Supreme Court of India M/S. Pepsi Foods Ltd. & Anr vs Special Judicial Magistrate & Ors on 4 November, 1997 Author: D Wadhwa Bench: Sujata V. Manohar, D.P. Wadhwa PETITIONER: M/S. PEPSI FOODS LTD. & ANR.

Vs.

RESPONDENT: SPECIAL JUDICIAL MAGISTRATE & ORS.

DATE OF JUDGMENT: 04/11/1997

BENCH: SUJATA V. MANOHAR, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT: THE 4TH DAY OF NOVEMBER, 1997 Present: Hon'ble Mrs. Justice Sujata V. Manohar Hon'ble Mr. Justice D.P.Wadhwa K.K.Venugopal, Sr. Adv., R.K. Virmani, Rizvi, P.Varma, Advs., with him for the appellant In-person for the Respondent No.2 Yogeshwar Prasad, Sr. Adv., and A.S. Pundir, Adv. with him J U D G M E N T The following Judgment of the Court was delivered: D.P. Wadhwa, J. Leave granted. The appellants are aggrieved by the judgment dated September 23, 1996 of the Division Bench of the High Court of Judicature at Allahabad (Lucknow Bench) dismissing their writ petition filed under Articles 226 and 227 of the Constitution. The appellants sought quashing of the compliant filed against them under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954 (for short 'the Act'). The prayers in the writ petition were worded as under: "(a) issue a writ of prohibition or a writ, order or direction in the nature of prohibition, prohibiting the Opposite Party Number-1 to proceed with case No.699 of 1994 (Anurag Narain vs. Nitin Sachdeva and others; (b) issue a writ of certiorari or a writ, order or direction in the nature of certiorari quashing the proceedings in Case o. 699 of 1994 together with the consequential order dated 9.5.1994 and the complaint dated 6.5.1993 in so far as it pertains to the petitioners; (c) issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding the Opposite Party Number-1 not to proceed with the Case No.699 or 1994 during the pendency of the aforesaid writ petition; (d) issue any other appropriate writ, order or direction which this Hon'ble Court may deem just and necessary in the circumstances of the case may also be passed; and (e) to allow the writ petition with costs". There are two appellants, second appellant is the Managing Director of first appellant, The respondents are three. First respondent is the court where the appellants alongwith others have been summoned for having committed offences under Sections 7/16 of the Act. The second respondent is the complainant and the third respondent is the State of Uttar Pradesh. The allegation in the complaint is that complainant was sold a bottle of beverage under the brand "Lehar Pepsi" which was adulterated. The bottle was purchased by the complainant on September 13, 1993. He filed the complaint on May 6, 1994. After recording preliminary evidence the Magistrate passed orders summoning the appellants

