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## R. Chandra Vs Bhagabati Shaw and Another

Court: Calcutta High Court

Date of Decision: Nov. 14, 1974

Acts Referred: Prevention of Food Adulteration Act, 1954 â€" Section 16, 16(1)(a)(i), 17, 7

Citation: 79 CWN 529

Hon'ble Judges: A.K. De, J

Bench: Single Bench

Advocate: S.K. Basu and Durgapada Dutta, for the Appellant; Tapan Deb Nandi and S.S. Pal for the State, for the

Respondent

## **Judgement**

A.K. De, J.

Upon a complaint by the petitioner, Food Inspector, with the written consent of the Health Officer, Corporation of Calcutta,

the two opposite parties, the proprietors of a shop located at 38, Bentink Street and another their Salesman in the shop, were summoned u/s 16(1)

(a) (i) read with section 7 of the Prevention of Food Adulteration Act, 1954. to be hereinafter called ""the Act" for storing and or selling adulterated

food. All the three accused, so summoned, appeared before the trying Magistrate. They filed a joint petition to state that they would plead guilty to

the charge which may be framed on the evidence of the Food Inspector alone. The complainant examined the Food Inspector who proved several

document Exts. 1 to 7. The three accused cross-examined the Food Inspector. The learned Magistrate thereafter considered the evidence so given

and was satisfied on it that a charge u/s 16 read with section 7 of the Act should be framed. He framed charge only against the salesman accused.

He explained the charge, so framed, to him and the said accused pleaded guilty. Accepting his plea the learned Magistrate had convicted and

sentenced him. By the same order the learned Magistrate had, however, discharged the two accused opposite parties u/s 253(2) of the Code of

Criminal Procedure holding the charge to be groundless as against them. His order discharging the two opposite parties u/s 253(2) of the Code is

challenged in this Rule. A person who himself or by any person on his behalf stores or sells any adulterated food, is liable to be punished u/s 16

read with section 7 of the Act. The learned Magistrate in discharging the two opposite parties held as follows:

Admittedly, accused Nos. 1 and 2 are two owners of the shop. So the shop is a "company" u/s 17 of the P.F.A. Act. But the. company has not

been made a party. The prosecution has led no evidence to the extent that either or both the accused Nos. 1 and 2 Bhagabati and Gulab were in

charge or were responsible for the business at the material time. So, the charge against both of them is groundless.

The learned Magistrate also states in his Explanation, called for in this Rule.

It is true that both Bhagabati Shaw and Gulab were shown as proprietors in the petition of complaint. It is also true that admittedly they were the

proprietors and the prosecution also adduced some evidence on that point. Thus, the business in question of the opposite parties Nos. 1 and 2 was

an association of individuals and was, therefore, a "company" not within the meaning of the Companies Act but within the meaning of section 17

read" with its Explanation (a) of the P.F.A. Act 1954.

2. A "Company" as stated in the Explanation to section 17 of the Act means a body corporate and includes a firm or other ""association of

individuals"".

The expression ""association of individuals"" is not a term of art. A group of persons doing an act may or may not form an association. An

association of individuals can be formed only when two or more individuals voluntarily ""combine"" together for a certain purpose. Volition on the

part of the members of the association is the essential ingredient. The mere fact that two or more persons own one or more shops jointly and take

the profit or bear the loss of the business run in the shop does not by itself indicate that they act as an association of individuals. What transpired

from the evidence given before the learned Magistrate is that the two opposite parties are two owners of the shop. That does not by itself go to

show that they act as an association of individuals. The learned Magistrate fell into error when he concluded that a business run by more than two

persons is an association of those persons and is a "company" within the meaning of the term in the Explanation to section 17 of the Act. These

two opposite parties as individuals are running the shop. They are therefore, liable to be tried and punished for an offence, if any, u/s 16 read with

section 7 of the Act. In this view of the matter, the learned Magistrate's order discharging the two opposite parties has been wrong. The result is

that I make the Rule absolute, set aside, the order dated 21.5.73 of the learned Magistrate in Case No. 83D of 1972 so far as it discharged the

two opposite parties u/s 253(2) of the Code and direct that a charge u/s 16 (1) (a) (i) read with section 7 of the Act be framed against each of

them and they be tried on that charge in accordance with law and the procedure laid down in section 254 and the following section of the Code of

Criminal Procedure. The two opposite parties are directed to appear before the learned Magistrate on or before 14.12.73, failing which the

learned Magistrate will cause their appearance before him by issue of necessary processes.

Let the records be sent down as quickly as possible.