

HARI SHANKAR AGGARWAL

A

v.

THE STATE OF RAJASTHAN & ANR

(Criminal Appeal No. 297 of 2021)

MARCH 10, 2021

B

**[ASHOK BHUSHAN, S. ABDUL NAZEER AND  
HEMANT GUPTA, JJ.]**

*Prevention of Food Adulteration Act, 1954 – ss.7/16 – Offence under – Cognizance taken against appellant by Courts below – If justified – Case of appellant that he was not a nominee of the firm / company in question and there being no allegation against him, no cognizance of the offence could have taken against him – Held: As per s.17 of the Act, notice u/s.17(2) is contemplated by company to Local Health Authority in such form and in such manner as prescribed that it has nominated such Director or Manager as a person who is responsible along with written consent of such Director – On facts, when the nomination was in Form VIII and duly sent and received, it cannot be rejected on the ground that it was sent on the letter head of the company – The averments in the complaint itself clearly indicate that it was the name of one Devendra Singh Bhadauria which was with the Local Health Authority, hence it was he who was responsible for the affairs of the company and reference of appellant whose name was informed by the Commercial Tax Department, has no relevance – High Court as well as the Special Judge erred in rejecting the case of the appellant – Further there were no specific allegations against the appellant in the complaint apart from that he was being impleaded as a nominee – Thus, no cognizance could have been taken against the appellant for offence u/s.7/16 of the Act, and the Courts below committed error in taking cognizance.*

C

D

E

F

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal  
No. 297 of 2021

G

From the Judgment and Order dated 17.04.2018 of the High Court of Rajasthan at Jaipur in S.B. Criminal Misc. Petition No.1664 of 2018.

Ajay Jain, Jinendra Jain, Ms. Mitika, Ms. Tannu Vats, Ms. Cherry Aggarwal, Advs. for the Appellant.

H

A Dr. Manish Singhvi, Sr. Adv., Milind Kumar, Advs. for the Respondents.

The Order of the Court was passed :

**ORDER**

B 1. Leave granted.

2. Heard learned counsel for the appellant and Dr. Manish Singhvi, learned senior counsel appearing for the State of Rajasthan. This appeal has been filed against the judgment and order dated 17.04.2018 passed by the High Court of Judicature for Rajasthan, by which the Criminal Miscellaneous (Petition) No.1664/2018 filed by the appellant has been dismissed.

C 3. Brief facts necessary for deciding this appeal are:-

a complaint was filed by the Medical and Health Department, (Rajasthan) for offence under Section 7/16, Prevention of Food Adulteration Act, 1954 on the basis of inspection made on 02.03.2002 on *Oswal Traders Shop*. In a complaint, it was averred that on information received from Commercial Tax Department, Jaipur, the nominee of firm is *Hari Shankar Aggarwal S/o Shri Vasudev Prasad Agarwal*, therefore he has been made a party. In paragraph 11, it was further stated that according to information received from the Local Health Officer, Mathura the Director of *M/s Bhola Baba Milk Food Industry* is *Devendra Singh Bhadauria*, who was also impleaded as one of the party. The Judicial Magistrate, Jhalwar, Rajasthan, took cognizance of the offence and issued summon by order dated 04.08.2003. Against the order dated 04.08.2003, the appellant-*Hari Shankar Aggarwal* filed criminal case No.17 of 2017, challenging the order of the Trial Court dated 04.08.2003.

4. The case of the appellant is that he was not a nominee of the firm and one *Devendra Singh Bhadauria* was declared as nominee. The information regarding his nomination had already been submitted to the Chief Medical Officer, Mathura, which was received on 21.10.1995 and there being no allegation against the appellant, no cognizance of the offence could have taken against the appellant. The petition was dismissed by the Special Judge on 16.02.2018 against which the Criminal Miscellaneous Petition was filed in the High Court, which has been rejected by the impugned judgment of the High Court. Learned counsel

H

for the appellant relying on Annexure P-2, which is an information in Form VIII submitted to the Chief Medical Officer on 21.10.1995, submits that form nominating *Devendra Singh Bhadauria*, was sent by letter dated 21.02.1995 which was duly received by Chief Medical Officer on 21.10.1995. Hence, the complaint against the appellant alleging himself to be nominee ought not to have been taken cognizance. It is submitted that a copy of letter dated 21.02.1995 duly received by the Chief Medical Officer on 21.10.1995 has been filed before the Courts below and the said document clearly proved that nominee was *Devendra Singh Bhadauria* and cognizance could have been taken against *Devendra Singh Bhadauria* and therefore the Courts below erred in dismissing the claim of the appellant.