and others on May 9, 1994. It appears that when the summons reached the appellants they immediately approached the High Court seeking aforesaid reliefs. The High Court, however, refused to entertain the writ petition on the ground that the appellants should approach the 1st respondent for their discharge under Section 245 of the Code of Criminal Procedure (for short 'the Code'), if the complaint did not disclose commission of any offence by the appellants and the Court considered the charge to be groundless. The High Court did not approve of the appellants approaching it under writ jurisdiction when sufficient remedy was available under the Code. The High Court was also of the opinion that it could not be said at that stage that the allegations in the complaint were so absurd and inherently improbable on the basis of which no prudent man could ever reach a just conclusion that there existed no sufficient ground for proceedings against the accused. On the plea of the appellants that the provisions of Section 13(2) of the Act read with Rule 9-A of the Rules framed under the Act were violated and on that account the inquiry or trial stood vitiated the High Court said that the appellants could well approach the court for that purpose and that it was no stage for the High Court to record its finding. yet another plea of the appellants that provisions of Section 203 and 245 (2) of the Code did not provide an adequate remedy for a person charged on flimsy grounds and that in view of the decision of this Court in State of Haryana vs. Chaudhary Bhajan Lal and others (JT 1990 (4) S.C. 650 [(1992) supp. 1 SCC 335] the court should interfere also did not find favour with the High Court. It was of the opinion that Chaudhary Bhajan Lal's case pertained to a cognizable offence where police had taken cognizance of the matter and in a complaint case the Magistrate was empowered to discharge the accused at any stage of the trial if it was found that the charge was groundless. There are as many as 12 accused in the complaint. If we refer to the order summoning them on the basis of the allegations made in the complaint and evidence available on record it appeared to the 1st respondent, the Magistrate, that all the 12 accused had committed offence punishable under Sections 7/16 of the Act and they were therefore summoned to appear before the court to stand their trial. before we advert to the allegations made in the complaint and the preliminary evidence brought on record which led to the first respondent to summon the accused, we may briefly refer to the provisions of law as contained in the Act and the Code. Under Section 7 of the act, in relevant part, no person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute any adulterated food. Under clause (ia) of Section 2 of the Act which defines 'adulterated" - an article of food shall be deemed to be adulterated- (a) if he sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be; (b) if the article contains any other substance which affects, or if the article is so processed as to affect injuriously the nature, substance or quality thereof; (c) if any inferior or cheaper substance has been substituted wholly or in part for the article so as to affect injuriously the nature, substance or quality thereof; (d) if any constituent of the article has been wholly or in part abstracted so as to affect

injuriously the nature, substance or quality thereof; (e) if the article had been prepared, packed or kept under insanitary conditions whereby it has become contaminated or injurious to health; (f) if the article consists wholly or in part of any filthy, putrid, rotten, decomposed or diseased animal or, vegetable substance or is insect-infested or is otherwise unfit for human consumption; Under clause (viiib) "manufacture" includes any process incidental or ancillary to the manufacture of an article of food. "Food" is also defined to mean any article used as food or drink for human consumption (Section 2 (v). Section 16 of the Act prescribes penalties for contravention of the provisions of the Act. The sentence can vary from minimum imprisonment of three to six months to two or three years and imposition of prescribed amount of fine. If we look at the Act and the Rules the primary duty for enforcement of the provisions of the Act is on the Food Inspector and Public Analyst appointed under the Act. Powers of Food Inspector and procedure to be followed by him are prescribed. Under Section 20 of the Act no prosecution for an offence under Act except for offences under Section 14 and 14A shall be instituted except with the written consent of the Central Government or the State Government or a person authorised in that behalf by general or special order, by the central Government or the State Government. However, there is proviso to the section under which a purchaser can also file a complaint and this reads as under: "Provided that a prosecution for an offence under this Act may be instituted by a purchaser [or recognised consumer association] referred to in Section 12, if he [or it] produces in court a copy of the report of the public analyst along with the complaint." Under Section 12 of the Act a purchaser may also have food analysed. This Section reads as under: "12. Purchaser may have food analysed.- Nothing contained in this act shall be held to prevent a purchaser f any article of food other than a food inspector or a recognised consumer association, whether the purchaser is a member of that association or not, from having such article analysed by the public analyst on payment of such fees as may be prescribed and from receiving from the public analyst a report of his analysis; Provided that such purchaser or recognised consumer association shall inform the vendor at the time of purchase of his or its intention to have such article so analysed; provided further that the provisions of sub-section (1), sub- section (2) and sub-section (3) of Section 11 shall, as far as may be, apply to a purchaser of article of food or recognised consumer association who or which intends to have such article so analysed, as they apply to a food inspector who takes a sample of food for analysis; Provided also that if the report of the public analyst shows that the article of food is adulterated, the purchaser or recognised consumer association shall be entitled to get refund of the fees paid by him or it under this section." In Section 12 we find reference of Section 11 which is reproduced as under: "11. Procedure to be followed by food inspectors,- 91) When a food inspector takes a sample of food for analysis, he shall - (a) give notice in writing then and there of his intention to have it so analysed to the person from whom he has taken the sample and to the person, if any, whose name, address and other particulars have been disclosed under section 14-A; (b) except in special cases provided by rules under this Act, divide

