

R. Banerjee And Ors vs H.D. Dubey And Ors on 13 March, 1992

Equivalent citations: 1992 AIR 1168, 1992 SCR (2) 221, AIR 1992 SUPREME COURT 1168, 1992 (2) SCC 552, 1992 AIR SCW 1123, 1992 (2) COM LJ 195 SC, 1992 (1) FAC 128, 1992 CRIAPPR(SC) 130, 1992 UP CRIR 210, 1992 SCC(CRI) 412, 1992 CALCRILR 116, 1992 FAJ 346, 1992 (2) BLJR 1309, 1992 CRILR(SC MAH GUJ) 323, (1992) 2 SCR 221 (SC), (1992) 2 COM LJ 195, 1992 (2) UJ (SC) 57, 1992 BLJR 2 1309, (1992) 2 JT 436 (SC), 1992 (2) JT 436, (1992) SC CR R 509, (1992) MAD LJ(CRI) 711, (1992) 1 ALLCRILR 721, (1992) 2 EFR 101, (1992) 1 FAC 128, (1993) MADLW(CRI) 4, (1992) 2 PUN LR 433, (1992) 2 RECCRIR 81, (1992) 2 SCJ 93, (1992) 2 CURCRIR 1, (1992) 109 TAXATION 61, (1992) 1 CRICJ 513, (1992) 29 ALLCRIC 386, (1992) 2 BLJ 252, (1992) 19 CRILT 360, (1992) 75 COMCAS 722, (1992) 1 CRIMES 1215, (1992) 104 CURTAXREP 33

Author: A.M. Ahmadi

Bench: A.M. Ahmadi, K. Ramaswamy

PETITIONER:

R. BANERJEE AND ORS.

Vs.

RESPONDENT:

H.D. DUBEY AND ORS.

DATE OF JUDGMENT 13/03/1992

BENCH:

AHMADI, A.M. (J)

BENCH:

AHMADI, A.M. (J)

RAMASWAMY, K.

CITATION:

1992 AIR 1168	1992 SCR (2) 221
1992 SCC (2) 552	JT 1992 (2) 436
1992 SCALE (1) 690	

ACT:

Prevention of Food Adulteration Act, 1954:
Section 17-Prosecution-Launching of-Against
Directors/Managers of Public Limited Companies-Nomination
made under sub-section (2)-Validity of Nomination-

Prosecution only against the nominated person-Not against others-Impleading others as co-accused-When arises-Applicability of sub-section (4).

HEADNOTE:

The Respondent Food Inspector visited the godown of a company and lifted samples of orange drink manufactured by the company, as also Vanaspati ghee manufactured by the said company as also by another company. He found that the label affixed to the orange drink carried the date of manufacture as June, 1988. Since the date of expiry was stated to be six months from the date of manufacture he found that the products was mis-branded or adulterated as six months had already expired on the date of inspection. He forwarded the samples so collected to the public Analyst. The report of the Public Analyst was to the effect that all the three samples were adulterated, as they did not conform to the standard prescribed by law. The respondent then filed three separate complaints against the respective companies, as well as Directors, Managers and officers of the companies, for the commission of offences punishable under Section 7/16 read with section 17 of the prevention of Food Adulteration Act, 1954. The appellants' contention that in view of the nomination made by the companies, only the persons nominated to be incharge of and responsible for the conduct of the business could be prosecuted and not the other Directors/Managers/Officers.

Having been unsuccessful before the Trial Court as also before the High Court, the appellants have preferred the present appeals by special leave.

