Mahender Kumar Verma vs State Of H.P on 25 October, 2024

(2024:HHC:10261) IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA Cr. MMO No. 1313 of 2023 Reserved on: 16.09.2024 Date of Decision: 25.10.2024.

Mahender Kumar Verma ...Pet

Versus

State of H.P. ...Resp

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Hon'ble Mr Justice Rakesh Kainthla, Judge. Whether approved for reporting?1 Yes For the Petitioner : Mr. G.S. Sawhney, Advocate. For the Respondents : Mr. Ajit Sharma, Deputy Advocate General for respondent/State.

Rakesh Kainthla, Judge The petitioner has filed the present petition for quashing the complaint and the proceedings pending before the learned Additional Chief Judicial Magistrate, Palampur, District Kangra, H.P. under the Food Safety and Standards Act, 2006 (hereinafter referred to as Food Safety Act).

Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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2. Briefly stated, the facts giving rise to the present petition are that Food Safety Officer Kangra at Dharmshala filed a complaint before the learned Trial Court under Section 59(1) read with Sections 3(1)(c) (zz), 26(2) (i) (ii) and 27 (1) (c) of the Food Safety Act. It was asserted that the Food Safety Officer visited the shop named M/s Chaina Ram Sant Ram at Maranda Kalu di Hatti on 23.05.2018 at 2:35 PM with Subhash Chand. Puneet Baghla, partner M/s Chaina Ram Sant Ram was conducting the business of the shop. He had kept 245 PET bottles of 1 kg of Snack Sauce (Himpa) for sale to the general public for human consumption.

The Food Safety Officer called Partap Singh to witness the proceedings. The Food Safety Officer disclosed his identity and declared his intention to take a sample of Snack Sauce (Himpa) for analysis. He served notice in Form VA upon Puneet Baghla and purchased 4x1 kg PET bottles of Snack Sauce (Himpa) in original packed condition against the payment of 160/-. He obtained the receipt duly signed by Mr. Puneet Baghla. Mr Puneet Baghla disclosed that he had purchased the Snack Sauce (Himpa) from Jupiter Multi Fruit Processor, a Manufacturer of Fruit Syrups, Vegetable sauces, Tomato Ketchup etc., Plot No.1, Phase-

III, Industrial Area, Tahliwal, Una (H.P.) in a sealed condition.

(2024:HHC:10261) The Food Safety Officer sent a copy of Form VA to the manufacturer. The bottles were labelled with a labelling slip signed by the Food Business Operator (Puneet Baghla). These were wrapped in four wrapping papers separately. The corners of the wrapping papers were neatly folded and affixed with gum.

Four paper slips bearing Code No. KGR and Sl.No. 268 with the signatures of the Designated Officer, Kangra were pasted with gum from top to bottom around each bottle. The bottles were tied with strong thread above and across each packet and sealed with sealing wax. At least four seals were applied on each packet covering all the knots of the packets. The signatures of Food Business Operators were obtained in such a manner that the paper slip and the wrapping paper carried a part of the signature.

A spot memo was prepared on the spot. One part of the sample was sent to the Food Analyst, Kandaghat in a sealed registered letter and the remaining three parts were deposited with the Designated Officer, Kangra along with three copies of Form VI in a sealed packet. As per the report of analysis, the sample of Snack Sauce (Himpa) did not conform to the standards laid down under Rule 2.3.28 of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 as its (2024:HHC:10261) acidity was found to be 0.94% against the minimum prescribed standard of 1%. It contained Ponceau 4R which is prohibited.

Hence, the sample was declared substandard and unsafe by the Food Analyst, Kandaghat vide his report No. 083 dated 30.06.2018. The Designated Officer, Kangra forwarded the report to the Food Safety Officer and asked him for the complete and correct address of the Food Business Operator. The Food Safety Officer submitted the correct address and a notice was sent to the Food Business Operator. The Designated Officer recommended the case to C.M.O. Kangra for written consent.

C.M.O. Kangra granted sanction to launch the prosecution against Puneet Baghla and Jupiter Multi Fruit Processor. Hence, the complaint was filed against the petitioner and Mr. Puneet Baghla before the learned Additional Chief Judicial Magistrate.

3. Being aggrieved from the filing of the complaint, the petitioner has filed the present petition asserting that the petitioner was arrayed without impleading it through any of the authorized representatives. There is no whisper in the complaint as to how the petitioner is in charge and responsible for the conduct of the business or manufacturing. The allegations against the petitioner are wrong. The complaint does not disclose (2024:HHC:10261) any specific role of the petitioner. The requirement of Section 202 of the Code of Criminal Procedure, 1973 was not complied with. The vendor had not produced any bill before the Food Safety Officer regarding the purchase of four PET bottles of Snack Sauce. The bill enclosed with the complaint only mentions the sale of CN 1kg for 9,000/-. No brand name was mentioned in the bill. There is non-compliance of Rule 2.4.2(5) and proviso of Rule 2.4.2(6). The sample was received by the Food Analyst on 30.05.2018 and was analyzed on 30.06.2018 after the mandatory period of 14 days. The Food Analyst has not mentioned that the Food article was unfit for human consumption and is injurious to human health. The mandatory provisions of Section 42(3) of the Food Safety Act was not complied with. Learned Trial Court could not have taken any cognizance of the commission of an offence against the petitioner.

