

(1977) 11 CAL CK 0005

Calcutta High Court

Case No: Criminal Revision No"s. 779 and 956 of 1976

Abdul Rahaman

APPELLANT

Vs

J.D. Manchanda

RESPONDENT

Date of Decision: Nov. 30, 1977

Acts Referred:

- Prevention of Food Adulteration Act, 1954 - Section 16, 16(1), 17(1)

Citation: (1977) 2 ILR (Cal) 558

Hon'ble Judges: Monoj Kumar Mukherjee, J

Bench: Single Bench

Advocate: Prasun Chandra Ghosh, for the Appellant; Pradip Ghosh and J. Islam for State, for the Respondent

Judgement

Monoj Kumar Mukherjee, J.

In these two revisional applications 11 accused persons pray for quashing the proceeding of Case No. 147-D of 1974 pending against them in the Court of the Metropolitan Magistrate, Calcutta, u/s 16 of the Prevention of Food Adulteration Act, 1954.

2. On November 22, 1974, Sri J.D. Manchanda, Food Inspector, Corporation of Calcutta and the opposite party herein, filed a petition of complaint in the Court of the Metropolitan Magistrate, Calcutta and Judicial Magistrate, First Class, outside metropolitan area against 13 accused persons for having committed offences punishable u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act). The learned Magistrate took cognizance of the said complaint and issued process against all the 13 accused persons. Pursuant to the summons issued all the accused persons appeared before the learned Magistrate and thereafter, a date was fixed for committal of the accused persons to the Court of Sessions for standing their trial. In the meantime, 11 of these accused persons moved this Court and obtained the two present Rules for quashing the

proceeding of the said case. While Criminal Revision No. 779 of 1976 is at the instance of seven of these accused persons, the other Criminal Revision case being Case No. 956 of 1976 is at the instance of the other four of the accused persons. Since a common point has been raised in both these Rules, this judgment will dispose of both of them.

3. Mr. Prasun Chandra Ghosh, learned Advocate appearing for the Petitioners in both Rules, has contended that as the petition, of complaint does not disclose any offence having been committed by any of these Petitioners the proceeding against them is an abuse of the process of the Court and as such, the same is liable to be quashed. Mr. Ghosh has drawn my attention to the petition of complaint wherein the only averment made against these Petitioners is that they were either Chairman, Vice-Chairman, Director or Treasurer of the company, namely Indian Coffee Workers Co-operative Society Ltd. the accused No. 1. According to Mr. Ghosh, these eleven Petitioners were being sought to be proceeded against by virtue of Section 17(1) of the Act, but in the absence of any averment made in the petition of complaint that they were, at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company, no such prosecution lay against them nor was the Magistrate justified in issuing process against them. Mr. Ghosh contended that a plain reading of the said section would unmistakably show that merely holding certain official position of the company would not make them liable for prosecution in absence of any allegation that they were running the affairs of the business. In support of his contention Mr. Ghosh has firstly referred to a decision of the Supreme Court in Smt. Manibai and Another Vs. The State of Maharashtra, in which, while dealing with a similar case under the Act, the Supreme Court held:

Even if it may be assumed that the business was owned by a firm or an association of individuals and Manibai was a partner of that firm or member of that association of individuals, Manibai would be liable u/s 17(1) of the Act for the sale which was made by her son Pranjivan only if it was shown that she was in charge of and was responsible for the conduct of the business which was carried on at the shop. There is no evidence to that effect on the record. In the absence of such evidence no criminal liability for the sale of coconut oil by Pranjivan can be fastened on Manibai under the provisions of the Act.

4. Mr. Pradip Ghosh, learned Advocate appearing for the complainant opposite party, in his usual fairness did not challenge this proposition of law. Mr. Pradip Ghosh, however, contended that the case that fell for determination in the Supreme Court was after the completion of the trial while in the instant case the stage was one of issuing process against the accused only. According to Mr. Pradip Ghosh, the application of the Petitioners is premature as the prosecution is yet to lead evidence and if after such evidence being taken it is found that no such involvement of the accused Petitioners is there they can take recourse to the provisions of Section 17(1)

of the said Act to earn an acquittal. In reply to the contentions so raised by Mr. Pradip Ghosh, Mr. Prasun Chandra Ghosh has drawn my attention to a decision of this Court in Momtaz Begum Vs. The State. In this decision, this Court, while considering a similar provision of the Employees' Provident Fund Act, 1952, held that in absence of any averment in the petition of complaint that the accused was in charge of and responsible to the company for the conduct of the business of the company, the proceeding started against the accused was not maintainable.

5. I am in respectful agreement with the decision of this Court. In my view, at the stage of issuing process the learned Magistrate has to be satisfied that there is a *prima facie* case against the accused and for obtaining such satisfaction, the materials on which the learned Magistrate decides to issue process must indicate the necessary ingredient of the offence and also materials to connect the "accused with the crime. Keeping in view the above position, let us now see whether the petition of complaint discloses even a *prima facie* case against these eleven accused Petitioners.

6. From the petition of complaint it appears that in the column for the accused these eleven Petitioners have been named and they have been described as Chairman, Vice-Chairman, Director or Treasurer. There is no allegation or averment therein that these accused persons were in charge of and responsible to the company for the conduct of the business of the company. On the contrary, the petition of complaint impliedly shows that these accused persons were not responsible to the company for the conduct of the business nor was in charge of the business as one Md. Quashim, Secretary of the company, has been described as the person in charge of the local affairs of the company. Since the petition of complaint, on the basis of which alone process was issued against the accused Petitioners, does not disclose any material to connect these eleven Petitioners with the offence in question, these two applications must succeed.

7. In the result, both the Rules are made absolute and the proceeding of Case No. 1470 of 1974 so far as it relates to these eleven accused Petitioners is hereby quashed. They are discharged from their respective bail bonds.