

## David Mathews and Others Vs State of H.P. and Others

**Court:** High Court of Himachal Pradesh

**Date of Decision:** March 30, 2010

**Acts Referred:** Constitution of India, 1950 " Article 227

Criminal Procedure Code, 1973 (CrPC) " Section 305, 482

Prevention of Food Adulteration Act, 1954 " Section 14A, 16(1), 17, 17(1), 17(2)

**Citation:** (2011) 6 RCR(Criminal) 2194 : (2010) 2 ShimLC 170

**Hon'ble Judges:** Surinder Singh, J

**Bench:** Single Bench

**Final Decision:** Allowed

### Judgement

Surinder Singh, J.

The present petition has been filed u/s 482 of the Code of Criminal Procedure read with Article 227 of the Constitution

of India, against summoning the petitioners as accused in complaint case No. 6-3 of 2004 u/s 16(1)(a)(i) of the Prevention of Food Adulteration

Act, 1954, in short "the Act".

2. In fact, M/s. Mashobra Resorts Limited is a body corporate and a Company, duly registered under the Companies Act. It has its unit at

Charabara in district Shimla, running under the head and style of ""M/s Wildflower Hall"", a hotel, wherein Mr. Sameer Miglani was an Executive

Chef and the food licence was issued in his name for and on behalf of the said hotel.

3. On 16th August, 2003 at about 12 O'clock, Shri L.D. Thakur, Food Inspector, inspected the premises of the said hotel at Charabara and

found accused Shri Sameer Miglani conducting the business of the hotel. He had exhibited 244 x 300 ml canes of Fanta sweetened carbonated

beverages on steel shelf for sale to the general public. The Food Inspector disclosed his identify and issued a notice declaring his intention to take

the sample of Fanta sweetened carbonated beverage for the purpose of analysis. 3 x 300 ml. canes of Fanta were purchased out of 244 sealed

canes kept for sale and made the payment of Rs. 54/-, regarding which a receipt was also obtained. The purchased canes were separately labeled

and wrapped in accordance with law.

4. Said Shri Miglani disclosed u/s 14-A of the Act that he had purchased the said articles from respondent No. 2 M/s Gogoi Departmental Store.

Thus copy of notice form VI was also posted to the said firm. The seizure memo was prepared on the spot in the presence of the witnesses.

5. One part of the sample was sent to the Public Analyst Kandaghat for its examination as per the procedure and another part was deposited with

the LHA.

6. After the analysis, the sample so sent was found misbranded as the quantity of sugar added in the product was not mentioned in the label.

7. All the papers were placed before the Chief Medical Officer concerned, for taking his consent to launch the prosecution against Sameer Miglani

and the Company as also to respondent No. 2. The Food Inspector aforesaid was authorized to launch the prosecution against the aforesaid

licencee, as such, the complaint was filed in the Court of learned Judicial Magistrate 1st Class, Court No. 2, Shimla on 31st December, 2003.

8. The process was issued against the respondents for their presence on 15.1.2004 for the aforesaid offence. Pursuant to the said order, Sameer

Miglani and accused No. 2 in the complaint put in appearance through its representative Shri Kailash Chander Soni on 19.4.2004 and filed the

authorization on behalf of the respondent No. 2 u/s 305 Cr.P.C. Respondent No. 3 herein, also put in appearance on 9.2.2005. The others were

not present. When the matter was fixed for service of other respondents, Sameer Miglani did not turn up during the hearing of the case and he was

thus declared as proclaimed offender.

9. Vide order dated 12.6.2006, passed by the trial Court, notice was ordered to be issued to the Directors of M/s. Wildflower Hall, Charabara

for their presence on 3.7.2006. David Mathew, General Manager of the Hotel, who is alleged to have taken over the charge on 15.7.2004 was

served. He moved an application Annexure P-4 for quashing the proceedings against him as at the relevant time, he was not the General Manager

of the said hotel.