Therefore, it was prayed that the present petition be allowed and the FIR be quashed.

4. The petition is opposed by filing a reply making preliminary submissions regarding lack of maintainability and the petitioners having not come to the Court with clean hands.

The contents of the petition were denied on merits. However, it was admitted that the complaint was filed before the learned (2024:HHC:10261) Additional Chief Judicial Magistrate, Palampur, District Kangra, H.P. It was asserted that the petitioner is a manufacturer of Snack Sauce (Himpa) which was recovered from the shop of Puneet Baghla. This fact was duly mentioned in the Panchnama prepared on the spot. The manufacturer is liable under Section 66 of the Food Safety Act. The product was found to be unsafe and substandard and the petitioner is liable for manufacturing such a defective product. Therefore, it was prayed that the present petition be dismissed.

5. I have heard Mr. G.S. Sawhney, learned counsel for the petitioner and Mr. Ajit Sharma, learned Deputy Advocate General for the respondent/State.

6. Mr. G.S. Sawhney, learned counsel for the petitioner submitted that the allegations against the petitioner are false.

The complaint does not mention that the petitioner is in charge and responsible to the Firm in the absence of which the petitioner could not have been arrayed as a party. The Firm was required to be impleaded but has not been so impleaded.

Therefore, the prosecution against the petitioner is bad and there is non-compliance with the mandatory provisions of Sections 43 (2024:HHC:10261) and 46 of the Food Safety Act. The Bill annexed to the petition does not show that snacks were sold to the Food Business Operator. Therefore, he prayed that the present petition be allowed and the complaint pending before the learned Trial Court be quashed. He relied upon the judgments of State of Uttar Pradesh and others vs. Babu Ram Upadhya AIR 1961 Supreme Court 751, Vishnu Prashad vs. State of Uttrakhand AIR 2012 Supreme Court 572, Vidarbha Industries Power Limited versus Axis Bank Limited Civil Appeal No. 4633 of 2021, Consumer Action Group versus Cadbury India Ltd and another Criminal Appeal No. 917 of 1995 and Kantilal vs. State of Telangana and others, Writ petition No. 41 of 2023 decided on 09.03.2023 in support of his submission.

7. Mr. Ajit Sharma, learned Deputy Advocate General for the respondent/State submitted that the provisions of Sections 43 and 46 are not mandatory but directory. The petitioner was a manufacturer of the Snack Sauce which was found to be substandard and adulterated by the Public Analyst and the complaint was rightly filed against the petitioner. Therefore, he prayed that the present petition be dismissed.

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8. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

9. The parameters for exercising jurisdiction under Section 482 of Cr.P.C. were laid down by the Hon'ble Supreme Court in A.M. Mohan v. State, 2024 SCC OnLine SC 339, wherein it was observed: -

> 9. The law with regard to the exercise of jurisdiction under Section 482 of Cr. P.C. to quash complaints and criminal proceedings has been succinctly summarized by this Court in the case of Indian Oil Corporation v. NEPC India Limited (2006) 6 SCC 736: 2006 INSC 452 after considering the earlier precedents. It will be apposite to refer to the following observations of this Court in the said case, which read thus:
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> "12. The principles relating to the exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few--Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692: 1988 SCC (Cri) 234], State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335: 1992 SCC (Cri) 426], Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194: 1995 SCC (Cri) 1059], Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591: 1996 SCC (Cri) 1045], State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164: 1996 SCC (Cri) 628], Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259: 1999 SCC (Cri) 401], Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269: 2000 SCC (Cri) 615], Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168: 2000 SCC (Cri) 786], M. Krishnan v. Vijay Singh [(2001) 8 SCC 645: 2002 (2024:HHC:10261) SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122: 2005 SCC (Cri) 283]. The principles, relevant to our purpose are:
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> (i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are necessary for making out the offence. (v.) A given set of facts may make out: (a) purely a civil wrong; (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking (2024:HHC:10261) remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

10. Similar is the judgment in Maneesha Yadav v. State of U.P., 2024 SCC OnLine SC 643, wherein it was held: -

> 12. We may gainfully refer to the following observations of this Court in the case of State of Haryana v. Bhajan Lal1992 Supp (1) SCC 335: 1990 INSC 363:
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> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
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> (1) 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.

