

Gursharanjit Singh v. State of Punjab (D. S. Tewatia, J.)

authority wishes to relax the provisions of a particular rule in favour of a class of persons it has to record an express order in that behalf. The rules once promulgated are meant to be obeyed meticulously and they cannot be by-passed on the ground that they stand impliedly relaxed. In any event, the interpretation placed by the learned Judge on the relevant rules and endorsed by us does not debar the Inspector-General of Police to pass an order in terms of rule 13.21 to relax the provisions of any rules in Chapter XIII in favour of outstanding sportsmen.

(10) Since we have come to the conclusion that the view taken by the learned Judge in Chambers is in accordance with the relevant rules, we see no force in this appeal and dismiss the same.

S. S. Sandhawalia, C.J.—I agree.

N. K. S.

Before D. S. Tewatia, J.

GURSHARANJIT SINGH,—*Petitioner.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Revision No. 220 of 1981.

April 21, 1981.

Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 7, 16(1) (a) (i) and 17—Sale of adulterated by a salesman employed in a company—Superior officer under whom such salesman is working—Whether liable to be prosecuted—Sale—Whether could be said to be on behalf of such officer—Offence committed by a Company—Such Company—Whether necessary to be arrayed as an accused alongwith its functionaries.

Held, that a perusal of sections 7 and 16(1) (a) (i) of the Prevention of Food Adulteration Act, 1954 would show that not only the persons who directly effects the sale but even a person, on whose behalf he effects the sale, is also guilty of the offence if the person, who had actually effected the sale is held to have committed the offence in

question. In an organisation which is a Corporation or a Company having hierarchy of posts, a person placed in a subordinate position when effecting sale of adulterated food cannot be considered to be doing so on behalf of his superior officers. This is more particularly so when the organisation in question happens to be incorporated one with an independent entity. In such a case, the salesman can be said to be effecting the sale on behalf of the Company and not on behalf of any of his officers. Such being the position, then a superior officer cannot be charged with the commission of the offence under section 16 with the aid of section 7 of the Act. To charge such an officer or any other officer who is considered to be a functionary envisaged either by clauses (a) (i) or (ii) of section 17(1) of the Act, relevant provisions of section 17 shall have to be pressed into service and specifically invoked. Where an officer of the Company is not sought to be charged of the offence with the aid of section 17, the charge against him is clearly illegal.

(Para 4)

Held, that a perusal of the provisions of section 17 shows that where an offence under the Act had been committed by the Company then the persons named in clauses (a) (i) or (ii) of sub-section (1) of section 17 of the Act shall be deemingly guilty of the offence and would be punishable. A perusal of section 7 would show that a person on whose behalf adulterated food is sold is said to have committed the offence. The expression 'person' is not limited to a 'natural person', but also includes 'juristic person', that is, the companies and corporations and, therefore, where an employee of a corporation commits an offence, the corporation by virtue of its vicarious liability is automatically deemed to have committed the offence. Once a corporation or a company is so held to have committed the offence by virtue of its vicarious liability, then the persons specified in clauses (a) (i) or (ii) of sub-section (1) of section 17 of the Act are automatically deemed guilty of the offence and are liable to be punished. Section 17(1) (b) makes expressly liable the company, in addition to persons specified in clauses (a) (i) and (ii) of sub-section (1) of section 17 of the Act. In a case where the intention is to punish the company, then the company shall have to be actually prosecuted and arrayed as an accused but where such is not the intention and where liability of the company or the corporation arises vicariously, then the company can be pronounced guilty even when it is not arrayed as an accused. In such a case, the persons made deemingly liable for the offence committed by the company could be prosecuted without prosecuting the company itself. However, in such a case, the company cannot be punished.

((Paras 5, 6 and 7).

B. K. Verma vs. Corporation of Madras, A.I.R. 1971 Madras 40 Dissented from.

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Petition under section 397/401 Cr. P. C. for the revision of the order of the court of Shri Pawan Kumar Garg, Chief Judicial Magistrate Faridkot dated 2nd February, 1961 ordering that both Shakti Kumar and District Manager, Shri Gursharanjit Singh may be charged for an offence under section 7/16(1) (a) (i) Prevention of Food Adulteration Act.

G. R. Majithia, Advocate with Salil Sagar, Advocate, for the Petitioner.

H. C. Sachdeva, Advocate, for A.G., Punjab.

JUDGMENT

D. S. Tewatia, J.—(Oral)

(1) This revision petition is directed against the order dated 2nd February, 1981 of the Chief Judicial Magistrate, Faridkot, whereby he charged the petitioner, District Manager of the Punjab State Civil Supplies Corporation Limited, hereinafter referred to as the Punsup, at Faridkot, alongwith Shakti Kumar, a salesman of the Punsup shop located at Kotkapura, for the offences under sections 16(1) (a) (i) read with section 7 of the prevention of Food Adulteration Act, hereinafter referred to as the Act.

