

remand the case to the trial Court for decision of those issues.

Rama Nand  
v.  
Jiwan Dass  
and others

The appeal fails and is dismissed with costs.

D. FALSHAW, C.J.—I agree.

Mehar Singh, J.  
Falshaw, C.J.

*B.R.T.*

REVISIONAL CRIMINAL.

Before D. Falshaw, Chief Justice.

V. N. CHOKRA,—Petitioner.

versus

THE STATE,—Respondent.

Criminal Revision No. 64(R) of 1965.

*Prevention of Food Adulteration Act (XXXVII of 1954)—S. 19—Supplier of adulterated article of food to the dealer—Whether can be prosecuted along with the dealer.*

1965  
September,  
24th.

Held, that there is no justification for the prosecution of a person, firm or company who is alleged to have supplied goods to the dealer from whom the sample is actually purchased by the Food Inspector, in the same trial as the dealer from whom the sample was taken. The only section which brings a third party into the matter when an adulterated sample has been taken in section 19 of the Prevention of Food Adulteration Act, 1954, according to which the dealer has first to set up and establish the defence contemplated in section 19(2) and comply with the other provisions of the sub-section. The question of prosecuting the supplier who is alleged to have given a warranty will arise after the trial of the actual vendor has concluded with a successful defence by him under the provisions of section 19(2) and the supplier of the goods to the actual vendor has been heard.

*Case reported under Section 438, Criminal Procedure Code, by Shri R. S. Bindra, Sessions Judge, Hoshiarpur at Dharamsala with his letter No. 60/RK, dated 16th March, 1965 for revision of the order of the Chief Judicial Magistrate, Dharamsala, dated 21st December, 1964 ordering that theailable warrants in the sum of Rs. 200 be issued.*

M. R. MAHAJAN, V. M. GAIND, ADVOCATES, for the Petitioner.

L. K. SUD. ADVOCATE FOR ADVOCATE-GENERAL, for the Respondent.

## JUDGMENT

**Falshaw, C.J.**      **FALSHAW, C.J.**—This is a revision petition filed by Mr. V. N. Chokra in his capacity as Manager of the Jawala Flour Mills, Amritsar.

The facts are that on the 18th of June, 1964, Food Inspector H. R. Khanna, purchased 600 grams of *suji* from Pashori Lal, a grocer of Paprola. The *suji* purchased by the Inspector was taken from a closed bag containing 2 mds. 17 seers of *suji* bearing the name of the Jawala Flour Mills, Amritsar. The report of the Public Analyst on the sample sent to him for examination was that it was adulterated as being highly infested with insects.

A complaint was then filed by the Food Inspector in the Court of the Sub-Divisional Magistrate at Palampur against both Pashori Lal and Messrs Jawala Flour Mills, which had been described as a company, though it does not appear to be any more than a firm. In answer to the summons served on the so-called company Banarsi Das, an accountant, appeared on the 21st of December, 1964, with counsel, but the learned Magistrate would not recognise either the accountant or the counsel as representing the company and refused to entertain some application which was sought to be filed and he issued a warrant of arrest against the company without naming any particular individual and so obviously nobody could be arrested under it. However, on the 16th of January, 1965, Mr. V. N. Chokra, the Manager of the firm, appeared and filed an application on which an order was passed for a reply from the Food Inspector. The learned Magistrate then proceeded to record an order to the effect that Pashori Lal accused was present, but that the second accused was absent. The Food Inspector was asked to furnish the correct address of the second accused and the case was adjourned to the 2nd of February, 1965.

Since this order indicated that the Manager of the company or firm was not recognised by the learned Magistrate as an authorised person to appear, the revision petition which has led to this reference was filed by Mr. V. N. Chokra in the Sessions Court and the learned Sessions Judge has recommended the quashing of the proceedings against the company on the grounds that the

complaint neither discloses any offence against the company nor any ground which would give the Court at Dharamsala jurisdiction to try a company carrying on business at Amritsar. He has also expressed the opinion that the learned Magistrate was wrong in not recognising the Manager of the company as its representative, though this question would only arise in case the trial were to proceed.

V. N. Chokra  
v.  
The State  
Falshaw, C.J.

On the whole I am of the opinion that the recommendation must be accepted and the proceedings against the so-called company quashed. The complaint merely consists of a printed form in which some blanks have been filled in. The effective part of the complaint reads—

“Shri H. R. Khanna, G.F.I., inspected the shop of Messrs Jagdish Lal-Pashori Lal, K. dealer, on 18th June, 1964 at 18.45 at Paprola, and found Shri Pashori Lal, K. dealer, having in possession about 2 maunds 17 seers of *suji* contained in a closed bag with the label of Messrs Jawala Flour Mills, Amritsar, for public sale and purchased a sample of 600 gms. of that *suji* on cash payment of 44 np.”

This certainly does not disclose any offence against the firm or company, and obviously it is necessary in such a complaint to state that the *suji* from which the sample was taken was supplied by the firm or company to Pashori Lal, and also that this was done at Paprola in order to give the local Court some jurisdiction in the matter.

It seems to me that there is no justification for the prosecution of a person, firm or company who is alleged to have supplied goods to the dealer from whom the sample is actually purchased by the Food Inspector in the same trial as the dealer from whom the sample was taken. As far as I can see the only section which brings a third party into the matter when an adulterated sample has been taken is section 19, the relevant portion of which reads—

“(2) A vendor shall not be deemed to have committed an offence if he proves—

(i) that the article of food was purchased by him as the same in nature, substance and quality

V. N. Chokra  
 v.  
 The State  
 \_\_\_\_\_  
 Falshaw, C.J.

as that demanded by the purchaser and with a written warranty in the prescribed form, if any, to the effect that it was of such nature, substance, and quality;

(ii) that he had no reason to believe at the time when he sold it that the food was not of such nature, substance and quality; and

(iii) that he sold it in the same state as he purchased it:

Provided that such a defence shall be open to the vender only if he has submitted to the food inspector or the local authority a copy of the warranty with a written notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to that person:

\* \* \* \* \*  
 \* \* \* \* \*

(3) Any person by whom a warranty as is referred to in sub-section (2) is alleged to have been given shall be entitled to appear at the hearing and give evidence."

From this it would appear that the firm or company could only have been brought into this case at all after Pashori Lal accused, who actually sold the adulterated *suji*, had set up the defence contemplated in section 19(2) and complied with the other provisions of the sub-section, and in my opinion any question of presecuting the present firm or company which is alleged to have given a warranty could only arise after the trial of the actual vendor had concluded with a successful defence by him under the provisions of section 19(2) and the supplier of the goods to the actual vendor had been heard. I accordingly accept the recommendation of the learned Sessions Judge and quash the proceedings against Messrs Jawala Flour Mills, Amritsar.

B.R.T.