(2024:HHC:10261) (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code. (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

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103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

11. The present petition has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

12. It was submitted that the Food Safety Officer has arrayed Jupiter Multi Food Processor through its proprietor as a party which is not permissible. The name of the person through whom the concern was impleaded was not mentioned and such a complaint is not maintainable. This submission cannot be accepted. It was laid down by this Court in IndusInd Bank Ltd. vs. State of H.P. and others 2024:HHC 6327 that a juristic person can sue and be sued in its name and it is not necessary to implead the juristic person through a natural person. It is for the juristic person to nominate its representative before the Court as per Section 305 of Cr.P.C. It was observed:

> "23. Therefore, it is apparent from the judgments of different High Courts that the company is a juristic person. It is to be sued in its own name and not through any person. The summons is to be addressed to the company (2024:HHC:10261) and it will be the choice of the company to nominate a person to represent it during the proceedings. If the person does not appear, the Court will proceed further as per law and the company cannot take defence that the proceedings were conducted in its absence."

13. Therefore, if the M/s Jupiter Multi Food Processor is a Firm, it is to be treated as a juristic person in terms of explanation (a) to Section 66 and it was not necessary to prosecute it through a natural person as per the judgment of this Court.

14. The complaint has been filed only against M/s Jupiter Multi Food Processor. As per Section 66 of the Food Safety Act when an offence is committed by the Company (which includes a Firm) every person who at the time when the offence was committed was in charge of and responsible to the Company for the conduct of its business as well as the Company shall be deemed to be guilty of the offence; therefore the Section provides that the Company as well as a person in charge are liable to be prosecuted under the provisions of Food Safety Act. This shows that primarily the offence is committed by a Company, which is a juristic person and a natural person is vicariously liable because he is in charge and responsible to the Company for its affairs. The primary liability of the Company will not cease to exist because a (2024:HHC:10261) natural person was not impleaded as a party. Hence, the submission that the natural person was required to be impleaded as a party and an averment was to be made against him that he is in charge and responsible to the Company for its affairs is not acceptable.

15. If M/s Jupiter Multi Fruit Processor is a proprietorship concern, it does not have any distinct identity. It was laid down by the Hon'ble Supreme Court in Shankar Finance and Investment Vs. State of A.P. 2008 (8) SCC 536, that there is no distinction in law between a proprietary concern and individual trading under a trading name. It was observed: -

> "8. As contrasted from a company incorporated under the Companies Act, 1956 which is a legal entity distinct from its shareholders, a proprietary concern is not a legal entity distinct from its proprietor. A proprietary concern is noth- ing but individual trading under a trade name. In civil law where an individual carries on business in a name or style other than his name, he cannot sue in the trading name but must sue in his own name, though others can sue him in the trading name. Therefore, if the appellant, in this case, had to file a civil suit, the proper description of the plaintiff should be "Atmakuri Sankara Rao carrying on business under the name and style of M/s. Shankar Fi- nance and Investments, a sole proprietary concern". But we are not dealing with a civil suit. We are dealing with a criminal complaint to which the special requirements of Section 142 of the Act apply. Section 142 requires that the complainant should be a payee. The payee is M/s. Shankar Finance and Investments. Therefore in a criminal com-
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> (2024:HHC:10261) plaint relating to an offence under Section 138 of the Act, it is permissible to lodge the complaint in the name of the proprietary concern itself."

16. Therefore, as per the judgment of the Hon'ble Supreme Court, a proprietorship firm is not a juristic person and cannot be impleaded as a party in its individual capacity. It was held in Parvesh Kaur v. State of Punjab, 2022 SCC OnLine P&H 4065, that proprietorship concern has no legal identity and cannot be impleaded as a party. It was observed: -

> 8. Furthermore, infact the law as enunciated by the Hon'ble Supreme Court of India in the case of Raghu Lakshminarayanan v. Fine Tubes, (2007) 5 SCC 103, draws a clear distinction emerging therefrom that only the propri-

etor can be held liable under Section 138 of the Act, as the proprietorship concern has no separate legal identity, it means and includes sole proprietor and vice versa. Thus, a sole proprietorship firm would not fall within the ambit and scope of Section 141 of the Act, the proprietor and the firm being one and the same. The para as relevant reads thus: --

> "It is settled position in law that the concept of vi- carious liability introduced in Negotiable Instru- ments Act is attracted only against the Directors, partners or other persons in charge and control of the business of the company, or otherwise responsi- ble for its affairs. Section 141 of the NI Act not covers within its ambit, the proprietary concern. The pro- prietary concern is not a juristic person so as to at- tract the concept of vicarious liability. The concept of vicarious liability is attracted only in the case of juristic persons, such as the company registered un- der the provisions of the Companies Act, 1956 the (2024:HHC:10261) partnership firm registered under the provisions of the Partnership Act, 1932 or the association of persons which ordinarily would mean a body of per- sons which is not incorporated under any statute. The proprietary concern stands absolutely on a dif- ferent footing. A person may carry on a business in the name of the business concern being the propri- etor of such proprietary concern. In such a case, the proprietor of proprietary concern alone can be held responsible for the conduct of business carried out in the name of such proprietary concern. There- fore, Section 141 of the Negotiable Instruments Act has no applicability in a case involving the offence committed by a proprietary concern."