Allowing the appeals on the question whether it was permissible to

222

launch a prosecution under section 17(1) of the Prevention of Food Adulteration Act, 1954 against the Directors and Managers of Public Limited Companies notwithstanding the nomination made by the companies as required by section 17(2) of the Act, this Court,

HELD : 1. It is clear from the scheme of section 17 of the Prevention of Food Adulteration Act, 1954 that where a company has committed an offence under the Act, the person nominated under sub-section (2) to be in charge of, and responsible to, the company for the conduct of its business shall be proceeded against unless it is shown that the offence was committed with the consent/connivance/negligence of any other Director, Manager, Secretary or Officer of the Company in which case the said person can also be proceeded against and punished for the commission of the said offence. It is only where no person has been nominated under sub-section (2) of section 17 that every person, who at the time of the commission of the offence was in charge of and was

responsible to the company for the conduct of its business can be proceeded against and punished under the law. [227G, H; 228A,B]

2. In the present cases, on a careful perusal of the complaints lodged by the Food Inspector under the Act it is evident that intimation regarding the nomination had been communicated to the Food Inspector before the complaints came to be lodged. This is evident from the averments made in the respective complaints. The nomination was, however, not acted upon by the complainant on the ground that it was incomplete. It was, therefore, said that in the absence of a valid nomination from the concerned company the Directors of the company were liable to be proceeded against and punished on proof of the charge levelled against them in the complaint. Thus there is no allegation in the complaint which would bring the case within the mischief of section 17(4) of the Act. There is no allegation in the complaint that the offence was committed with the consent/connivance/negligence of the Directors, other than the nominated person, who were impleaded as co-accused. Therefore, the allegations in the complaint do not make out a case under sub-section (4) of section 17 of the Act. That being so, the inclusion of the co-accused other than the company and the nominated person as the persons liable to be proceeded against and punished cannot be justified. [230G, H; 231A-C]

Municipal Corporation of Delhi v. Ram kishan Rohtagi & Ors., [1983]

223

1 SCR 884, relied on.

3. Since the validity of the nominations require investigation, the matters are remanded to the trial court with a direction to inquire into the question whether the nomination forms were received and acknowledged by the Local (Health) Authority competent to receive and acknowledge the same. This question will be considered as a preliminary question and the magistrate will record a finding thereon. If he comes to the conclusion that the nomination forms had been acknowledged by the competent Local (Health) Authority he shall drop the proceedings against the directors of the Company, other than the company and the nominated persons. If on the other hand he comes to the conclusion that the prescribed forms had been acknowledged by a person other than the competent Local (Health) Authority he will proceed against all the persons who are shown as the accused in the complaint i.e. all the Directors including the nominated person and the company. [232H; 233A-C]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 167-169 of 1992.

From the Judgment and Order dated 4.2.91 of the Madhya Pradesh High Court in Crl. Revision Nos. 356, 357 and 358/89.

Ram Jethmalani, Ravinder Narain, B.B. Lall, Ashok Sagar and S. Sukumaran for M/s IJBD & Co. for the Appellants.

U.N. Bachawat, Ms. Mirdula Gupta and Uma Nath Singh for the Respondents The Judgment of the Court was delivered by AHMADI. J. Special leave granted.

The short question which arises for determination in these appeals is whether it was permissible to launch a prosecution under sub-section (1) of section 17 of the Prevention of Food Adulteration Act, 1954 (hereinafter called the 'the Act') against the Directors and Managers of public limited companies, namely, M/s. Lipton India Limited and M/s. Hindustan Lever Limited, for the commission of the alleged offence punishable under the aforesaid provision notwithstanding the nomination made by the said companies as required by sub-section (2) of section 17 of the Act. In order to appreciate contention raised on behalf of the appellants it is necessary to notice a few provisions of the Act. Section 7 of the Act inter alia provides that no person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute any adulterated food or any misbranded food or any article of food in contravention of the provisions of the Act and the rules made thereunder. Section 16 prescribes penalties for contravention of the provision of the Act. It lays down that if any person whether by himself or by any person on his behalf, manufactures for sale, or stores, sells or distributes any article of food which is adulterated or misbranded or the sale of which is prohibited under any provision of the Act or any rule made thereunder or by an order of the Food (Health) Authority, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine which shall not be less than one thousand rupees. Then comes section 17, the relevant part whereof may be reproduced:

"17. Offences by companies - (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 (hereinafter 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 :

Provided that nothing contained in this sub- section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent

the commission of such offence.

