

A.Sahadevan (Former Managing ... vs State Of Kerala on 20 January, 2021

Author: P.Somarajan

Bench: P.Somarajan

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.SOMARAJAN

WEDNESDAY, THE 20TH DAY OF JANUARY 2021 / 30TH POUSHA, 1942

CrI.MC.No.2981 OF 2020(C)

AGAINST THE ORDER/JUDGMENT IN CC 635/2019 OF JUDICIAL MAGISTRATE
OF FIRST CLASS -I,KOZHIKODE

PETITIONERS/ACCUSED NOS.3 TO 6:

- 1 A.SAHADEVAN (FORMER MANAGING DIRECTOR)
M/S KERALA STATE CO-OPERATIVE CONSUMER FEDERATION
LTD, GANDHI NAGAR, ERNAKULAM-682 020,
RESIDING AT CHUNDAKKAD HOUSE,
AYAKKAD P.O.PALAKKAD-678 683.
- 2 M.MEHABOOB
(FORMER ADMINISTRATIVE COMMITTEE CONVENOR)
M/S KERALA STATE CO-OPERATIVE CONSUMER FEDERATION
LTD, GANDHI NAGAR,
ERNAKULAM-682 020,
RESIDING AT SAUHRUDAM,
VELOOR P.O.ATHOLI,
CALICUT-673 315.
- 3 P.M. ISMAIL
(FORMER ADMINISTRATIVE COMMITTEE MEMBER),
M/S KERALA STATE CO-OPERATIVE CONSUMER FEDERAL LTD,
GANDHI NAGAR, ERNAKULAM-682 020,
RESIDING AT PANAKKAL HOUSE,
MUNDAVOOR P.O.MOOVATTUPUZHA,
ERNAKULAM-686 669
- 4 K.V.KRISHNAN
(FORMER ADMINISTRATIVE COMMITTEE MEMBER),
M/S KERALA STATE CO-OPERATIVE CONSUMER FEDERAL LTD,
GANDHI NAGAR, ERNAKULAM,

KOCHI -682 020,
RESIDING AT KOCHU NILAYAM,
RAVANEESHWARAM P.O.KASARAGOD-671 316.

BY ADV. SRI.M.SASINDRAN

RESPONDENTS/STATE/COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.
Crl.MC.No.2981 OF 2020(C)

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2 THE FOOD SAFETY OFFICER,
KOZHIKODE NORTH CIRCLE,
KOZHIKODE DISTRICT-673 001.

R2 BY ADV.SRI.M.R.DHANIL, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
20.01.2021, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
Crl.MC.No.2981 OF 2020(C)

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ORDER

The crime was registered on the allegation of offences under Sections 3(1)(zz)

(ix), 26(1)(2)(i), 27(1)(2)(c) and 59(i) of Food Safety and Standards Act, 2006 read with regulation 2.4.6.1 and 15 of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011, against which the accused No.3 to 6 came up to quash the entire proceedings on the ground that there is no specific allegation against them or their alleged role in the commission of offence.

2. The offences alleged are against a company and the persons, who were in the affairs of the company responsible for the alleged issue and the same is specifically mentioned in the complaint. The two decisions of the Apex Court regarding the vicarious Crl.MC.No.2981 OF 2020(C) liability in Pepsico India Holidays Pvt. Ltd. v. Food Inspector and another (2010 (4) KHC

767) and Municipal Corporation of Delhi v. Ram Kishan Rohtagi and others (1983 KHC 404) were brought to the notice of this Court.

3. The question which was considered by the Apex Court in Pepsico India Holiday's case (supra) is with respect to what is the liability of the Directors of a company which is said to have committed defaults within the meaning of Section 17 of the 1954 Act, in the light of the decision of Apex Court in S.M.S Pharmaceuticals Ltd. v. Neeta Bhalla and Anr. (MANU/SC/0622/2005 : 2005 (8) SCC 89), when they were neither in charge of nor responsible for the conduct of the business of the company. Earlier, the Apex Court had the occasion to consider the vicarious liability against the managing director of a company in Municipal Corporation of Delhi's case Crl.MC.No.2981 OF 2020(C) (supra) and laid down that unless he is responsible for the affairs of the company or the conduct of business, no vicarious liability can be extended. It is a decision rendered in the context of 1954 Act. But the later one in S.M.S. Pharmaceuticals's case (supra) is with respect to the application of Section 141 of the Negotiable Instruments Act and the question of fastening vicarious liability in the matter of an offence under Section 138 of the Negotiable Instruments Act.

4. The very same issued was considered in Everest Advertising (P)Ltd. v. State, Govt. of NCT of Delhi and Ors. (MANU/SC/1767/2007 :

(2007) 5 SCC 54).

The legal position settled by the Apex Court in various decisions would prima facie show that in order to fasten criminal liability against the Chairman or the Managing Director, as the case may be, there should be Crl.MC.No.2981 OF 2020(C) pleading regarding their responsibility in the commission of offence. When there is sufficient pleading and prima facie material to fasten liability, then it is a question of fact to be adjudicated, for which, the jurisdiction under Section 482 Cr.P.C. cannot be extended. As such, it is not fit and proper to exercise the jurisdiction under Section 482 Cr.P.C. Crl.M.C. is hence dismissed, without prejudice to the right to exercise all other remedies available at various stages. Regarding the personal appearance of the accused, it shall be considered based on the well settled principles.

Sd/-

P.SOMARAJAN JUDGE SPV Crl.MC.No.2981 OF 2020(C) APPENDIX PETITIONER'S/S EXHIBITS:

ANNEXURE AI A TRUE COPY OF THE COMPLAINT IN CC NO 635 OF 2019 ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE-1, KOZHIKODE
ANNEXURE AII A TRUE COPY OF THE MAHAZAR PREPARED BY THE 2ND RESPONDENT ON 17.9.2018 ANNEXURE AIII A TRUE COPY OF THE NOTICE ISSUED UNDER SECTION 46(4) OF FOOD SAFETY AND STANDARDS ACT AGAINST THE ACCUSED NOS 1,2,7 AND 9 RESPONDENTS' EXHIBITS: NIL
//TRUE COPY// PA TO JUDGE