9. Still further, in M. M. Lal v. State NCT of Delhi, 2012 (4) JCC 284, the High Court of Delhi while following the dic- tum of the Hon'ble Supreme Court of India, held that "it is well settled that a sole proprietorship firm has no separate legal identity and in fact is a business name of the sole proprietor. Thus, any reference to sole proprietorship firm means and includes sole proprietor thereof and vice versa. Sole proprietorship firm would not fall within the ambit and scope of Section 141 of the Act, which envisages that if the person committing an offence under Section 138 is a company, every person who, at the time of offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. The company includes a partner- ship firm and any other association of individuals. The sole proprietorship firm would not fall within the meaning of a partnership firm or association of individuals. Thus, in the case of a proprietorship concern, only the proprietor can be held liable under Section 138 NI Act as the propri- etorship concern and the proprietor are one and the same."

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10. In view of the law as enunciated above, there was no le- gal requirement of the proprietorship firm to have been arrayed as an accused."

17. A similar view was taken by Allahabad High Court in Dhirendra Singh v. State of U.P., 2020 SCC OnLine All 1130, that a proprietorship concern is not a juristic person which can be impleaded under Section 141 of the Negotiable Instruments Act.

It was observed: -

> "10. A plain reading of the provision makes it clear, that if the person committing the offence is a "company", in that event every natural person responsible for such commis- sion as also the artificial person namely the company shall be deemed to be guilty of the offence and be liable to be proceeded against and punished accordingly. Also, certain other natural persons may be held guilty, if so proved.
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> 11. Perusal of the registration of the firm, Annexure no. 1, it transpires that the petitioner is the proprietor of the firm namely M/S. Rashmi Arosole& Chemical Avas Vikas Colony, Sector 10, Sikandara Agra. Perusal of the registra- tion certificate of the firm, petitioner Dhirendra Singh, is the proprietor of the firm and it is clear that this is the sole proprietorship firm. Thus, the main question arises whether in sole proprietorship firm indictment of firm ar- raign as parties is necessary or not.
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> 12. Thus, the phrase "association of individuals" neces- sarily requires such entity to be constituted by two or more individuals i.e. natural persons. On the contrary, a sole- proprietorship concern, by very description does not allow for ownership to be shared or be joint and it defines, re- stricts and dictates the ownership to remain with one per- son only. Thus, "associations of individuals" are abso- lutely opposed to sole-proprietorship concerns, in that sense and aspect.
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> 13. A 'partnership' on the other hand is a relationship formed between persons who willfully form such a rela- tionship with each other. Individually, in the context of that relationship, they are called 'partners' and collec- tively, they are called the 'firm', while the name in which they set up and conduct their business/activity (under such relationship), is called their 'firm name'.
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> 14. While a partnership results in the collective identity of a firm coming into existence, a proprietorship is nothing more than a cloak or a trading name acquired by an indi- vidual or a person for the purpose of conducting a particu- lar activity. With or without such a trade name, it (sole proprietary concern) remains identified to the individual who owns it. It does not bring to life any new or other legal identity or entity. No rights or liabilities arise or are in- curred, by any person (whether natural or artificial), ex- cept that otherwise attach to the natural person who owns it. Thus, it is only a 'concern' of the individual who owns it. The trade name remains the shadow of the natural per- son or a mere projection or an identity that springs from and vanishes with the individual. It has no independent existence or continuity.
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> 15. In the context of an offence under section 138 of the Act, by virtue of Explanation (b) to section 141 of the Act, only a partner of a 'firm' has been artificially equated to a 'director' of a 'company'. It's a legal fiction created in a penal statute. It must be

confined to the limited to the purpose for which it has been created. Thus, a partner of a 'firm' entails the same vicarious liability towards his 'firm' as the 'director' does towards his 'company', though a partnership is not an artificial person. So also, upon being thus equated, the partnership 'firm' and its partner/s has/have to be impleaded as an accused person in any criminal complaint, that may be filed alleging of- fence committed by the firm. However, there is no indica- tion in the statute to stretch that legal fiction to a sole proprietary concern.

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16. Besides, in the case of a sole proprietary concern, there are no two persons in existence. Therefore, no vicarious li- ability may ever arise on any other person. The identity of the sole proprietor and that of his 'concern' remain one, even though the sole proprietor may adopt a trade name different from his own, for such 'concern'. Thus, even otherwise, conceptually, the principle contained in section 141 of the Act is not applicable to a sole-proprietary con- cern.