R.BANERJEE v. H.D. DUBEY [AHMADI, J.] (2) Any company may, by order in writing, authorise any of its directors or managers (such managers) 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 establishment or branches or different units in any establishment or branch, different persons may be nominated under this sub-section in relation to different establishment 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."

Sub-section (4) which begins with a non-obstante clause next provides that 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, (not being a person nominated under sub-section (2)) such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Section 23 of the Act empowers the Central Government to make rules. In exercise of the said power the Central Government has framed rules known as the Prevention of Food Adulteration Rules, 1955 (hereinafter called 'the Rules'). Rule 12-B with which we are concerned reads as under;

"Form of nomination of Director or Manager and his consent, under Section 17-1 (1) A company may inform the Local (Health) Authority of the concerned local area, by notice in duplicate, in Form VIII containing the name and address of the Director or Manager, who has been nominated by it under sub-section (2) of section 17 of the Act to be in charge of, and responsible to, the company for the conduct of the business of the company or any establishment, branch or unit thereof :

Provided that no such nomination shall be valid unless the Director or Manager who has been so nominated, gives his consent in writing and has affixed his signature, in Form VIII in duplicate in token of such consent.

(2) The Local (Health) Authority shall sign and return one copy of the notice in Form VIII to the company to signify the receipt of the nomination and retain the second copy in his office for record."

Form VIII is in three parts. The first part is in the nature of notice that the company has by a resolution passed at its meeting nominated its named Director/Manager to be in charge of, and responsible to, the company for the conduct of the business of the said company or establishment/branch/unit thereof. A certified copy of the resolution has to be sent along with the form. This part must be signed by the Managing Director/Secretary of the Company. The second part relates to the acceptance of the nomination and must be signed by the nominated Director/Manager. The third part has to be signed by the Local (Health) Authority acknowledging the receipt of the nomination.

It is clear from the plain reading of section 17 that where an offence under the Act is alleged to have been committed by a company, where the company has nominated any person to be in charge of, and responsible to, the company for the conduct of its business that person will be liable to be proceeded against and punished for the commission of the offence. Where, however, no person has been so nominated, every person who at the time of the commission of the offence was in charge of, and responsible to, the company for the conduct of its business shall be proceeded against and punished for the said crime. Even in such cases the proviso offers a defence, in that, the accused can prove his innocence by showing that the offence was committed without his knowledge and notwithstanding the exercise of due diligence to prevent it. The scheme of sub-section (1) of section 17 is, therefore, clear that cases where a person has been nominated under sub-section (2) of section 17, he alone can be proceeded against and punished for the crime in question. It is only where on such person has been nominated that every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of its business can be proceeded against and punished. The proviso, however, lays down an exception that any such person proceeded against shall not be liable to be punished if he proves that the offence was committed without his knowledge and that he had exercised all due diligence to prevent the commission thereof. Sub-section (2) of section 17 empowers the company to authorise any of its Directors or Managers 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 the Act. It further empowers the company to give notice to the Local (Health) Authority in the prescribed form that it has nominated a Director or Manager as the person responsible to the company for the conduct of its business. This has to be done with the written consent of the nominated Director or Manager. Where a company has different establishment or branches or units, different persons may be nominated in relation to the different establishments/ branches/units and the person so nominated shall be deemed to be the person responsible in respect of such establishment, branch or unit. Sub-section (4) of section 17 overrides the preceding sub-section and posits that where an offence has been committed by a company and it is proved that the offence was 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, other than the one nominated, such Director, Manager Secretary or other officer shall also be deemed guilty and be liable to be proceeded against and punished for the same. This sub-section, therefore, makes it clear that notwithstanding the nomination under sub-section (2) of section 17 and notwithstanding clause (a)(i) of sub-section (1) of section 17, any Director, Manager, Secretary or other officer of the company, other than the nominated person, can be proceeded against and punished if it is shown that the offence was committed with his consent or connivance or negligence. It is crystal clear from the scheme of section 17 that where a company has committed

