Puneet Gupta and anr Vs. State

Puneet Gupta and anr Vs. State

SooperKanoon Citation : sooperkanoon.com/954695

Court : Delhi

Decided On : Jan-15-2013

Judge : G.P. Mittal

Appellant : Puneet Gupta and anr

Respondent : State

Advocate for Def. : Ms. Rajdipa Behura

Advocate for Pet/Ap. : Mr. Satish Kumar Tripathi

Judgement :
* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

15. h January, 2013 + CRL. M.C. 756/2012 PUNEET GUPTA & ANR Through: ..... Petitioners Mr. Satish Kumar Tripathi, Advocate versus STATE Through: ..... Respondent Ms. Rajdipa Behura, APP CORAM: HON'BLE MR. JUSTICE G.P.MITTAL JUDGMENT G. P. MITTAL, J.

(ORAL) 1. A complaint under Section 16 of the Prevention of Food Adulteration Act, 1954(the Act) was filed as a sample of Fruit Yogurt purchased from one Gian Chand Bedi was found to be not conforming to the standard of Fruit Yogurt and thus adulterated. M/s L-Comps & Impex Pvt. Ltd. was impleaded as accused No.7 being the importer of the sampled commodity. One Anu Sharma was impleaded as accused No.8, as he was a nominee appointed under Section 17 of the Act of accused No.7.

2. While the prosecution evidence was being recorded in the complaint case filed by the Food Inspector, Govt. of NCT of Delhi, an application dated 20.11.2007 was moved by earlier said Anu Sharma for dropping proceedings against him on the ground that he was appointed as a nominee only for Chandigarh. Para 2 of the application is extracted hereunder:

2. That the sample in the present case was lifted by the Food Inspector, Delhi, at Delhi, whereas the present petitioner was the nominee of the said firm only for Chandigarh. In support of his contention, the petitioner is enclosing herewith the photocopy of the letter issued by the Local Health Authority, Homoeopathic Dispensary, Sec. 28-A, Chandigarh Admn. dated 15.6.01 for the ready reference of the Honble Court which clearly indicates that the petitioner was the nominee for the Chandigarh only.

3. The learned Metropolitan Magistrate(MM) came to dispose of the said application by an order dated 16.09.2008. He dropped proceedings against said Anu Sharma holding that the nomination of accused No.8 was received in the office of Local Health Authority (LHA) on 09.05.2001 and the same was accepted on 15.06.2001. The learned MM also held that the nomination of accused Anu Sharma was only for the territory of Chandigarh. The relevant portion of the order is extracted hereunder: I have gone through the nomination i.e. form VIII of accused no.8 i.e. Anu Sharma. The same is dt. 5.1.01 as far as officials of accused no.7 is concerned. There is no date of acceptance on behalf of LHA. However, there is a document on record which is purported to be a communication sent by LHA to accused no.7. As per this document it appears that the nomination of accused no.8 was received by the office of LHA on 9.5.01 and the same is accepted on 15.6.01. From the perusal of this document it also appears that the nomination of accused no.8 is only limited for Chandigarh. So this shows that on the date of alleged offence i.e. 17.3.01, accused no.8 was not the nominee of accused no.7. So he cannot be made liable for prosecution. Further, his nomination was accepted only for the area of Chandigarh so cannot be held responsible for the acts if any committed in Delhi.

4. An application under Section 20A read with Section 17(a)(ii) of the Act was moved by the complainant to implead the directors in charge of and responsible for the conduct of business of M/s L-Comps & Impex Pvt. Ltd. (accused No.7). In the application, it was stated that accused Anu Sharma was discharged and the proceedings against him were dropped by an order dated 16.09.2008. Thus, there was no one to represent the earlier said company. As per records and reply received from VATO-89, Shri S.P. Gupta, Pankaj Gupta and Puneet Gupta were the directors of the company. None of them were sleeping directors and thus they were liable to be prosecuted being in charge of and responsible for the conduct of the business of the company(accused No.7). The application found favour with the learned MM who by his order dated 05.09.2011 directed summoning of the directors Puneet Gupta and Pankaj Gupta, the Petitioners herein.

5. In the Petition it is contended that the summoning order was illegal in view of the nomination dated 05.01.2001 duly received in the office of LHA. It is urged that the learned MM erred in dropping the proceedings against accused No.7 by an order dated 16.09.2008 and then summoning the Petitioners by an order dated 05.09.2011.

6. The legality of the order dated 16.09.2008 is not before this Court. There is no gainsaying that the Petitioners have been summoned by the aid of Section 20A of the Act. For the sake of convenience, Section 20A of the Act is extracted hereunder: [20A. Power of court to implead manufacturer, etc.- Where at any time during the trial of any offence under this Act alleged to have been committed by any person, not being the manufacturer, distributor or dealer of any article of food, the court is satisfied, on the evidence adduced before it, that such manufacturer, distributor or dealer is also concerned with that offence, then, the court may, notwithstanding anything contained in [sub-section (3) of section 319 of the Code of Criminal Procedure, 1973 (2 of 1974)] or in section 20 proceed against him as though a prosecution had been instituted against him under section 20].