17. Accordingly, there is no defect in the complaint lodged against the applicant, in his capacity as the sole proprietor of the concern M/s. Rashmi Arosole & Chemicals. There was no requirement to implead his sole proprietary con- cern as an accused person nor there was any need to addi- tionally implead the applicant by his trade name.

18. On perusal of the averment of the parties, it is crystal clear that the petitioner took the money in advance by way of loan and the petitioner handed over the cheques bearing no. 850213 & 850214 amount of Rs. 50,000/- each only for the security for payment of money advance by way of loan. So, the transaction of money and cheques was not in the prosecution of the business of the firm but cheques handed over by the petitioner to Nepal Singh in an indi- vidual capacity. So due to aforesaid reason too no need to implead the sole proprietor firm by his firm name.

18. In the petition, Mahender Kumar Verma has been mentioned as a proprietor of M/S Jupiter Multi Food Processor, therefore, as per the petition, M/s Jupiter Multi Food Processor is a sole proprietorship concern and the petitioner Mahender Kumar Verma is liable by virtue of being the proprietor of the concern. Therefore, the prosecution of the petitioner will not be bad.

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19. It was submitted that the Bill annexed to the complaint does not mention the sale of Snack Sauce (Himpa) but merely CN 4x1 kg. Reliance was placed upon the judgment of the Hon'ble Supreme Court in Consumer Action Group (supra).

This submission will not assist the petitioner because the Court was concerned with Section 20 of the Prevention of Food Adulteration Act, 1955 in the cited case. In the present case, the panchnama

clearly shows that the petitioner is a manufacturer of the Snack Sauce and its name was mentioned on the bottle itself.

Therefore, the petitioner would be liable by virtue of Section 59 of the Food Safety Act as a manufacturer.

20. It was submitted that there is a violation of mandatory provisions of Sections 43 and 46 of the Food Safety Act. The analyst had analyzed the sample beyond the period of 14 days as required under Section 46(3) read with Section 42(2) of the Food Safety Act and the Designated Officer had not sent the recommendation within 14 days for sanctioning prosecution.

Reliance was placed upon the judgments of S. Sakthivel (supra), R. Chandramohan (supra) and Kantilal (supra). It was further submitted that the use of the term 'shall' is generally treated to be mandatory. Reliance was placed upon the judgments of Babu (2024:HHC:10261) Ram Upadhya (Supra), Delhi Airtech Services (Supra) and Vidarbha Industries Power Limited (supra) in support of his submission.

This submission is not acceptable. The Hon'ble Supreme Court has exhaustively dealt with the question whether the use of the term 'shall' makes a provision mandatory or not in X (Juvenile) vs. State of Karnataka, (2024) 8 SCC 473 and held that where consequences for default of a provision in a statute are not mentioned, the same cannot be held to be mandatory. It was observed:

> 29. Where consequences for default for a prescribed period in a statute are not mentioned, the same cannot be held to be mandatory. For this purpose, reference can be made to the following decisions of this Court.
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> 30. This Court in Topline Shoes Ltd. v. Corporation Bank [Topline Shoes Ltd. v. Corporation Bank, (2002) 6 SCC 33: (2002) 3 SCR 1167: 2002 INSC 287] while interpreting Section 13(2)(a) of the repealed Consumer Protection Act, 1986 prescribing time-limit for filing reply to the complaint, held the same to be directory in nature.

Relevant para 11 thereof is extracted below: (SCC p. 40, para 11) "11. We have already noticed that the provision as contained under clause (a) of sub-section (2) of Section 13 is procedural in nature. It is also clear that with a view to achieve the object of the enactment, that there may be speedy disposal of such cases, that it has been provided that reply is to be filed within 30 days and the extension of time may not exceed 15 days. This provision envisages that proceedings may not be prolonged for a very long time without the opposite party having filed his reply. No penal (2024:HHC:10261) consequences have however been provided in case an extension of time exceeds 15 days. Therefore, it could not be said that any substantive right accrued in favour of the appellant or that there was any kind of bar of limitation in the filing of the reply within extended time though beyond 45 days in all. The reply is not necessarily to be rejected. All facts and circumstances of the case must be taken into account. The Statement of Objects and Reasons of the Act also provides that the principles of natural justice have also to be kept in mind." (emphasis supplied)

31. This Court in Kailash v. Nanhku [Kailash v. Nanhku, (2005) 4 SCC 480 : (2005) 3 SCR 289: 2005 INSC 186] while interpretating Order 8 Rule 1CPC prescribing time-limit for filing written statement, held the same to be directory in nature. Relevant paras 30 and 46 thereof are extracted below : (SCC pp. 495 & 499-501) "30. It is also to be noted that though the power of the court under the proviso appended to Rule 1 Order 8 is circumscribed by the words "shall not be later than ninety days" but the consequences flowing from non- extension of time are not specifically provided for though they may be read in by necessary implication. Merely because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form.

