

ALLAHABAD HIGH COURT

D.K. Jain

Vs

State (Allahabad)

Criminal Revn. No. 1402 of 1963

(H.C.P. Tripathi, J.)

25.06.1963. 17.11.1964

ORDER

H.C.P. Tripathi, J.

This revision is directed against an order of the learned Civil and Sessions Judge, Meerut, upholding on appeal the applicant's conviction and sentence of Rs. 1000/- as fine under Section 16 of the Prevention of Food Adulteration Act as recorded by a Magistrate, First Class on 30th January, 1963.

2. Messrs. Edward Keventers (S) Private Limited, Delhi, who deal in dairy products and milk, had. established a stall at the Nauchandi Fair in the district of Meerut. On 15th April, 1962 at about 7 P.A. Sri Ajmal Husain, Food Inspector Meerut purchased. If Chhataks of sweetened milk from Vidya bushan who was working as salesman at the stall on payment of its price. The sample was divided into three parts and sealed then and there in three separate containers, according to the rules, one of which was handed over to Vidya Bhushan. The other was sent to the Public Analyst and the third was retained in the office of the Medical Officer of Health of the city. The Public Analyst tested the sample on the basis of the statutory standard for buffalo milk and found it to be deficient in fat contents by about 53 per cent. His report indicates that coaltar dye (erythrosine colour index No. 773) had been used for colouring the milk which was not permissible under the law. Subsequently the applicant who is the Commercial Manager of the aforesaid Company and its Salesman Vidya Bhushan were tried for an offence under Section 16 of the Prevention of Food Adulteration Act and were sentenced to pay a fine of Rs. 1000/- and Rs. 250/- respectively. Their conviction and sentences were confirmed in appeal by the Sessions Judge. The revision filed by Vidya Bhushan against his conviction and sentence was summarily dismissed and we are not concerned with it.

3. Learned counsel for the applicant has raised two points in support of this revision. His contention is that as the applicant was not present at the stall when the sample was purchased and as he is not responsible for the production side of the Company's business, he could not be held

liable for an offence under Section 16 of the Act. Learned counsel contends that Messrs. Edward Keventers (S) Private Limited is a Company registered under the Indian Companies Act and, therefore, to make the applicant liable for the offence alleged to have been committed by it, it must be proved that the offence had been committed with the consent and connivance of the applicant or is attributable to any neglect on his part, for which there is no evidence on the record.

4. It has been further argued that it was not the buffalo milk which was sold to the Food Inspector, rather it was toned milk which is a dairy product and which finds mention in Appendix B to the Rules and, therefore, the charge that adulterated milk was being sold at the stall has not been established against the applicant.

5. The argument that it was the toned milk which was being sold at the stall and not the pure milk was advanced before the lower Courts but it did not appeal to them. The argument appears to be without substance because had it been toned milk which was sold to the Food Inspector the Company whose entire business reputation was at stake, in all probability, would have taken steps to get the part of the sample with it analysed as such either by the Public Analyst himself or by the Director of the Central Food Laboratory, Calcutta as envisaged under Section 13 of the Act.

6. A Company is a legal entity distinct from its members. It can hold and dispose of property, it can sue and be sued in its own lights. It would, therefore, have been more appropriate to have prosecuted the Company as well along with the salesman for the offence as is provided under Section 17(1) of the Act.

Section 17(2) of the Act reads :

"Notwithstanding anything contained in Sub-Section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the Company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

7. A reading of the aforesaid Sub-Section makes it obvious that the Legislature has taken care to provide that natural persons made vicariously liable for the offence committed by a Company or anyone of its employees are to be punished only when it is established that they had some nexus with the crime either because of their connivance with it or due to their criminal negligence which had resulted in its commission. To make the applicant liable, therefore, for the offence committed by the Company or its Salesman who was physically present on the scene,, it must be proved that the offence was committed with his connivance. There is, however, no such evidence on the record.

8. In his statement before the trial Court, the applicant had stated that he had no connection with the production side of the Company's business. There is no evidence to suggest that the applicant

in his capacity as commercial manager of the Company had anything to do with the preparation of sweetened milk or that he was necessarily responsible for organising its sales on behalf of the Company. The finding of the learned Sessions Judge that the applicant too was liable for punishment under Section 16 of the Act because in his opinion the words "any person" used in this Section are wide enough to include not only the principal but also the agent, manager or the servant acting on behalf of the former, is based on an erroneous reasoning. It is no doubt true that under the aforesaid Section any person acting on behalf of its principal is also liable to punishment. In the instant case however, it was the Company which was the principal and its agent was the salesman who was found selling the adulterated milk. The Company has not been prosecuted while the agent has already been punished. To make the applicant liable for the offence committed by the Company and its salesman, it was necessary for the prosecution, as has been indicated earlier, within the meaning of Section 17(2) of the Act to prove "that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of" the applicant.

9. In the result, this revision is allowed. The conviction and sentence of the applicant are set aside. The fine, if paid, shall be refunded to him.

Revision allowed and conviction set aside.