

Tapan Chandra Kar and Others Vs The State

Court: Calcutta High Court

Date of Decision: Sept. 10, 1986

Acts Referred: Essential Commodities Act, 1955 " Section 10, 3, 7
Prevention of Food Adulteration Act, 1954 " Section 16, 17, 7

Citation: 91 CWN 946

Hon'ble Judges: S.P. Das Ghosh, J

Bench: Single Bench

Advocate: Balai Chandra Roy, S.L. Hazra and Y. Dastur, for the Appellant; Alakananda Bhose, for the Respondent

Final Decision: Allowed

Judgement

S.P. Das Ghosh, J.

This revisional application is directed against an order passed by the learned Metropolitan Magistrate, 7th Court,

Calcutta, whereby charge under Rule 114(11a) of the Defence of India Rules, 1971, was framed against the accused-petitioners no.1 to 4, the

accused-petitioner no.1, Tapan, being stated to be the Manager and the accused-petitioners nos.2, 3 and 4 being stated to be the partners of a

firm under the name and style of M/s. Annapurna Marketing Agency at 10, Pollock Street, Calcutta. The allegation against the petitioners is that

the petitioners did not display the stock of Baby Food, to wit, Amul Spray in the office-cum-sales counter of the firm at 10, Pollock Street, on

18.6.74, although they had a physical stock of 497 cartons, each carton containing 12 tins of 1000 grams, 11 tins each of 1000 grams and 62

cartons each containing 24 tins of 500 grams of Amul Spray in their godown at Canning Ware House at 7, Strand Road, Calcutta. On alleging

violation of Para-3 of the West Bengal Declaration of Stocks and Prices of the Essential Commodities Order, 1971, punishable under Rule

114(11a) of the Defence of India Rules, 1971 (hereinafter calaled ""the D.I. Rules"" for the sake of convenience), the present prosecution was

started against the petitioners.

2. After filing of the charge-sheet, prosecution examined three P.Ws. Subsequently, by an order passed on 10.9.80, the learned Metropolitan

Magistrate, 7th Court, Calcutta, directed framing of a charge under Rule 114(11a) of the D.I. Rules. It is against this order for framing of charge

against the petitioners no.1 to 4 that the present revisional application is directed.

3. Mr. Roy, the learned Advocate for the petitioners, has contended that the proceedings against the petitioners should be quashed when the firm,

M/s. Annapurna Marketing Agency, was not an accused in the case. The contention of Mr. Roy is that the provisions of Rule 170 of the D. I.

Rules are similar to the provisions in section 10 of the Essential Commodities Act, 1955. It is contended that as M/s. Annapurna Marketing

Agency, is not an accused in the case, vicarious liability cannot be fastened on the petitioners nos. 2, 3 and 4, who happen to be the partners of the

firm or on the petitioner no.1, who happens to be the manager of the firm. Mrs. Bhose, the learned Advocate for the State, has contended that

charge has only been framed in the case and the P.Ws. are yet to be cross-examined after charge. According to her, the prosecution of the

petitioners is maintainable, even though the firm has not been made an accused in the case.

4. After hearing Mr. Roy and Mrs. Bhose, I am of the opinion that the proceedings against the petitioners should be quashed. The provisions of

Rule 170 of the D.I. Rules relating to offence by companies are similar to the provisions in section 10 of the Essential Commodities Act, 1955. It is

now well-settled that u/s 10 of the Essential Commodities Act, it is the company which is primarily responsible for any offence u/s 7 of that Act,

which may have been committed as a result of contravention of an order u/s 3 of that Act in respect of essential commodities which are covered by

that Act. (See Kailas Musaddi v. The State, 1984(1) C.H.N. 26, State of Kerala Vs. Noveen Chandran M. Soni, partner Soni Hiralal and Co.,

and Man Mohan v. State of U.P., 1975 Cri.L.J. 1241). In order to fasten liability on a person other than the company, it is essential to show that

such a person was in charge of and was responsible to the company for the conduct of the business of the company. There is nothing in the

evidence of any of the three P.Ws. examined in the case before charge to show that any of the petitioners nos.2, 3 and 4, the partners of M/s.

Annapurna Marketing Agency, was in charge of, and was responsible to the firm for the conduct of the business of the firm. In the absence of any

evidence as yet before charge or any averment in the charge-sheet to show that any of the petitioners nos. 2, 3 and 4 was in charge of, and was

responsible to the firm for the conduct of the business of the firm, the proceedings against the petitioners nos. 2, 3 and 4 are to be quashed, even

though, at the time of inspection of the firm on 18.6.74 the stock of Baby Food was not displayed at the office-cum-sales counter of the firm at 10,

Pollock Street, Calcutta. So far as the petitioners nos. 2, 3 and 4 are concerned, the proceedings against them were liable to be quashed, even if

the company was made an accused in the case as there was no evidence or any averment in the complaint or charge-sheet that the partners of the

firm were in charge of, and were responsible to the company for the conduct of the business of the company.

5. Since the decision of the Supreme Court in the case of Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, the position has

become somewhere different as regards a manager in a case u/s 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954,

provisions of Section 17 of the Prevention of Food Adulteration Act being also similar to the provisions in Section 10 of the Essential Commodities

Act and Rule 170 of the D.I. Rules. If a company is made an accused in a case under the Prevention of Food Adulteration Act, 1954 the manager

of such a company who is directly in charge of its affairs, does not, from the very nature of his duties, fall in the same category as its directors or

partners and hence, if a company is made an accused in a case under the Prevention of Food Adulteration Act, its manager could be prosecuted

u/s 7 read with Section 16 of that Act. In view of this decision by the Supreme Court in the case of Municipal Corporation of Delhi Vs. Ram

Kishan Rohtagi and Others, , the position of a manager has become different from that of directors or partners of a company as regards

prosecution u/s 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954 or Rule 114(11a) of the D.I. Rules, 1971. Even then, if

the company itself is not made an accused in a case, the manager of the company cannot be held to be vicariously liable because of the nature of

his duties. It is to be stated in this connection, that in the case of Delhi Municipality (Supra), the company was also made an accused as

distinguished from this case where the company has not been made an accused. The case of the petitioner no.1 as the manager of M/s. Annapurna

Marketing Agency, cannot thus be differentiated in this case from the case of the petitioners nos. 2, 3 and 4 on the basis of the Supreme Court

decision in the case of Delhi Municipality (Supra).

6. As the matter stands, neither the petitioner no.1 nor any of the petitioners nos. 2, 3 and 4 can be proceeded with further as the company, M/s.

Annapurna Marketing Agency, has not been made an accused in the case. The proceedings against the petitioners nos.1 to 4 are, accordingly, to

be quashed.

7. The revisional application is, accordingly, allowed. The proceedings against the petitioners nos.1 to 4 in the G.R. Case No.536 of 1975 in the

court of the learned Metropolitan Magistrate, 7th Court, Calcutta, are quashed. The Rule is made absolute.

Let the lower court records be sent down.