

In Re Jagannathan and anr.

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Court : Chennai

Decided On : Jul-27-1981

Reported in : 1982CriLJ1142

Judge : M.N. Moorthy, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313

Appeal No. : Crl. R.C. 180 of 1979 (Crl. R.P. No. 177 of 1979)

Appellant : In Re Jagannathan and anr.

Advocate for Def. : N. Dinakar, Govt. Adv.

Advocate for Pet/Ap. : R. Muthukrishnan, Adv.

Judgement :

ORDER

1. There were three accused before the Sub-Divisional Judicial Magistrate, Nagapattinam in C.C. No. 383 of 1978, who were accused of offences under Sections 7(1) and 16(1)(a) read with S. 2(i)(a) of the Prevention of Food Adulteration Act. They were found guilty of the said offences by the learned Sub-Divisional Judicial Magistrate and each of them was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 2000/- in default to suffer rigorous imprisonment for six months.

2. The accused appealed against the conviction and sentence before the Sessions Judge, East Thanjavur, A. 1 filing C.A. No. 219 of 1978 and A. 2 and A. 3, C.A. 222 of 1978. The learned Sessions Judge allowed C.A. No. 219 of 1978 acquitting A. 1 and dismissed C.A. 222 of 1978 confirming the conviction and sentence passed by the trial court on A. 2 and A. 3. The present revision is filed by A. 2 and A. 3 against the order of the learned Sessions-Judge.

3. The case of the prosecution is briefly as follows. A-1 is the Kangalanjeri Co-operative Agricultural Bank Ltd., Nagore Main Road, Kangalanjeri, represented by its secretary, Rajamanickam : A-2 is the salesman of the Maligai wing attached to it : and A-3 is the accountant who was in-charge secretary. On 27-1-1978, at about 10-15 a.m. P.W. 1, the Food Inspector attached to Panchayat Union, Thirumarugal, inspected the 'maligai wing of the Kangalanjeri Co-operative Agricultural Bank Ltd., when A. 2 was in charge of sale of grocery to public. P.W. 1 found about 60 Kgs of rava kept in a bag for sale. Expressing his intention of taking sample thereof for analysis and serving Ex. P. 2 form VI notice upon A. 2, he purchased 750 gms of rava for Rs. 1.50 and obtained Ex. P. 1 cash receipt from A. 2. As A. 1, the secretary was on leave on that date, A. 3 the accountant was in-charge secretary, P.W. 1 served a copy of form VI notice on A-3 also and obtained Ex. P. 4 acknowledgment. Then P.W. 1 followed the usual procedure and sent one bottle of the sample to the public analyst and the remaining two bottles to the local health authority. Ex. P. 7 is the report received from the public analyst to the effect that the sample is heavily insect infested and musty odoured and as such it is unfit for human consumption. Prosecution was launched against the accused on 22-4-1978. Subsequently a notice u/s. 13(2) of the Act, copy of which is marked as Ex. P. 8, and a copy of the report Of the public analyst were served on the accused against acknowledgment Exs. P. 9 and P. 10 respectively.

4. The accused in their statements u/s. 313 Cri.P.C. denied having committed any offence. They examined four witnesses on their behalf to show that the grocery wing was in the exclusive charge and management of one Kaliya perumal as per Ex. D. 1, resolution passed by the bank, that the secretary and in charge secretary had nothing to do with the same in that on the relevant date when P.W. 1 inspected the 'maligai' wing and demanded sample A 2 represented that the rava

available in the gunny bag was not intended for sale and it had to be purified and that in spite of such protest, P.W. 1 took the sample.

5. There is no doubt that P.W. 1 when he visited the 'maligai' branch of that said agricultural co-operative bank took the sample expressing his intention of sending the same for an analysis. The defence version is that they represented to P.W. 1 that the said stock of rava was not for sale and it needed purification. But when this was put to P.W. 1 in the cross-examination, he denied the same. As I see no reason not to accept the evidence of P.W. 1, hold that there was sale of rava by A. 2 to P.W. 1 on 27-1-1978.

6. Coming to the question of culpability of the petitioners, let me deal with the case of A. 3 the second petitioner herein. He was in charge secretary on that date. D.W. 3, the President of the Co-operative Agricultural Bank, would say in his deposition that according to Ex. D. 1, resolution, one Kaliaperumal was in charge of and responsible for the conduct of the business. He was entrusted with the administration of the 'maligai' wing. According to the defence version A. 3 took charge only on the day when P.W. 1 visited the co-operative agricultural bank. Even according to P.W. 1, A-3 was not there when he purchased rava from A. 2. Even Form VI notice was served on A. 3 only later on in a different wing of the bank where he was working and it is conceded that A-3 took charge as in-charge secretary only that morning. Taking these circumstances into consideration, I feel that it is unsafe to convict A-3 for an offence under the P.F.A. Act.

7. Turning to the case of A. 2, the sales-man, the learned counsel for the petitioners, (sic) are liable for the offence alleged against them only vicariously within the meaning of Section 17 of the P.F.A. and as such in the absence of any valid prosecution and conviction against the Co-operative Society Bank, the petitioners could not be prosecuted and convicted. The Counsel states that it is unjust to prosecute against the second accused as a vendor individually without the aid of Section 17, for the act constituting offence was not of his choosing but of the society or of one in charge of management of the business of the company. It is the society which is primarily liable and he is only acting on behalf of the society and is vicariously liable for it. He is not the vendor in the real sense of the term.

