

Puneet Sharma vs State Of M.P. on 14 September, 2023

Author: Anil Verma

Bench: Anil Verma

1

IN THE HIGH COURT OF MADHYA PRADESH
AT I N D O R E
BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 14th OF SEPTEMBER, 2023

MISC. CRIMINAL CASE No. 5958 of 2021

BETWEEN: -

PUNEET SHARMA S/O RAMESH KUMAR
SHARMA, AGED ABOUT 39 YEARS,
OCCUPATION: SERVICE, ASSISTANT
MANAGER-CUM-NOMINEE, FIRM CADBURY
INDIA LIMITED, UNIT I & II, HADBAST, NO.199,
VILLAGE SANDHOLI, BADDI, TEHSIL
NALAGARH, DISTRICT SOLAN (HIMACHAL
PRADESH)

.....PETITIONER

(SHRI SURENDRA SINGH - SENIOR ADVOCATE WITH SHRI LOKESH
KUMAR BHATNAGAR AND SHRI SOURABH AGRAWAL - ADVOCATE)

AND

STATE OF M.P. STATION HOUSE OFFICER
THROUGH MAHENDRA KUMAR VERMA, FOOD
SAFETY OFFICER, FOOD AND DRUGS
ADMINISTRATION, DHAR (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI SANTOSH THAKUR - GOVT. ADVOCATE)

This application coming on for admission this day, the court has
passed the following:

ORDER

This petition under Section 482 of Cr.P.C. has been filed for quashment of criminal complaint filed by the respondent, which is pending before the Court of Judicial Magistrate First Class, Sardarpur, District Dhar (M.P.) in Criminal Complaint No.RCT 361/2014.

02. The necessary facts for the disposal of present petition in short art that on 15/10/2013 Shri Mahendra Kumar Verma, Food Safety Officer, Food and Drug Administration, Dhar inspected the premises of Swastik Agency at Raigarh. Co-accused Rakesh Jain, who is the Proprietor of the said Agency was present at the said premises. Shri Mahendra Kumar Verma took a sample of Cadbury Dairy Milk Fruit & Nut Chocolate, which was sent to the Public Analyst, Bhopal. As per the report dated 01/11/2014 the same was declared to be adulterated as it was insect infected.

03. During the investigation, it has been found that the aforesaid product was manufactured by Cadbury India Limited and being the Nominee/Assistant Manager, present petition Puneet Sharma has been implicated as an accused. After completion of investigation, written complaint has been filed by Shri Mahendra Kumar Verma, Food Safety Officer before the JMFC, Sardarpur, District Dhar, who took cognizance of the offence and issued process against the accused person and vide order dated 15/11/2011 charges under Section 26(2)(i) and 59 of the Food Safety and Standards Act, 2006 (hereinafter referred to as "Act of 2006") have been framed against the petitioner. Hence, this petition is filed.

04. Learned counsel for the petitioner submits that the petitioner has been implicated as an accused as he is the nominee of the Company but no other allegation has been levelled against him. The alleged offence has been committed by the Company and its officers cannot be made vicariously liable unless the Company itself is also implicated as an accused. There is no evidence available against the petitioner to connect him with the aforementioned offence. As per Section 66 of the Act of 2006 Company is not arrayed as an accused, therefore, there is no prima facie case exists against the petitioner. Hence, in absence of the main accused, prosecution is not maintainable against the petitioner.

05. Per contra, learned counsel for the respondent / State submitted that petitioner is the nominee of the Cadbury India Limited and since the offence is committed by the Company, therefore, the applicant is being prosecuted being the nominee of the Company. Hence, no interference is warranted by this Court.

06. Heard learned counsel for both the parties at length and perused the record.

07. The undisputed facts are that the samples of Cadbury Dairy Milk Fruit & Nut Chocolate was found to be adulterated therefore, complaint has been filed against the applicant and the other co-accused persons. This is also an undisputed fact that present applicant has been arraigned as an accused because he is the nominees of the Cadbury India Limited, which is the manufacturer of the Cadbury Dairy Milk Fruit & Nut Chocolate. The Cadbury India Limited has not been arraigned as an accused.

08. Now the moot question before this Court is that whether the Primary accused is the Company or not? If the Company is an accused, then whether the prosecution of office bearer of the Company is permissible without arraigning the Company as an accused or not?

