in the above light. It appears that there is no averment against the impleaded petitioners that they were in charge of and responsible for the conduct of the company on the date when the sample was taken for analysis. There is also no averment against either of them that they were nominated by the company in the prescribed manner with a notice to the Local (Health) Authority as envisaged under Sub-section (2) of Section 17 of the P.F.A. Act. There is no documentary evidence or otherwise, on the basis of which it can

be said that the petitioners were either nominated or defacto in charge of and responsible to the company for the conduct of the business of the firm M/s. Poonam Chand Pawan Kumar. The same point involved in this case has been decided by the Hon'ble Apex Court in Om Prakash Shivprakash v. K.I. Kuriakose and Ors. (supra).

23. In the present case also, the accused Poonam Chand (now dead) filed an application for impleading the petitioners as accused-persons in the case on the ground that they were also partners i the firm. At the stage of filing the application by Poonam Chand (now dead), his plea was not recorded and therefore, the evidence could not be recorded. As per provisions of Section 20- A of the Act, the impleadment can be made only on the evidence adduced before it during the trial. In other words, the power under Section 20-A cannot be involved until the trial begins and after the trial ends. In Omprakash Shiv prakash's case, the Hon'ble Apex Court has held that the trial of offences under the Act begins when the Magistrate asks the accused whether he pleads guilty or not as envisaged in Section 251 of the Code. Nothing sort of this has been done in this case. Therefore, the impleadment of the petitioners is pre-mature and hence the action is without jurisdiction.

24. The order of taking cognizance against the petitioners is also without jurisdiction as there is no evidence against them that all or any of them was in charge of ad responsible for the conduct of the business. As per explanation to Section 17(4) of the Act, the 'company' includes a firm. Only partner-ship deed was available with the trial Court and as per complaint, there is no allegation against either of the petitioners/accused, who were impleaded as accused view impugned order. This could not be done in view of the decisions cited above, particularly the decision given in Sham Sunder v. State of Haryana (supra). Therefore, without any allegation or evidence and before commencement of the trial, the impugned order has been passed presumably under Section 20-A of the Act, which is pre-mature.

25. In the considered opinion of the Court, the power under Section 20-A cannot be invoked before the stage of adducing evidence in the trial, nor can it be invoked

after the conclusion of the trial. In the present case, the Magistrate has chosen to exercise the power prematurely and hence the action is without jurisdiction.

26. In view of the above, the impugned order of the trial Court taking cognizance against the petitioners mentioned in the application of Poonam Chand (now dead) is liable to be set aside and is hereby set aside. The Court need not will enter into to decide the other points raised regarding violation of the right under Section 13(2) of the Act. But, the Court would like to pass an order on the question of speedy trial. However, it is made clear that this judgment will not preclude the Magistrate from considering the question afresh at the appropriate stage.

27. The proceedings against the firm should be continued or not after dropping proceedings against Poonamchand due to his death will be decided by the learned trial Court.

28. Accordingly, both the petitions are hereby allowed and the order of the court below is quashed and set aside. This order will also prevail in favour of the petitioners, who have not filed the petitioners before this Court.

29. A copy of this order be sent to the learned trial Court with its record immediately.

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