8. In the trial court, the Co-operative Agricultural Bank, represented by its Secretary Rajamanickam was an accused along with the petitioners herein. It had been ranked as A-1. In the trial court all the three accused were convicted. However, in appeal, the, learned Sessions Judge observing that the trial court erred in convicting Rajamanickam, the secretary, individually in spite of the fact that Kangalanjeri Co-operative Agricultural Bank Ltd., wps shown as A-1 acquitted Rajamanickam.

9. To substantiate his argument, learned counsel for the petitioners cited before me D. K. Jain v. State. : AIR1965 All525 wherein it is held that Section 17(2) of the PFA Act makes it obvious that the Legislature has taken care to provide that natural persons made vicariously liable for the offence committed by a Company or any one of its employees are to be punished only when it is established that they had some nexus with the crime either because of their connivance with it or due to their criminal negligence which had resulted in its commission. This decision has not taken into consideration Section 7 of the Act which provides that 'no person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute'

10. In Sarjoo Prasad v. State of UP 1961 MLJ Cri 284 : : 1961 CriLJ747 the Supreme Court has held that a servant is liable for being punished for contravention of the provisions of the P.F.A. Act.

11. In view of the above decision of their Lordships of the Supreme Court, the petitioners on this aspect of the matter, stated in Benoy Krishna Mukherjee v. State of Manipur, wherein it is held :

'In case of a person coming under the purview of S. 17 it may be unjust to prosecute him as a vendor individually without the aid of S. 17, for the act constituting the offence was not of his choosing but of the company or of one in charge of management of the business of the company and this he cannot show outside S. 17, and this may prejudice him. It is the company which is primarily liable, he is only one acting on behalf of the company and vicariously liable for it. He is not the vendor in real sense of the term. The last proposition appears to be justified on the ground that once the business in course of which the offence is

committed is found to belong to a company or firm, the company is primarily liable and entire responsibility does not lie on the person found in flagrante delicto for it is not his decision but of the company, and under such circumstances, he cannot be treated as the vendor and if he is prosecuted without the aid of S. 17 and others are left out, the real person who was responsible for the offence may escape and as a result only the humblest employee of the company will be prosecuted for carrying out his duties. This will open up a wide door for company offenders to escape. Section 17 itself makes ample provision for his prosecution. On the other hand, the man who is found to have sold the sample is the surest of the offenders for the purpose of prosecution and he cannot be allowed to escape in the absence of any others found liable for the offence. If he is also allowed to escape liability this statutory offence will find indulgence in law. Section 7 clearly provides - 'No person shall himself manufacture for sale, or store sell or distribute.' The learned counsel made particular stress on the decision in *B. K. Varma v. Corporation of Madras*, : AIR1971 Mad40 wherein Krishnaswami Reddy J. has held (at page 61).

'It is therefore, clear from Section 17, that under Clause (1) if the offence was committed by the company, the company as well as the 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 under Clause (2) if the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such persons mentioned therein shall be liable to be proceeded against and punished. The prosecution, therefore must have filed a complaint against the company first and then against the persons against whom they could proceed under Section 17(1) and (2) of the Act. It is, therefore, clear from the complaint itself that the revision petitioner has been prosecuted not in his individual capacity as a vendor but in the capacity of a person employed by the firm as the Plant Superintendent.'

12. According to my reading of the judgment it is not meant to hold that the company should be prosecuted as a condition precedent to the prosecution of the person in charge. In the above case, it was held that though under Section 17(1)

of the Act, the company is liable to be prosecuted every person in charge of the company for the conduct of the business also can be convicted but on a scrutiny of the evidence it was found that it was not established that the accused there was in charge of the manufacture of the goods. So it may be stated that every person in charge of conducting the affairs of the company at the time the offence was committed will be liable and it is not, as stated before, a condition precedent that the company should be prosecuted before the prosecution of persons in charge, if individual employees have committed offences without the knowledge of the company, there is no reason why the company should be made an accused.

13. Lastly, the learned counsel relied on the decision in *Chander Bhan v. State* (1975) 2 FAC 77, wherein Vyas Dev Misra J. of the Delhi High Court, relying on a Bench Decision of that court held that where a company has been acquitted for whatever reasons the acquittal may be, as an inevitable concomitant thereof, it is not possible to deem any person to be guilty of the offence because of his being in charge of the business of the company at the material time.

14. In the present case, the company was made an accused but was acquitted in appeal. In my view, it is not necessary that the company should be made an accused and should be convicted for its employees to be proceeded against for offence under the P.F.A. Act. The proposition that if the company is acquitted it may not be safe, or it may not be possible to convict its employees depends on the facts of each case. In the present case, taking into consideration the fact that A-1 the society and A-3 its secretary in charge are found not to have committed an offence under the Act, and in the peculiar circumstances of the case, I feel that conviction of A. 2 may not be safe in spite of Section 7 of the Act. In the result, I set aside the conviction and sentence passed on A. 2 and A-3 and acquit them. The revision is allowed and the bail bonds will stand cancelled.

15. Revision allowed.