10. Vide order dated 3rd July, 2006, the Food Inspector was directed to file the list of Directors of the Company. A list of three Directors i.e. the

petitioners P.R.S. Oberoi, Arjun Oberoi and T.K. Sibal (at page-103 of the trial Court file) dated 11.9.2006 was filed by the Food Inspector to

summon them for 28th October, 2006 as accused. The hotel staff at Charabara received the notice and aforesaid petitioners came to know about

the issuance of notice, which has been assailed in this petition.

11. Heard the learned Counsel for the parties and have examined the record of the case.

12. As a matter of fact Section 17(1) of the Act is a deeming provision which provides that where an offence under the Act is committed by a

Company/Firm, the person Incharge and responsible to it, is held to be guilty, and to be liable should be proceeded against with a view to fix

culpability, where offence is committed by a company. Sub-section (2) provides for a nomination so that there is no difficulty in fixing responsibility.

Where, however, no person has been nominated, liability is extended to any person who was in-charge of or responsible to the company/firm in

the conduct of its business. The prosecution is under obligation to find out whether any person has been nominated in terms of Section 17(2) of the

Act and if a person has been nominated, to proceed against him so that he can be punished if the Company is found guilty. There has to be a

determination that a company/firm is guilty, where after the question of punishing the person of any of the categories indicated in Clause (a) of Sub-

section (1) arises. However, reverse is not necessary to be established. The Section does not provide that the person in-charge of the company

should be found guilty before the company is held liable. Merely because a person is not nominated, the liability does not vanish and along with the

company the person who was in-charge of or responsible to the company in the conduct of the business is rendered liable. Sub-section (1) of

Section 17 of the Food Act makes all the persons in charge of or responsible to the company in the conduct of business liable to the company in

the conduct of the business liable to the procedure and process, in case there is no indication in terms of Sub-section (2). Where a person is

nominated, that person is made liable in terms of Clause (a) of Sub-section (1) of Section 17 of the Act.

13. The scope is wider where there is no nomination and the person who is in-charge of or responsible to the company in the conduct of business

is liable subject, of course, to the proviso which casts onus on the person who claims that the offence was committed without his knowledge and

he exercised all due diligence to prevent the commission of such offence.

14. In the instant case, there is no averment made in the complaint that any of the directors or General Manager sought to be impleaded are the

Incharge or the responsible person of the Company, in the conduct of the business, therefore, their summoning as the accused persons in the

instant case, is wrong and illegal.

15. Precisely, the reading of Section 17 of the Act shows that the Legislature has an intention to proceed against the person responsible at the first

instance and only if it is proved that the offence has been committed with the consent etc. of any Director and/or other persons named in Sub-

section (4), it is thereafter open to the Court to proceed against him/them. The intention behind the amendment Act, 1976 which has given the

present shape to this Section, as it stands now, is apparent and is plainly discernable from its scheme that it is not open to the Court to work

against it on any ground more specifically when it is not averred in the complaint that such a person was Manager, Secretary or other officer of the

company/firm not being a person nominated under Sub-section (2) of the Act, consented to or connived to commit the offence under the Act or is

attributable to him/them on account of any neglect on his/their part. [Pl. see Raj Kumar v. Food Inspector 2009 (1) Sim.L.C. (359).

16. Thus, in view of the above position, when there is no allegation of the above nature against the petitioners, it would not be open for the learned

trial Court to summon them as an accused under the Act. Therefore, summoning them in this case without any such allegation or in absence of any

prima facie proof is unsustainable in the eyes of law. The petition is, therefore, allowed and summoning order and proceedings against the

petitioners are hereby quashed. However, it would be open to the trial Court to implead any such persons whether the Director(s) or the partner(s)

of the Company as an accused qua whom the consent, connivance or neglect would be proved within the indictment of Sub-section (4) of Section

17 of the Act aforesaid.

17. The petition is accordingly allowed and stand disposed of. Record of the learned trial Court be returned.

Cr.M.P. Nos. 619 of 2009 and 109 of 2010.

In view of the disposal of the main petitioner, both these applications become fruituous.