an offence under the Act, the person nominated under sub-section (2) to be in charge of, and responsible to, the company for the conduct of its business shall be proceeded against unless it is shown that the offence was committed with the consent/connivance/negligence of any other Director, Manager, Secretary or Officer of the company in which case the said person can also be proceeded against and punished for the commission of the said offence. It is only where no person has been nominated under sub-section (2) of section 17 that every person, who at the time of the commission of the offence was in charge of and was responsible to the company for the conduct of its business can be proceeded against and punished under the law.

In the instant case it is the contention of both the companies, namely (i) M/s. Lipton India Limited and (ii) M/s. Hindustan Lever Limited that they had made the nomination as required by sub-section (2) of section 17 of the Act and, therefore, only the nominated person could be proceeded against and punished since there is no allegation in the complaints lodged by the Food Inspector to bring the case within sub-section (4) of section 17 of the Act. If the said two companies can show from the record of the case that a valid nomination was made prior to the commission of the alleged offence and the allegations in the complaints do not attract sub-section (4) of section 17, the appellants- Director, Manager and other Officers would be justified in contending that they cannot be proceeded against or punished for the offence alleged to have been committed by their respective companies.

The facts of the present case reveal that Mr. H.D. Dubey, Food Inspector, had visited the godown of Lipton India Limited situate at Panagarh, Jabalpur and had lifted samples of Tree Top Orange Drink in Tetrapacks and Dalda Vanaspati Ghee manufactured by the said two companies as he suspected the said products of the said two companies to be adulterated. During inspection the Food Inspector found that the Tree Top Tetrapack carried the date of manufacture as June 1988 as evidenced by the label affixed thereto and since the date of expiry was stated to be six months from the date of manufacture, the product was adulterated as six months had already elapsed on the date of inspection. It was, therefore, felt that the product was misbranded or adulterated. Suffice it to say that the samples collected by the Food Inspector from the said godown were forwarded to the Public Analyst for examination and report as required by law and the Public Analyst reported that samples of all the three products, namely, Tree Top Tetrapacks and Vanaspati Ghee manufactured by M/s. Lipton India Limited as well as by M/s. Hindustan Lever Limited were adulterated as they did not conform to the standard prescribed by law. It was on the receipt of this report that the Food Inspector filed three separate complaints against the company as well as its Directors, Managers and other officers for the commission of offences punishable under section 7/16 read with section 17 of the Act.

The appellants however, contend that since the company had made a nomination as required by sub-section (2) of section 17 of the Act, only the person nominated could be proceeded against and punished for the alleged offence along with the company. So far as Lipton India Limited is concerned, it is said that it had nominated one H. Dayani by company resolution dated 15th December, 1988 as the person to be in charge of, and responsible to, the company for the conduct of its business at its Nagpur branch and intimation thereof was sent as required by Rule 12B with the consent of the said H. Dayani to the concerned Local (Health) Authority and hence the said H.