the sample then and there into three parts and mark and seal or fasten up each part in such a manner as its nature permits and take the signature or thump-impression of the person from whom the sample has been taken in such place and in such manner as may be prescribed; Provided that where such person refuses to sign or put his thumb- impression the food inspector shall call upon one or more witnesses and take his or the signatures or thumb-impressions, as the case may be, in lieu of the signature or thumb-impression of such person; (c) (i) send one of the parts for analysis to the public analyst under intimation to the Local (Health) Authority; and (ii) send the remaining two parts to the Local (Health) Authority for the purposes of sub-section (2) of this Section and sub-section (2-A) and (2-F) of Section 13. (2) Where the part of the sample sent to the public analyst under sub-clause (i) of clause (c) of sub-section (1) is lost or damaged, the Local (Health) Authority shall, on a requisition made to it by the public analyst or the food inspector despatch one of the parts of the sample sent to it under sub- clause (ii) of the said clause (c) to the public analyst for analysis. (3) When a sample of any article of food [or adulterant] is taken under sub-section (1) or sub-section (2) of Section 10, [the food inspector shall, by the immediately succeeding working day, send a sample of the article of food or adulterant or both, as the case may be], in accordance with the rules prescribed for sampling to the public analyst for the local area concerned." Section 13 deals with the report of the public analyst. It provides, among other things, that a public analyst shall deliver, in such form as may be prescribed, a report of the result of the analysis of any article of food submitted to him for analysis. Any document purporting to be a report signed by a public analyst, subject to certain inspections, may be used as evidence of the facts therein in any proceeding under the act (Section 13 (5)). Since no argument was addressed before us on the violation of Section 13(2) read with Rule 9-A we do not think it necessary either to set out or to refer to the same. The Code provides the procedure as to how a complaint can be filed and how the court will proceed in the matter. (The word 'court' and 'magistrate' are synonymous here) Since for an offence under the act imprisonment for a term exceeds two years it would be a case tried as warrant-case. One of the modes by which a court can take cognizance of an offence is on filing of a complaint containing facts which constitutes such offence. A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witness, and also by the Magistrate (Sections 190 and 200 of the Code). If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be a warrant case, he may issue a warrant, or, of he thinks fit, summons for causing the accused to be brought or to appear before him on a date fixed by him (Sub- section (1) of Section 204). Whenever a Magistrate issues a summon, he may, if he sees reasons so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader (sub-section (1) of Section 205). In the present case though it was a warrant case the first respondent issued summons but

he did not dispense with personal attendance of the accused. Chapter XIX-B of the Code provides for trial of warrant cases instituted on a complaint. We may noted Sections 244 and 245 falling under this Chapter: "244. Evidence for prosecution.- (1) When, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution. (2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing. 245. When accused shall be discharged.-(1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him. (2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless". Under Article 227 of the Constitution of India High Court has power of superintendence over courts. Clause (1) provides that every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. High Court has power to issue certain writs, orders and directions under Article 226 of the Constitution. Clause (1) of Article 226, which is relevant, is as under: "(1) Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [writs in the nature of habeas corpus, mandamus, prohibition, quo warrant to and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purposes.]" Having set out the relevant provisions of law to some extent and before we consider the merits and demerits of the case and the jurisdiction of the High Court under Article 226 and 227 of the Constitution, we may refer to the complaint and the evidence which led the 1st respondent to issue summons to the appellants and others for an offence under Section 7 of the Act. The complainant (second respondent) is a student. He says that he is appearing in examinations is various State and Central Services. On September 13, 1993, he went to a shop known as "The Flavours Fast Food and Cool Corner" and purchased 500 m1. chilled bottle of 'Lehar Pepsi' for drinking. Nitin Sachdeva is stated to have (Accused named as No.1) sold the bottle to the complainant. After he had consumed the beverage contained in the bottle, the complainant felt a strange taste. On observation, he found that the bottle contained many white particles. The complainant felt giddy and nauseated. One Divya Trivedi was present at the shop as a customer. Another shopkeeper by the name Lal Bahadur Singh who owned a shop opposite to from where the complainant purchased the 'Lehar Pepsi' bottle was also present. They were shown the bottle by the complainant. The beverage was put in two glasses to see the while particles clearly and Nitin Sachdeva accepted the presence of the particles. Suspecting adulteration, the complainant told Nitin Sachdeva