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46. We sum up and briefly state our conclusions as under:

(i)-(iii) ***

(iv) The purpose of providing the schedule for filing the written statement under Order 8 Rule 1CPC is to expedite and not to scuttle the hearing. The (2024:HHC:10261) provision spells out a disability for the defendant. It does not impose an embargo on the power of the court to extend the time. Though the language of the proviso to Rule 1 Order 8CPC is couched in negative form, it does not specify any penal consequences flowing from non-compliance. The provision being in the domain of procedural law, it has to be held directory and is not mandatory. The power of the court to extend the time for filing the written statement beyond the schedule provided by Order 8 Rule 1CPC is not completely taken away.

(v) Though Order 8 Rule 1CPC is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded Parliament to enact the provision in its present form, it is held that ordinarily, the schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for the asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the court on its being satisfied. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case." (emphasis supplied)

> 32. This Court in State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti [State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti, (2018) 9 SCC 472 : (2018) 4 SCC (Civ) 387 : (2018) 7 SCR 1147: 2018 INSC 648] while Sections 34(5) and (6) of (2024:HHC:10261) the Arbitration and Conciliation Act, 1996 held the period prescribed in sub-section (6) to be directory. The relevant paras 23, 25 and 26 are extracted below : (SCC pp. 489-91) "23. It will be seen from this provision that, unlike Sections 34(5) and (6) if an award is made beyond the stipulated or extended period contained in the section, the consequence of the mandate of the arbitrator being terminated is expressly provided. This provision is in stark contrast to Sections 34(5) and (6) where, as has been stated hereinabove, if the period for deciding the application under Section 34 has elapsed, no consequence is provided. This is one more indicator that the same Amendment Act, when it provided time periods in different situations, did so intending different consequences.

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25. We come now to some of the High Court judgments. The High Courts of Patna [Bihar Rajya Bhumi Vikas Bank Samiti v. State of Bihar, 2016 SCC OnLine Pat 10104], Kerala [Shamsudeen v. Shreeram Transport Finance Co. Ltd., 2016 SCC OnLine Ker 23728], Himachal Pradesh [Madhava Hytech Engineers (P) Ltd. v. Executive Engineers, 2017 SCC OnLine HP 2212], Delhi [Machine Tool (India) Ltd. v. Splendor Buildwell (P) Ltd., 2018 SCC OnLine Del 9551], and Gauhati [Union of India v. Durga Krishna Store (P) Ltd., 2018 SCC OnLine Gau 907] have all taken the view that Section 34(5) is mandatory in nature. What is strongly relied upon is the object sought to be achieved by the provision together with the mandatory nature of the language used in Section 34(5). Equally, analogies with Section 80CPC have been drawn to reach the same result. On the other hand, in Global Aviation Services (P) Ltd. v. AAI [Global Aviation Services (P) Ltd. v. AAI, 2018 SCC OnLine Bom 233], the Bombay High Court, in answering Question 4 posed by it, held, following some of our judgments, that the provision is directory, largely because no consequence has been provided for breach of the time-limit specified. When faced with the argument that the object of the (2024:HHC:10261) provision would be rendered otiose if it were to be construed as directory, the learned Single Judge of the Bombay High Court held [Global Aviation Services (P) Ltd. v. AAI, 2018 SCC OnLine Bom 233] as under : (SCC OnLine Bom para 133) '133. Insofar as the submission of the learned counsel for the respondent that if Section 34(5) is considered as directory, the entire purpose of the amendments would be rendered otiose is concerned, in my view, there is no merit in this submission made by the learned counsel for the respondent. Since there is no consequence provided in the said provision in case of non- compliance thereof, the said provision cannot be considered as mandatory. The purpose of avoiding any delay in proceeding with the matter expeditiously is already served by the insertion of appropriate rules in the Bombay High Court (Original Side) Rules. The Court can always direct the petitioner to issue notice along with papers and proceedings upon the other party before the matter is heard by the Court for admission as well as for final hearing. The vested rights of a party to challenge an award under Section 34 cannot be taken away for non-compliance of issuance of prior notice before filing of the arbitration petition.' The aforesaid judgment has been followed by recent judgments of the High Courts of Bombay [Maharashtra State Road Development Corpn. Ltd. v. Simplex Gayatri Consortium, 2018 SCC

OnLine Bom 805] and Calcutta [Srei Infrastructure Finance Ltd. v. Candor Gurgaon two Developers & Projects (P) Ltd., 2018 SCC OnLine Cal 5606].