Dayani alone could be proceeded against and punished, besides the company, for the commission of the offence in question. A copy of the resolution passed by the Board of Directors of the company at its meeting held on 15th December, 1988 was annexed to the intimation sent in the prescribed form under Rule 12B of the Rules. M/s Hindustan Lever Limited contends that it too had nominated one Dr. Nirmal Sen as the person in charge of, and responsible to, the said company for the conduct of its business at the Shamnagar factory and hence besides the company the said Dr. Nirmal Sen alone could be proceeded against and punished. That company also had intimated the Local (Health) Authority about the nomination of Dr. Nirmal Sen as the person in charge of, and responsible to, the said company for the conduct of its business at its shamnagar factory and this was duly verified by the Local (Health) Authority of Bhatpara Municipality exercising administrative control over the area in which the said factory was situate. As pointed out earlier if the two companies succeed in showing that they had made valid nominations of H. Dayani and Dr. Nirmal Sen, respectively, and had duly intimated the concerned Local (Health) Authority about the same before the commission of the alleged offences, there can be no doubt that the case would fall within the ambit of sub- clause (i) of clause (a) of sub-section (1) of section 17 of the Act and not under sub-clause (ii) thereof. It would then be necessary for the prosecuting agency to show from the averments made in the complaint that the case falls within sub-section (4) of section 17 of the Act. If the prosecuting agency fails to show that the offence was committed with the consent or connivance of any particular Director, Manager, Secretary or other officer of the company or on account of the negligence of any one or more of them, the case set up against the appellants cannot be allowed to proceed.

It may at this stage be mentioned that H. Dayani has filed an affidavit stating that at the material point of time he was the Branch Manager of the Nagpur Branch of Lipton India Limited and the said branch had a godown at Panagarh, District Jabalpur, where Dalda Vanaspati in different packings and Tree Top Tetrapack were stored, By the Board's Resolution dated 15th December, 1988 he was nominated under section 17 (2) of the Act to be the person in charge of, and responsible to, the company for the conduct of its business at Nagpur Branch. He further states that as per Rule 12B, a nomination in Form VIII was duly sent by the company to the Local (Health) Authority at Jabalpur and he had signed the said form in token of having accepted the nomination. This form, says the deponent, was duly received by the Local (Health) Authority, Panagarh, Jabalpur on 21st February, 1989. Similarly, Dr. Nirmal Sen has filed an affidavit stating that he was the Factory Manager of the Shamnagar Factory of Hindustan lever Limited at the material time and his company had a godown at Panagarh, District Jabalpur, where Dalda Vanaspati in different packings was stored. By the Board's Resolution dated 22nd March, 1983 he was nominated under section 17(2) of the Act to be in charge of, and responsible to, the company for the conduct of its business at the Shamnagar factory and in that capacity he was entitled to exercise all such powers and take all such steps as considered necessary or expedient to prevent the commission of any offence under the Act. As required by Rule 12B, a nomination in Form VIII was sent by his company to the Local (Health) Authority, Bhatpara Municipality and he had signed the same in token of having accepted the nomination made in his favour on 13th April, 1983. He states that this form was duly received by the Local (Health) Authority on the same day. The aforesaid sworn statements made by H. Dayani and Dr. Nirmal Sen were produced on record to assure the Court that the nominated person of the said two companies own their responsibilities under the Act pursuant to the nomination.

On a careful perusal of the complaints lodged by the Food Inspector under the Act it is evident that intimation regarding the nomination in favour of H. Dayani and Dr. Nirmal Sen had been communicated to the Food Inspector before the complaints came to be lodged. This is evident from the averments made in the respective complaints. The nomination was, however, not acted upon by the complainant on the ground that it was incomplete. It was, therefore, said in the absence of a valid nomination from the concerned company the Directors of the company were liable to be proceeded against and punished on proof of the charge levelled against them in the complaint. It will thus be seen that there is no allegation in the complaint which would bring the case within the mischief of section 17 (4) of the Act. There is no allegation in the complaint that the offence was committed with the consent/connivance/negligence of the Directors, other than the nominated person, who were impleaded as co-accused. We are, therefore, satisfied that the allegations in the complaint do not make out a case under sub-section (4) of section 17 of the Act. That being so, the inclusion of the co-accused other than the company and the nominated person as the persons liable to be proceeded against and punished cannot be justified. As held by this Court in *Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Ors.*, [1983] 1 SCR 884 where the allegations set out in the complaint do not constitute any offence, no process can be issued against the co-accused other than the company and the nominated person and the High Court would be justified in exercising its inherent jurisdiction under section 482 of the Code of Criminal Procedure, 1973 to quash the order passed by the Magistrate taking cognizance of the offence against such co-accused.