that he would take sample of the beverage for analysis. He thereupon gave notice to Nitin Sachdeva, purchased three clean and dry empty new plastic jars from hereby Suri Stores and filled up the same with the beverage and which, according to the complainant, were sealed as per rules, wrapped in the paper and tied with thick yearn. Nitin Sachdeva signed the jars and put stamp of his shop thereon. The complainant obtained the stamp of the shop "The Flavour Fast Food and Cool Corner" on a separate paper and one jar of the sample with stamp used in the sample was deposited by the complainant in he office of the State Public Analyst, Uttar Pradesh, Lucknow on September 20, 1993 for analysis. The complainant says that the three jars were sealed in the presence of the witnesses and he also recorded their statements in writing including that of Nitin Sachdeva. The complainant also made a report to the Police on September 13, 1993 itself about the incident. The complainant then started making enquiries. Crown cap of the bottle had the words "Residency Foods and Beverages, Sataria, Jaunpur" printed. Nitin Sachdeva told the complainant with the bottle was supplied by the distributor "A.Kumar & Company", Lucknow whose proprietor was A.K. Jain (Accused No.2 and 3). The complainant was also told that A.K. Jain was the person responsible for conduct of the day-to-day business of A.K. Kumar and Company. Nitin Sachdeva also informed the complainant that marketing of Lehar Pepsi was done by "Taj Service Ltd." Lucknow (Accused No.4). From A.K Jain, the complainant learnt that Anil Nigam (Accused No.5) was the person responsible for the conduct of business of Taj Services Ltd. Yet, on further enquiry, the complainant learnt that bottling of Lehar Pepsi was done by Residency Foods and Beverages Ltd., Jaunpur (Accused No.6) and mr. N.K. Hariharan (Accused No.7) was the manager and person responsible for the conduct of day-to-day business of the said company and Mark Yadav (Accused No.8) was the Distribution Manager of that Company. V.S. Gurmany has been pleaded as Accused No.9 being the Director of Residency Foods and Beverages Ltd. The complainant then states that "upon enquiry and information from A.K. Jain, it was learnt that the manufacturer of the bottle of sample is"Pepsi Foods Ltd.", New Delhi (Accused No.10) and its incharge and the person responsible for conduct of business is Ravi Dhariwal, Executive Director (Accused No.11) and P.M. Sinha (Accused No.12) its Managing Director. The complainant then says that he personally contacted Ravi Dhariwal on December 4, 1993 who asked Subrat Padhi, Field Manager to look into the grievance of the complainant but no action was taken. The State Public Analyst, Lucknow gave his report on October 29, 1993 and expressed his opinion that due to the presence of fungus in the sample, the sample was adulterated. The complainant says that out of the two jars of the sample, he had deposited one jar with Nitin Sachdeva and other one was in his possession. The complainant then says that he was taken serious ill and could recover only after two months. That is all the complaint is about. On the basis of thee allegations, the complainant alleges that Accused Nos. 1 to 12, by selling, distributing, manufacturing and marketing adulterated ad harmful for health 'Lehar Pepsi, have committed an offence under section 7(1) of the Act which is punishable under Section 16(1A) of the Act. With