26. We are of the opinion that the view propounded by the High Courts of Bombay and Calcutta represents the correct state of the law. However, we may add that it shall be the endeavour of every court in which a Section 34 application is filed, to stick to the time limit of one year from the date of service of notice to the opposite party by the applicant, or by the Court, as the case may be. In case the Court issues (2024:HHC:10261) notice after the period mentioned in Section 34(3) has elapsed, every court shall endeavour to dispose of the Section 34 application within a period of one year from the date of filing of the said application, similar to what has been provided in Section 14 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. This will give effect to the object sought to be achieved by adding Section 13(6) by the 2015 Amendment Act." (emphasis supplied)

33. This Court in C. Bright v. Distt. Collector [C. Bright v. Distt. Collector, (2021) 2 SCC 392 : (2021) 2 SCC (Civ) 211 : (2020) 7 SCR 997: 2020 INSC 633] while interpreting the nature of Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 held the period prescribed therein mandating the District Magistrate to deliver possession of a secured asset within 30 days, extendable to an aggregate of 60 days, to be directory in nature. The relevant paras 8 and 11 are extracted below : (SCC pp. 398-

99) "8. A well-settled rule of interpretation of the statutes is that the use of the word "shall" in a statute, does not necessarily mean that in every case it is mandatory that unless the words of the statute are literally followed, the proceeding or the outcome of the proceeding, would be invalid. It is not always correct to say that if the word "may" has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid [State of U.P. v. Manbodhan Lal Srivastava, 1957 SCC OnLine SC 4: AIR 1957 SC 912] and that when a statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute [State of U.P. v. Babu Ram Upadhya, 1960 SCC OnLine SC 5: AIR 1961 SC 751]. The principle of literal construction of the statute alone in all circumstances without examining the context and (2024:HHC:10261) scheme of the statute may not serve the purpose of the statute [RBI v. Peerless General Finance & Investment Co. Ltd., (1987) 1 SCC 424].

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11. In a judgment reported as Remington Rand of India Ltd. v. Workmen [Remington Rand of India Ltd. v. Workmen, 1967 SCC OnLine SC 188: AIR 1968 SC 224], Section 17 of the Industrial Disputes Act, 1947 came up for consideration. The argument raised was that the time limit of 30 days of publication of the award by the Labour Court is mandatory. This Court held that though Section 17 is mandatory, the time limit to publish the award within 30 days is directory inter alia for the reason that the non-publication of the award within the period of thirty days does not entail any penalty."(emphasis supplied)

34. As against the above, where consequences of non- compliance within the period prescribed for anything to be done in the statute have been mentioned, the same was held to be mandatory by this Court in SCG Contracts (India) (P) Ltd. v. K.S. Chamankar Infrastructure (P) Ltd. [SCG Contracts (India) (P) Ltd. v. K.S. Chamankar Infrastructure (P) Ltd., (2019) 12 SCC 210 : (2020) 1 SCC (Civ) 237 : (2019) 3 SCR 1050: 2019 INSC 187] It was with reference to Order 8 Rule 1CPC as amended for suits relating to commercial disputes in terms of the Commercial Division and Commercial Appellate Division of High Courts Act, 2015. Relevant paragraphs of the judgment are extracted hereinbelow : (SCC p. 215, paras 10-11) "10. Several High Court judgments on the amended Order 8 Rule 1 have now held that given the consequence of non-filing of written statements, the amended provisions of CPC will have to be held to be mandatory. See Oku Tech (P) Ltd. v. Sangeet Agarwal [Oku Tech (P) Ltd. v. Sangeet Agarwal, 2016 SCC OnLine Del 6601] by a learned Single Judge of the Delhi High Court dated 11-8-2016 in CS (OS) No. 3390 of 2015 as followed by several other judgments including a judgment of the Delhi High Court (2024:HHC:10261) in Maja Cosmetics v. Oasis Commercial (P) Ltd. [Maja Cosmetics v. Oasis Commercial (P) Ltd., 2018 SCC OnLine Del 6698]

11. We are of the view that the view taken by the Delhi High Court in these judgments is correct in view of the fact that the consequence of forfeiting a right to file the written statement; non-extension of any further time; and the fact that the Court shall not allow the written statement to be taken on record all points to the fact that the earlier law on Order 8 Rule 1 on the filing of written statement under Order 8 Rule 1 has now been set at naught."

(emphasis supplied)

35. The judgment of this Court in Barun Chandra Thakur case [Barun Chandra Thakur v. Bholu, (2023) 12 SCC 401:

> 2022 SCC OnLine SC 870 : (2022) 10 SCR 595: 2022 INSC 716] does not come to the rescue of the appellant. This Court in the aforesaid judgment had only noticed the scheme of the Act in paras 61 and 62 and concluded that the conclusion of the inquiry and trials under the Act should be expeditious, is the scheme of the Act.

36. Hence, we are of the opinion that the time provided in Section 14(2) of the Act to conduct the inquiry is not mandatory but a directory. The time so provided in Section 14(3) can be extended by the Chief Judicial Magistrate or the Chief Metropolitan Magistrate, as the case may be, for the reasons to be recorded in writing."