The charge framed by the trial Magistrate against the petitioner is in the following terms:

“I, Pawan Kumar Garg, P.C.S., Chief Judicial Magistrate, Faridkot, hereby charge you Shakti Kumar and Gursharanjit Singh accused as follows:

That on 11th August, 1978 at 4.15 p.m. Dr. Gursewak Singh inspected the Punsup shop situate at Kotkapura of which you, Shakti Kumar, accused was the Salesman and you Gursharanjit Singh, District Manager, was the Incharge, and Dr. Gursewak Singh after disclosing his identity as Food Inspector, after serving a notice, purchased 900 grams of Rajmahn against a payment of Rs. 4.44 Paise, which on analysis was found containing two living insects and 2.4 per cent foreign matter (inorganic) against maximum of 1.0 per cent, and thus you committed an offence punishable under section 16(1) (a) (i) read with section 7 of

the Prevention of Food Adulteration Act, and within my cognizance.

And I hereby direct that you be tried by the said court on the said charge.”

Mr. G. R. Majithia, learned counsel for the petitioner, has assailed the order of the trial Magistrate on the ground that the reasoning of the trial Magistrate for justifying the framing of the charge against the petitioner on the score that he stood in the position of a master *qua* Shakti Kumar Salesman and, therefore, he was also vicariously liable for the offences specified in the charge, is erroneous.

(2) Before embarking upon a consideration of the submission advanced by Mr. Majithia, a few relevant facts deserve notice in the light whereof his submission is to be appreciated: Punsup is registered under the Indian Companies Act. It has established shops in the entire State for supplying essential commodities and as an organisation, at the district level, is headed by a District Manager. At the shop level, the salesmen effect the sales.

(3) Dr. Gursewak Singh, Food Inspector, on 11th August, 1978 purchased 900 grams of 'Rajmahn' from Shakti Kumar Salesman from its shop located at Kotkapura. The sample sent for chemical analysis was found to be adulterated and then a complaint was laid both against the salesman Shakti Kumar and the petitioner Gursharanjit Singh, the later at the relevant time happened to be the District Manager, Punsup, Faridkot. Before framing of the charge, evidence was led regarding the purchasing of the 'Rajmahn' by the Food Inspector, the same being found to be adulterated, sale having been made by Shakti Kumar, Salesman and the petitioner being the District Manager-in-charge of the said shop.

(4) Relevant portion of section 7 of the Act, which prohibits, *inter alia*, sale of adulterated food, is in the following terms:—

“7. No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute—

(i) any adulterated food:

* * * * *

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Relevant portion of section 16 of the Act, which penalises, *inter alia* selling of adulterated food, is in the following terms:

“16(1) Subject to the provisions of sub-section (1A), if any person—

(a) whether by himself or by any other person on his behalf, imports into India or manufactures for sale, or stores, sells or distributes any articles of food—

(i) which is adulterated within the meaning of sub-clause (m) of clause (ia) of section 2 or misbranded within the meaning of clause (ix) of that section or the sale of which is prohibited under any provision of this Act or any rule made thereunder or by an order of the Food (Health) Authority:

* * * * *

A perusal of sections 7 and 16(1) (a) (i) of the Act, extracted above, would show that not only the person who directly effects the sale but even a person, on whose behalf he effect the sale, is also guilty of the offence if the person, who had actually effected the sale, is held to have committed the offence in question. The question that now falls for consideration is as to whether in an organisation, whether of a corporation or a company, having hierarchy of posts, can it be said that a subordinate effects the sale on behalf of his superior officer(s). Apparently, a person placed in a subordinate position when effecting sale of adulterated food cannot be considered to be doing so on behalf of his superior officers. This is more particularly so when the organisation in question happens to be incorporated one with an independent identify. In such a case, the salesman, as in the present case, can be said to be effecting the sale on behalf of the company, that is, the Punsup, and not on behalf of any of its officials [see in this connection *Booth v. Helliwell* (1)]. Such being the position, then a District Manager cannot be charged with the commission of the offence under section 16 with the aid of section 7 of the Act. To charge a person in the position of a District Manager or for that matter any other officer who is considered to be a functionary envisaged either by clauses (a) (i) or (ii) of section 17(1) of the Act, the relevant provisions of section 17 shall have to be pressed into service and specifically invoked. In the present case, the petitioner is not sought to be charged

(1) (1914) 3 K.B.D. 252.

of the offence with the aid of section 17 and, therefore, the charge framed against him is clearly illegal.

(5) Mr. Majithia, learned counsel for the petitioner, additionally argued that unless Punsup is arrayed as one of the accused, the functionaries made deemingliy liable by the provisions of clauses (a) (i) or (ii) of section 17(1) cannot be prosecuted and made liable for the offence committed by the corporation, vicariously or otherwise. He sought sustenance for his above submission from a Single Bench decision of the Madras High Court reported in *B. K. Varma v. Corporation of Madras* (2), and drew pointed attention to the following observations made therein:

“Several points were raised before the learned Chief Presidency Magistrate. But before me, the learned counsel for the petitioner confined himself to one point, namely, that since the offence was committed by a company, the prosecution should have filed the complaint against the company and the persons in charge of or responsible to the company for the conduct of the business of the company.