the complaint report of the Public Analyst was filed. In the order dated May 9, 1994, summoning the accused, the 1st respondent very breifly records the averments made in the complaint and then notes as under:"In support of the complaint allegations, the Complainant has recorded his statement and presented the statement on oath of the witness Lal Bahadur Singh and as documentary evidence notice annexure-1, receipt for deposit of the bottle of sample for analysis with Public Analyst annexure-3A and application to the Public Analyst for analysis annexure-3B, report of the incident with O.S. Ghazipur annexure-4, cash memo issued by the vendor annexure-5, statement of Executive Director of Pepsi Foods Ltd. annexure-6, report of the Public Analyst annexures 7A and 7B and prescriptions of the doctor for treatment have been filed." Then the first respondent records that on the basis of the evidence available on record, prima facie, it appeared that the complainant got the sample sealed and analysed in accordance with the procedure prescribed which sample was found to be adulterated. He, therefore, ordered that "based on the evidence available on record, I, prima facie, find that the accused Nos.1 to 12 have committed offence under Section 7/16 of the Prevention of Food and Adulteration Act. Accordingly, accused Nos. 1 to 12 are directed to appear before Court on 23.05.1994 through summons." When the summons were served on the appellants, they approached the High Court seeking reliefs as aforementioned bu the High Court declined to interfere. The questions which arise for consideration are if in the circumstances of the case, the appellants rightly approached the High Court under articles 226 and 227 of the Constitution and if so, was the High Court justified in refusing to grant any relief to the appellants because of the view which it tool of the law and the facts of the case. We have, thus, to examine the power of the High Court under Articles 226 and 227 of the Constitution and section 482 of the Code. It is settled that High Court can exercise its power of judicial review in criminal matters. In State of Haryana and others vs. Bhajan Lal and others 1992 Supp (1) SCC 335, this court examined the extraordinary power under article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to the followed by the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guideline is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure, The power conferred on the High Court under Articles 226 and 227 of the constitution and

under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226. Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to. In Waryam Singh and another vs. Amarnath and another [AIR 1954 SC 215 = 1954 SCR 565] this Court considered the scope of Article 227. It was held that the High Court has not only administrative superintendence over the subordinate courts and tribunals but it has also the power of judicial superintendence. The court approved the decision of the Calcutta High Court in Dalmia Jain Airways Ltd. vs. Sukumar Mukherjee [AIR 1951 Cal 193 (SB)] where the High Court said that the power of superintendence conferred by Article 227 was to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting their mere errors. The Court said that it was, therefore, a case which called for an interference by the Court of the Judicial Commissioner and it acted quite properly in doing so. In Babhutmal Raichand Oswal vs. Laxmibai R. Tarte and another [AIR 1975 SC 1297 = (1975) 1 SCC 858] this Court again reaffirmed that the power of superintendence of High Court under Article 227 being extraordinary was to be exercised most sparingly and only in appropriate cases. It said that the High Court could not, while exercising jurisdiction under Article 227, interfere with the findings of fact recorded by the subordinate court or tribunal and that its function was limited to seeing that the subordiante court or tribunal functioned within the limits of its authority and that it could not correct mere errors of fact by examining the evidence or reappreciating it. The Court further said that the jurisdiction under Article 227 could not be exercised, "as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for rehearing of the issues raised in the proceedings." The Court referred with approval the dictum of Morris, L.J. in Rex vs. Northumberland Compensation Appeal Tribunal [1952-1 All ER 122]. In Nagendra Nath Bora vs. The Commissioner of Hills Division [1958 SCR 1240] this Court observed as under: "It is thus, clear that the powers of judicial interference under Art.227 of the Constitution with orders of judicial or quasi- judicial nature, are not greater than the power under Art of the Constitution, Under Art the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Art. 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority." Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the court find that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition one under Article 227 or Section 482 of the Cod. it ay not however, be lost sight of that provisions exist in the Code of revision and appeal but sometime for immediate relief Section

