

**(2001) 03 CAL CK 0033**

**Calcutta High Court**

**Case No:** C.R.R. No. 1563 of 1982

Ganeshbari Tea Company (P) Ltd.  
and Another

APPELLANT

Vs

The Corporation of Calcutta and  
Another

RESPONDENT

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**Date of Decision:** March 14, 2001

**Acts Referred:**

- Prevention of Food Adulteration Act, 1954 - Section 16(1), 19, 19(2), 7(1)

**Citation:** (2001) CriLJ 4483

**Hon'ble Judges:** Debiprasad Sengupta, J

**Bench:** Single Bench

**Advocate:** Balai Ch. Roy, for the Appellant; Ashim Roy and Somnath Banerjee, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

Debiprasad Sengupta, J.

The present revisional application is directed against an order dated 27-4-1982 passed by the learned Senior Municipal Magistrate, Calcutta in Case No. 504-D of 1974 thereby framing charge u/s 16(1)(a)(i) read with Section 7(1) of the Prevention of Food Adulteration Act against the petitioners.

2. The facts of the case are that the Food Inspector inspected the business premises of M/s. Tea King at 9/12, Lal Bazar Street, Calcutta on 29-8-1974 and found "Tea" stored and exposed for sale for human consumption. He purchased sample of tea from Judhisthir Agarwalla after complying with legal formalities. The sample was sent to Public Analyst, who on analysis opined the sample to be adulterated. Thereafter the petition of complaint was filed against four persons. Prosecution examined witnesses and they were also cross-examined before charge. Charge was

framed against accused M/s. Tea King and one J. Agarwalla u/s 16(1)(a)(i) read with Section 7(1) of P.F.A. Act. When the case was fixed for cross-examination of the P.Ws. after charge, the accused-Judhisthir Agarwalla filed an application with a prayer that the present petitioners, namely M/s. Ganeshbari Tea Co. (P) Ltd. might be impleaded as accused in the case in view of the provision of Section 20-A of the P.F.A. Act. The application was allowed and the present petitioners appeared before the learned Magistrate on 31-5-1977. On 15-2-1982 the prosecution examined three witnesses including the complainant, i.e., Food Inspector and the sample witnesses in presence of the accused-petitioners. P.W. 1 was also recalled for further evidence.

3. It was contended on behalf of the principal accused persons that they would not be liable for prosecution because the Tea" exposed for sale for human consumption, which was seized from M/s. Tea King, was manufactured by M/s. Ganeshbari Tea Co. (P) Ltd. and was sold to them as per Bill and Invoice. Such contention was not accepted by the learned Magistrate, who was of the view that the liability of Ganeshbari Tea Co. as manufacturer of the Tea cannot save M/s. Tea King from the liability for storing and exposing for sale for human consumption and for selling the adulterated Tea.

4. M/s. Tea King and accused-Judhisthir Agarwalla are being prosecuted for storing and exposing for sale for human consumption and for selling the adulterated tea. Similarly the added accused persons are also liable to be prosecuted as the manufacturer of the said adulterated tea. It appears that from the evidence of P.W. 1 Food Inspector and also from the cash memo (Exhibit 2) the learned Magistrate was satisfied that P.W. 1 purchased 400 grams of tea of Ganeshbari Tea Co. from accused-Judhisthir Agarwalla. It also appears that P.W. 1 in his cross-examination for added accused persons (present petitioners) stated that accused-Judhisthir showed him the cash memo of Ganeshbari Tea Co. Pvt. Ltd. The said cash memo was marked "X" for identification and the connected invoice was marked "Y" for identification. The learned Magistrate was satisfied that the evidence on record connects M/s. Ganeshbari Tea Co. (P) Ltd. with the offence as manufacturer of the adulterated tea and the present petitioner No. 2 Mr. I.P. Kanoi as the Director of the said Company who signed the cash memo. Accordingly charge was framed against the added accused persons (present petitioners) u/s 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act. A date was fixed on 21-5-1982 for cross-examination of P.Ws. after charge. It is at this stage the petitioners came up before this Court against the order of framing charge against them.

5. Mr. Balai Chandra Roy learned Advocate appearing for the petitioners submits that the present petitioners were added as accused in this case as manufacturer of the tea, which was seized from M/s. Tea King, in view of the provision of Section 20-A of the P.F.A. Act. But there is absolutely no evidence to show that the sample of article was seized in the same form in which it was sold by the petitioner to M/s. Tea King. According to Mr. Roy there being no evidence to indicate that the sample of

tea, which was taken from M/s. Tea King, was kept by the vendor in the same form and condition in which the manufacturer had sold the same to the vendor, the present petitioners cannot be liable for prosecution with the aid of Section 20A of the Act. But I am unable to accept such submission made by Mr. Roy. Section 19(2) provides as follows :◆

(2) A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves◆

(a) that he purchased that article of food◆

(i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer;

(ii) in any other case, from any manufacturer, distributor or dealer with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold, it in the same state as he purchased it.

6. The State Amendment of Section 19-A in the Act vide the W.B. Act XLII of 1973 provides as follows :◆

19-A. Burden of proof◆ When any article intended for food is seized from any person in the reasonable belief that the same is adulterated or misbranded the burden of proving that such article intended for food is not adulterated or misbranded shall be on the person from whose possession such article intended for food was seized.

7. So, from the aforesaid provisions it is very much clear that the vendor is to prove by adducing evidence that the article of food, while in his possession, was properly stored and was kept in the same form, in which it was purchased from the manufacturer. From the evidence on record prima facie materials are available, which is sufficient for the purpose of framing charge against the added accused (the petitioners herein). It is settled law that at the stage of framing of charge the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. If the Court is satisfied that a prima facie case is made out for proceeding further, then a charge has to be framed. It will not be proper for this Court to appreciate and weigh the materials on record to come to a conclusion that charge against the accused should not have been framed.

8. In the present case it cannot be said that there is absolutely no material to connect the added accused persons (petitioners herein) with the offence committed by the vendor. Since prima facie materials are there, the learned Magistrate was justified in framing charge against the petitioners. In my considered view it will not be proper for this Court to quash the charge or to interfere with the proceeding.

9. The revisional application accordingly fails and the Rule is discharged. The interim stay granted by this Court stands vacated. Since this a very old case of 1974, the learned Magistrate is directed to proceed with the trial and to conclude the same with utmost expedition without granting any unnecessary adjournment to either of the parties.

10. The lower Court records may be sent down to the Court below immediately.