It is, therefore, clear from section 17 that under clause (1) if the offence was committed by the company, the company as well as the person who at the time the offence was committed was incharge of, and was responsible to, the company for the conduct of the business of the company, and under clause (2) if the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such persons mentioned therein shall be liable to be proceeded against and punished. The prosecution, therefore, must have filed a complaint against persons against whom they could proceed under section 17(1) and (2) of the Act. It is, therefore, clear from the complaint itself that the revision petitioner has been prosecuted not in his individual capacity as a vendor but in the capacity of a person employed by the firm as the Plant Superintendent.”

(2) A.I.R. 1971 Madras 40.

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With respect, Krishnaswamy Reddy, J., laid down too wide a proposition when he observed that the persons made deemingly liable alongwith the company cannot be prosecuted unless the company is also prosecuted along with them.

The relevant provisions of section 17 are in the following terms: —

“17(1) Where an offence under this Act has been committed by a company—

- (a) (i) the person, if any, who has been nominated under sub-section (2) to be in charge of, and responsible to, the company for the conduct of the business of the company (hereafter in this section referred to as the person responsible), or
- (ii) where no person has been so nominated, every person, who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company; and

(b) the company,

shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

* * * * *

- (2) Any company may, by order in writing, authorise any of its directors or managers (such manager being employed mainly in a managerial or supervisory capacity) to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this Act and may give notice to the local (Health) Authority, in such form and in such manner as may be prescribed, that it has nominated such director or manager as the person responsible, along with the written consent of such director or manager for being so nominated.

Explanation: Where a company has different establishments or branches or different units in any establishment or branch, different persons may be nominated under this

sub-section in relation to different establishments or branches or units and the person nominated in relation to any establishment, branch or unit shall be deemed to be the person responsible in respect of such establishment, branch or unit.

A perusal of the above provisions of section 17 shows that where an offence under the Act had been committed by the company, then the persons named in clauses (a) (i) or (ii) of sub-section (1) of section 17 of the Act shall be deemingly guilty of the offence and would be punishable. A question arises as to when and how the company commits an offence under the Act.

(6) A perusal of section 7 would show that a person on whose behalf adulterated food is sold is said to have committed the offence. The expression 'person' is not limited to a 'natural person', but also includes 'juridic person', that is, the companies and corporation and, therefore, where an employee of a corporation commits an offence, the corporation by virtue of its vicarious liability is automatically deemed to have committed the offence. Once a corporation or a company is so held to have committed the offence by virtue of its vicarious liability, then the persons specified in clauses (a) (i) or (ii) of sub-section (1) of section 17 of the Act are automatically deemed guilty of the very offence and are liable to be punished.

(7) The question that falls for consideration is as to whether a corporation or a company could be pronounced guilty of an offence without being expressly arrayed as an accused and prosecuted as such. Section 17(1) (b) makes expressly liable the company, in addition to persons specified in clauses (a) (i) and (ii) of sub-section (1) of section 17 of the Act. In a case where intention is to punish the company, then the company shall have to be actually prosecuted and arrayed as an accused, but where such is not the intention and where liability of the company or the corporation arises vicariously, then the company can be pronounced guilty even when it is not arrayed as an accused. In such a case, the persons made deemingly liable for the offence committed by the company could be prosecuted without prosecuting the company itself. However, as already observed, in such a case, the company cannot be punished.

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(8) In view of the above, the impugned order and the charge framed against the petitioner is quashed with the direction that the trial Magistrate shall apply his mind again and see as to whether the charge could be framed against the petitioner under section 16(1) (a) (i) read with sections 7 and 17(1), clause (a), sub-clauses (i) and (ii) of the Act.

N.K.S.

Before S. S. Sandhawalia, C.J. and M. M. Punchhi, J.

SOHAN LAL,—Petitioner.

versus

STATE OF HARYANA and others—Respondents.

Civil Writ Petition No. 1403 of 1980.

April 23, 1981.

Punjab Town Improvement Act (4 of 1922)—Sections 58, 59, 60 and 65—Tribunal consisting of a President and two assessors—Assessors absent during the proceedings—Award rendered in the absence of one or both of them—Whether vitiated.

Held, that a close and indepth examination of the sections of the Punjab Town Improvement Act, 1922 seems to be a clear pointer to the legislative intent that the pivot of the Tribunal is its President whilst its two assessors are wholly ancillary. Whilst the participation of the assessors in the proceedings may be desirable, their absence is in no way mandatory or crucial to its proceedings. However, this conclusion is not derived from a single or solitary provision of the Act but from a variety of them which when viewed as a schematic whole clearly indicate that the absence of the two assessors even at the time of the rendering of the award was not designed to be fatal to the proceedings. If neither of the assessors is present or opines on the issues of the measurement of land, of the amount of compensation or costs, then the award rendered by the President alone would suffer from no infirmity worth the name
(Paras 5 and 17).

Writ Petition under Article 226 of the Constitution of India praying that:—

(a) record of the case be sent for,