That brings us to the question whether process could be issued against such co-accused under sub-clause (ii) of clause (a) of sub-section (1) of section 17 of the Act. This would depend on the court's finding whether there was a valid nomination in favour of H. Dayani and Dr. Nirmal Sen. If there was a valid nomination in existence at the date of the commission of the offence there can be no doubt that the case would be governed by section 17(1)(a)(i) of the Act and section 17(1)(a)(ii) would not be attracted. The nomination in favour of H. Dayani shows that it was received by the Local (Health) Authority on 21st February, 1989 and the same was signed by the Health Officer, Municipal Corporation, Jabalpur on the same day and a copy thereof was returned to the company sometime in March 1989. Although in the letter of the Food Inspector dated 21st March, 1989 it was stated that the nomination form could not be accepted as it was not signed by the Local (Health) Authority, no such averment was made in the complaints subsequently filed. In the complaints all that is said is that the nominations are not valid as they are incomplete. Now during the pendency of these appeals the Health Officer has by his letter dated 3rd October, 1991 informed as under :

"However, it is beyond my knowledge that who has cut Jabalpur and written Panagarh in place of Jabalpur when the nomination was handed over to the party the word Jabalpur was written on the document, Form No. VIII."

A perusal of the nomination form of H. Dayani shows that some word has been scored out and Panagarh has been written by its side. However, if it is the contention of the complainant that this change was subsequently made after a copy of the nomination was handed over to the party, the original document in the possession of the Health Officer could have been produced to show that Panagarh was subsequently added for Jabalpur. Even the scored out word does not read like Jabalpur. No where in the complaint has it been contended that the document has been tempered

with subsequently. It is clear from this communication that the nomination was sent in Form VIII and the same duly received and acknowledged by the Health Officer, Municipal Corporation, Jabalpur. It is, however, contended that since of godown in which the offending goods were stored was situate at Phutatal (Panagarh) of Jabalpur district, the Local (Health) Authority was not the Health Officer of the Jabalpur Municipality but the Civil Surgeon or the Chief Medical Officer of District Jabalpur. A notification issued by the State Government dated 14th February, 1983 under clause (viii) of section 2 of the Act has been relied upon. It is, therefore, necessary to inquire into the question whether the nomination of H. Dayani was sent to, received and acknowledged by the competent Local (Health) Authority.

The nomination form pertaining to Hindustan Lever Limited is dated 30th March, 1983 in favour of Dr. Nirmal Sen, Factory Manager of the Shamnagar unit of the company. Dr. Nirmal Sen has signed that form on 13th April, 1983. It appears to have been counter-signed by the Food Inspector, Bhatpara Municipality. It is, therefore, not clear if it has been signed by the competent Local (Health) Authority of the area in which the godown from which the offending goods were recovered was situated. This too is a matter which needs investigation.

In the result, the appeals are allowed. The order of the learned Magistrate as well as the impugned order of the High Court are set aside. The Matters are remanded to the learned trial magistrate with a direction to inquire into the question whether the nomination forms nominating H. Dayani and Dr. Nirmal Sen were received and acknowledged by the Local (Health) Authority competent to receive and acknowledge the same. This question will be considered as a preliminary question and the learned magistrate will record a finding thereon. If he comes to the conclusion that the nomination forms had been acknowledged by the competent Local (Health) Authority he shall drop the proceedings against the Directors of the company, other than the company and the nominated persons. If on the other hand he comes to the conclusion that the prescribed forms had been acknowledged by a person other than the competent Local (Health) Authority he will proceed against all the persons who are shown as the accused in the complaint i.e. all the Directors including the nominated person and the company. The appeals are allowed accordingly.

G.N.

Appeals allowed.