482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution. We have not been able to understand as to why it was necessary for the appellants to implead the first respondent as a party to the proceedings. There are no allegations of personal bias against the presiding officer. A court is not to be equated with a tribunal exercising quasi judicial powers. We would, therefore, strike out the name of the 1st respondent from the arrary of the parties. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. No doubt the magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial. it was submitted before us on behalf of the State that in case we find that the High Court failed to exercise its jurisdiction the matter should be remanded back to it to consider if the complaint and the evidence on record did not make out any case against the appellants, If, however, we refer to the impugned judgment of the High Court it has come to the conclusion, though without referring to any material on record, that "in the present case it cannot be said at this stage that the allegations in the complaint are so absurd and inherently improbable on the basis of which no prudent man can ever reach a just conclusion that there exists no sufficient ground for proceedings against the accused." We do not think that the High Court was correct in coming to such a conclusion and in coming to that it has also foreclosed the matter for the magistrate as well, as the magistrate will not give any different conclusion on an application filed under section 245 of the code. The High Court says that the appellants could very well appear before the court and move an application under Section 245(2) of the Code and that the magistrate could discharge them if he found the charge to be groundless and at the same time it has itself returned the finding that there are sufficient grounds for proceeding against the appellants. if we now refer to the facts of the case before us it is clear

to us that not only that allegation against the appellants make out any case for an offence under Section 7 of the Act and also that there is no basis for the complainant to make such allegation. The allegations in the complaint merely show that the appellants have given their brand name to "Residency Foods and Beverages Ltd." for bottling the beverage "Lehar Pepsi". The complaint does not shoe what is the role of the appellants in the manufacture of the beverage which is said to be adulterated. The only allegation is that the appellants are the manufacturer of bottle. There is no averment as to how the complainant could say so and also if the appellants manufactured the alleged bottle or its contents. His sole information is from A.K. Jain who is impleaded as accused No.3. The preliminary evidence on which the 1st respondent relied in issuing summon to the appellants also does not show as to how it could be said that the appellants are manufacturers of either the bottle or the beverage or both. There is another aspect of the matter. The Central Government in the exercise of their powers under Section 3 of the Essential Commodities Act, 1955 made the Fruit Products Order, 1955 (for short, the "Fruit Order"), It is not disputed that the beverage in the question is a "fruit product" within the meaning of clause (2)(b) of the Fruit Order and that for the manufacture thereof certain licence is required. The fruit Order defines the manufacturer and also sets out as to what the manufacturer is required to do in regard to the packaging, making and labeling of containers of fruit products. One of such requirement is that when a bottle is used in packing any fruit products, it shall be so sealed that it cannot be opened without destroying the licence number and the special identification mark of the manufacture to be displayed on the top or neck of the bottle. The licence number of manufacturer shall also be exhibited prominently on the side label on such bottle [clause (8)(1)(b)]. Admittedly, the name of the first appellant is not mentioned as a manufacturer on the top cap of the bottle. It is not necessary to refer in detail to other requirements of the Fruit Order and the consequences of infringement of the Order and to the penalty to which the manufacturer would be exposed under the provisions of the Essential Commodities Act, 1955. We may, however, note that in The Hamdard Dawakhana (WAKF) Delhi & Anr. vs. The Union of India & Ors. [AIR 1965 SC 1167 = (1965) 2 SCR 192], an argument was raised that the Fruit Order was invalid because its provision indicated that it was an Order which could have been appropriately issued under the Prevention of Food Adulteration Act, 1954. This Court negatived this plea and said that the Fruit Order was validly issued under the Essential Commodities Act. What we find in the present case is that there was nothing on record to show if the appellants held the licence for the manufacture of the offending beverage and if, as noted above, the first appellant was the manufacturer thereof. It is no comfortable thought for the appellants to be told that they could appear before the court which is at a far off place in the Ghazipur in the State of Uttar Pradesh, seek their release on bail and then to either move an application under Section 245(2) of the Code or to face trial when the complaint and the preliminary evidence recorded makes out no case against the. it is certainly one of those cases where there is an abuse of the process of the law and the courts

and the High Court should not have shied away in exercising its jurisdiction. Provisions of Articles 226 and 227 of the Constitution and Section 482 of the Code are devised to advance justice and not to frustrate it. In our view High Court should not have adopted such a rigid approach which certainly has led to miscarriage of justice in the case. Power of judicial review is discretionary but this was a case where the High Court should have exercised it. We, therefore, allow this appeal, set aside the order of the High Court and quash the complaint and proceeding against the appellants.