7. It is not in dispute that accused No.7 M/s L-Comps & Impex Pvt. Ltd was the manufacturer of the sampled Fruit Yogurt which was found to be not conforming to the standard. Apart from the manufacturer and the vendor and its

directors/partners, the distributor was prosecuted as accused No.6. A close reading of Section 20A would reveal that it is only a manufacturer, distributor or dealer who can be summoned to face prosecution during the course of the trial. Section 20A was inserted in the Act w.e.f. 01.03.1965. The purpose of insertion of the Section appears to be to enable the Court to prosecute the manufacturer, distributor or the dealer of the adulterated article when it transpires during the course of trial that the adulterated article had been manufactured or distributed by some person other than the one who has not been prosecuted. In the case of O.P. Shiv Prakash v. K.I. Kuriapose, (1999) 8 SCC 633.it was held that power under Section 20A cannot be invoked before the stage of adducing evidence in the trial. Admittedly, the consent under Section 20 of the Act is a condition precedent to a prosecution for an offence punishable under Section 16 of the Act. Section 20A of the Act also dispenses with the consent for prosecution required to be taken under Section 20 of the Act.

8. It is not a case where the manufacturer had not been impleaded and was sought to be impleaded by this application. The complainant sought to implead the directors only on the ground that the company which was earlier being represented by accused No.8(Anu Sharma) was not being represented by anybody.

9. Section 305 of the Code of Criminal Procedure lays down the procedure for representation of a corporation as an accused. It would be fruitful to extract Section 305 hereunder:

305. Procedure when corporation or registered society is an accused.- (1) In this section, "corporation" means an incorporated company or other body corporate, and includes a society registered under the Societies Registration Act, 1860 (21 of 1860). (2) Where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial and such appointment need not be under the seal of the corporation. (3) Where a representative of a corporation appears, any requirement of this Code that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused, shall be construed as a requirement

that that thing shall be done in the presence of the representative or read or stated or explained to the representative, and any requirement that the accused shall be examined shall be construed as a requirement that the representative shall be examined. (4) Where a representative of a corporation does not appear, any such requirement as is referred to in sub-section (3) shall not apply. (5) Where a statement in writing purporting to be signed by the managing director of the corporation or by any person (by whatever name called) having, or being one of the persons having the management of the affairs of the corporation to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section, is filed, the Court shall, unless the contrary is proved, presume that such person has been so appointed. (6) If a question arises as to whether any person, appearing as the representative of a corporation in an inquiry or trial before a Court is or is not such representative, the question shall be determined by the Court.

10. Thus, it would be seen that a company can be represented through a representative appointed for this purpose. Sub-section (3) says that where a representative of a company appears, any requirement of this Code that anything shall be done in the presence of the accused, shall be construed as a requirement that, that thing shall be done in presence of the representative. Sub-section(4) says that if the representative of the corporation does not appear, the requirement as referred in sub-section (3) shall not apply. Thus, simply because there was nobody to represent the company, the directors could not have been summoned to appear as accused. The right course to be adopted was to issue summons to the company through its principal officer and it is for the company to decide as to through whom it is to be represented. Thus, simply on the ground that the company was not being represented, its directors who are the Petitioners herein could not have been summoned to face prosecution. Moreover, Section 20A of the Act could not have been used by the learned MM to issue the summons to the two directors for the reason that it is only a manufacturer, distributor or a dealer of the sampled food article who has not been prosecuted earlier and where it transpires during the trial that the said manufacturer, distributer or dealer has not been prosecuted that the Court may take cognizance against him as if the prosecution had been instituted against him.

11. There is another aspect of the matter. Although, in the application under Section 20A of the Act the Petitioners were not sought to be summoned on the ground that there was no valid nomination under Section 17 of the Act in respect of accused No.8 and proceedings against whom had been dropped, the learned MM preferred to summon the Petitioners on the ground that the nomination given under Section 17 of the Act was only limited for Chandigarh. This finding reached by the learned MM is without any material. The nomination in form VIII under Rule 12-B is available on page 37 of the paper book. It simply says that Manager Purchase & Liaison has been nominated by the company(accused No.7) by a resolution passed in the meeting held on 01.01.2001 to be in charge of and responsible to the said company for the conduct of its business. It is nowhere stated that the nomination is confined only to the Union Territory of Chandigarh. The nomination was accepted by Anu Sharma on 05.01.2001.

12. Section 17(2) of the Act empowers a company having different establishments or branches or different units in any establishment to nominate separate persons in relation to any establishment or branch. M/s L-Comps & Impex Pvt. Ltd.(accused No.7) was only the importer of the sampled food article. It is nowhere the case of the complainant that it had different establishments or branches at different places. Thus, the finding reached by the learned MM that Anu Sharma(since discharged) was nominee only for the area of Chandigarh is not tenable.

13. It is not the case of the complainant in the Application under Section 20A of the Act that nomination in favour of Anu Sharma was not valid nor this is the ground for issuing summons against the Petitioners. I have already held above that the provision of Section 20A of the Act could be used only to summon a manufacturer, distributor or a dealer which is not the case here. At the same time, there are certain observations made by the learned MM in the order dated 16.09.2008(which is not subject matter of the instant Petition). Without any averment in this regard, the learned MM went on to observe that as per the acceptance letter issued by LHA, the nomination was received on 09.05.2001. It is true that the letter dated 15.06.2001 issued by the LHA says that the nomination dated 05.01.2001 was received in the office on 09.05.2001. But, at the same time, it is nowhere the case

of the complainant that the nomination was not transmitted by accused No.7 on 05.01.2001 and was received in the office of LHA only on 09.05.2001. It is also not the case of the complainant that the nomination was ante dated by accused No.7 or any officer or director of the company.

14. In view of the above discussion, the Petition succeeds on the twin grounds that the cognizance could not have been taken against the Petitioners on the strength of Section 20A of the Act and also on the ground that the nomination made in favour of accused No.8 was confined to the territory of Chandigarh or even that the nomination was not received in the office of LHA on 05.01.2001, when it purports to have been dispatched by accused No.7.

15. Consequently, the Petition succeeds. The summoning order against the Petitioners is set aside. (G.P. MITTAL) JUDGE JANUARY 15 2013 pst