09. Besides, the proviso to Section 66 of the Act of 2006 makes it very clear that where a person In-charge of an Establishment or Unit nominated by the company as responsible for the food safety shall be the person who will be liable for contraventions in respect of such Establishment, Branch or Unit. Undisputedly, in this particular case, the manufacturer of the offending food product is based at District Solan and the petitioner is the Assistant Manager-cum-Nominee, who works at the Solan Establishment which manufactures the offending products. Once, his inclusion as an accused has been made in this case, then only such a nominee cannot be held responsible. The said inference can be drawn by the manner in which first proviso is worded which, by necessary implication, makes such a nominee entirely liable for the contravention in respect of the Establishment, Branch or Unit, where the offending food material was manufactured.

10. As regards special statutes which provides for prosecution of the nominee for the offences committed by the companies, it is settled law that the nominee can not be prosecuted in isolation where the company has not been made an accused [Aneeta Hada Vs. Godfather Travels and Tours Pvt. Ltd., (2012) 5 SCC 661 and Sanghi Brothers Indore

(p) Ltd. Vs. Premchand, 2011 SCC Online MP 1299), Sharad Kumar Sanghi Vs. Sangita Rane (2015) 12 SCC 781 Para 11, Managing Director Vs. State of Karnataka (2018) 17 SCC 275 and Hindustan Unilever Ltd. Vs. State of M.P. (2020) 10 SCC 751 Para 23]. Undisputedly, in this case the company has not been proceeded against. Therefore, in view of the aforesaid judgments of the Supreme Court and the settled law that in special statutes which provides for the prosecution of a company for the offence committed by it, the nominee could only be vicariously liable if the company itself is made an accused. Therefore, on that ground itself the prosecution of the petitioner herein, who is the nominee of the company is impermissible in law.

11. In the case of Sharad Kumar Sanghi Vs. Sangita Rane (2015) 12 SCC 781, it has been held as under :

"11. In the case at hand as the complainant's initial statement would reflect, the allegations are against the Company, the Company has not been made a party and, therefore, the allegations are restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against the Company. There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened under certain statutes. It has been so held by a three-Judge Bench in Aneeta Hada v. Godfather Travels and Tours (P) Ltd. in the context of the Negotiable Instruments Act, 1881."

12. This Court by order dated 20/02/2017 passed in M.Cr.C. No.1301 of 2011 (Managing Director vs. State of M.P.) has held as under :-

"Thus, as the Marico Industries Limited, Mumbai has not been arrayed as an accused, therefore, the prosecution of the applicant in his official capacity is not permissible because he cannot be vicariously held liable for the offence committed by

the Company unless and until, the Company which is a juristic entity is arrayed as an accused."

13. The co-ordinate Bench of this Court in the case of Mr. Venketaramanan Ramnath and Another Vs. State of M. P. and Another reported in 2017 (1) FAC 124 in para 14 has held as under:-

"Thus, if the facts of the present case are considered in the light of the judgments, then it would be clear that Cadbury India Limited is the manufacturer of the Cadbury Gems, however, the Company has not been made an accused and the applicants are being prosecuted in the capacity of nominee/employees of Company. The applicants cannot be held vicariously liable for offence committed by the Company in absence of prosecution of company. Therefore, this Court is of the considered view that as the Company which is the manufacturer of the Cadbury Gems has not been arraigned as an accused, the applicants cannot be held vicariously liable. There is no allegation against the applicants in their personal capacity. Therefore, the prosecution of the applicants is bad in law."

14. In view of the foregoing analysis, this Court is of the considered opinion that the Company, who is manufacturer of Cadbury Dairy Milk Fruit & Nut Chocolate has not been implicated as an accused in the instant case, the petitioner being a nominee cannot be made accused in his personal capacity. Therefore, the prosecution of the petitioner is bad in law and he cannot be held vicariously liable for the act of the Company.

15. Hence, this petition succeeds and is hereby allowed. The proceedings in Criminal Complaint Case No.RCT 361/2014 pending before the JMFC, Sardarpur, District Dhar (M.P.) as well as all other consequent proceedings thereto, to the extent present petitioner is concerned only, is hereby quashed. The case pending before the trial Court shall continue as regards to the other accused persons.

Certified copy as per rules.

(ANIL VERMA) J U D G E Tej