5. Dr. Manish Singhvi, learned senior counsel appearing for the State submits that the document (Annexure P-2) dated 21.02.1995 claimed to be served on 21.10.1995, has not been believed by the Courts below. He has referred to the reasons given in the order dated 16.02.2018 passed by the Special Judge, (NDPS) Jhalwar, Rajasthan. He submits that there are reasons given by the Special Judge for not accepting the document. Hence, the claim of the appellant has rightly been rejected.

6. We have considered the submissions of the learned counsel for the parties and perused the record. Before we proceed and examine the respective contention of the parties, we need to reproduce paragraphs 10 and 11 of the complaint which are to the following effect:-

“10. That the Krishna Brand Ghee procured by M/s Falaudi Trading Co. from Bhole Baba Milk Food Industry 181 Sindhi Colony Whose Bill No.3074 dated 05/03/2002 was produced from which it is clear that M/s Falaudi Trading Co. has procured Ghee from the said firm. From the information received from Commercial Tax Department, Jaipur the nominee of the said firm is Sh. Hari Shankar Aggarwal S/o Vasudev Aggarwal, therefore, he has also been made a party.

11. That the boxes were labeled as Bhole Baba Milk Food Industry, Agra and the said firm was given several letters even then, no information regarding the firm was rejected. According to information received from local health officer, Mathura the director of Bhole Baba Milk Food Industry Namely Devendra Singh Bhadauria S/o Ram Sewak Singh Badoria R/o Hanuman Nagar, Fatehabad, District Agra, has been made a party.”

A           7. As per Section 17 of the Food Adulteration Act, 1954, the notice  
under Section 17(2) is contemplated by company to Local Health  
Authority in such form and in such manner as has been prescribed that  
it has nominated such Director or Manager as a person who is responsible  
along with written consent of such Director. When we look into paragraph  
B   10 of the complaint, it is clearly mentioned that from the information  
received from the Commercial Tax Department, Jaipur, the nominee is  
*Hari Shankar Aggarwal*. Whereas in paragraph 11 of the complaint, it  
is mentioned that according to information from Local Health Officer,  
Mathura, the Director is *Devendra Singh Bhadauria*. For the purposes  
of Section 17, the nomination has to be given to the Local Health Authority,  
C   according to the complaint itself, on the basis of the information received  
from Local Health Officer, it is *Devendra Singh Bhadauria*. The above  
statement in the complaint itself proves the case of the appellant that  
information of the nomination of the *Devendra Singh Bhadauria* was  
submitted by letter dated 21.02.1995 which was received on 21.10.1995.

D           8. Now, coming to the reasons relied by Dr. Manish Singhvi,  
learned senior counsel for the State that the document is dated 21.02.1995,  
whereas *M/s Bhole Baba Milk Food industry* was incorporated and  
its resolution was filed on 06.03.1995. Hence, the burden of proof,  
regarding the date on which nominee was made, lies on the appellant.  
The above observation of the Special Judge in no manner negate the  
E   submission of the nomination form which was received by the Chief  
Medical Officer, Mathura on 21.10.1995. The information was received  
only after incorporation of the company and after the resolution referred  
on 06.03.1995. Dr. Manish Singhvi, learned senior counsel, also submits  
that the nomination form was issued in the letter head of the company  
F   which ought not to have been sent.

9. We have perused the nomination form at page 18 of the paper  
book which clearly mentions Form VIII (Rule 12-B).

10. The submission of the learned senior counsel for the respondent  
that it could not have been sent on the letter head does not appeal to us.  
G   When the nomination was in Form VIII and duly sent and received, it  
cannot be rejected on the ground that it was sent on the letter head of  
the company. As observed above, the averments in the complaint itself  
clearly indicate that it was the name of *Devendra Singh Bhadauria*  
*which was with the* Local Health Authority, hence it was he who was  
H   responsible for the affairs of the company and reference of *Hari*

*Shankar Aggarwal* whose name was informed by the Commercial Tax Department, has no relevance. A

11. In view of the foregoing reasons, we are of the view that the High Court as well as the learned Special Judge erred in rejecting the case of the appellant. It is further to be noticed that there are no specific allegations against the present appellant in the complaint apart from that he was being impleaded as a nominee. We thus, are of the view that no cognizance could have been taken against the appellant for the offence under Section 7/16 of the Prevention of Food Adulteration Act, 1954 and the Courts below committed error in taking cognizance. B

12. In the result, the appeal is allowed and the order taking cognizance as well as the orders passed by the Courts below are set aside. C

Bibhuti Bhushan Bose

Appeal allowed.