21. Even the Madras High Court has taken a different view in M/S Blue Planets Foods Pvt. Ltd. Chennai versus State of H.P (2024) Cr..L.J. 110 and held:

> "13. The Food Analyst as required under Section 46(3) (ii), in his letter dated 04/02/ 2019 had clearly stated that the sample was received on 04/02/2019, the 14th day to send the report fall on 14/02/2019. But the delay of 350 days is expected due to administrative reasons and also 14th day falls on the same day for many of the

> samples. This letter from the Food Analyst addressed to the Designated Officer (2024:HHC:10261) and copy marked to the Commissioner of Food Safety speaks for itself.
>
> 14. The chemical analyst had signed his report on 23/11/2019. Thereafter, the sanction for prosecuting the petitioners was recommended by the Designated Officer to the Commissioner of Food Safety on 09/12/2019. The Designated Officer also vide his communication dated 02/12/2019 informed the Food Business Operators/the persons accused about their right to appeal and seek for test by referral lab within 30 days from the date of receipt of the report. They have not availed of the option. Though the claim that the sample would have decomposed, it is their presumption and not a fact tested."

22. The Madras High Court in S. Sakthivel (supra) and R. Chandramohan (supra) had merely looked into the word shall and treated it to be mandatory without examining the question whether the consequences for default have been provided by the legislature or not. Therefore, with utmost respect, it is difficult to follow the judgment to conclude that the provisions of Sections 42 and 46 of the Act are mandatory.

23. Sections 42 and 46 of the Act reads as under:

> 42. Procedure for launching prosecution.--(1) The Food Safety Officer shall be responsible for inspection of food business, drawing samples and sending them to Food Analyst for analysis.

(2) The Food Analyst after receiving the sample from the Food Safety Officer shall analyse the sample and send the analysis report mentioning method of sampling and analysis within fourteen days to Designated Officer with a copy to Commissioner of Food Safety.

(2024:HHC:10261) (3) The Designated Officer after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution.

(4) The Commissioner of Food Safety shall, if he so deems fit, decide, within the period prescribed by the Central Government, as per the gravity of offence, whether the matter be referred to, --

(a) a court of ordinary jurisdiction in case of offences punishable with imprisonment for a term up to three years; or

(b) a Special Court in case of offences punishable with imprisonment for a term exceeding three years where such Special Court is established and in case no Special Court is established, such cases shall be tried by a court of ordinary jurisdiction.

"46. Functions of Food Analyst. -

(1) On receipt of a package containing a sample for analy-

sis from a Food Safety Officer or any other person, the Food Analyst shall compare the seal on the container and the outer cover with specimen impression received sepa- rately and shall note the conditions of the seal thereon:

Provided that in case a sample container received by the Food Analyst is found to be in broken condition or unfit for analysis, he shall within a period of seven days from the date of receipt of such sample inform the Designated Offi- cer about the same and send a requisition to him for send- ing second part of the sample.

(2) The Food Analyst shall cause to be analysed such samples of article of food as may be sent to him by Food Safety Officer or by any other person authorised under this Act.

(2024:HHC:10261) (3) The Food Analyst shall, within a period of fourteen days from the date of receipt of any sample for analysis, send:

--

(i) where such sample is received under section 38 or section 47, to the Designated Officer, four copies of the report indicating the method of sampling and analysis; and

(ii) where such sample is received under section 40, a copy of the report indicating the method of sam-

pling and analysis to the person who had purchased such article of food with a copy to the Designated Officer:

Provided that in case the sample cannot be analysed within fourteen days of its receipt, the Food Analyst shall inform the Designated Officer and the Com- missioner of Food Safety giving reasons and speci- fying the time to be taken for analysis.

(4) An appeal against the report of the Food Analyst shall lie before the Designated Officer who shall if he so decides, refer the matter to the referral food laboratory as notified by the Food Authority for opinion."

24. It is apparent from the bare perusal of the provisions that the consequences of default have not been provided in them.

It has not been mentioned by the legislature as to what would happen if the food is not analyzed within 14 days or the Designated Officer does not send his recommendation within 14 days. Thus,

the provisions of Sections 42 and 46 of the Food Safety Act cannot be held to be mandatory and the submission that these are to be treated as mandatory is not acceptable.

(2024:HHC:10261)

25. Hence, the submission that the complaint is liable to be dismissed on the grounds of violation of mandatory provisions of Sections 42 and 46 of the Food Safety Act is not acceptable.

26. It was submitted that the learned Magistrate had not applied his mind; however, the order passed by the learned Magistrate was not placed on record to enable this Court to appreciate this submission. There is nothing on record to show that the learned Magistrate had not applied his mind and the submission is rejected.

27. The report of Food Analyst (Annexure P-2) reads that the sample of Snack Sauce (Himpa) was substandard and unsafe as its acidity was 0.94% against the minimum prescribed standard of 1% and it contained Ponceau 4R which is prohibited in the same. Section 3(1)(c)(zz) defines unsafe food as an Article of Food in which a substance or ingredient is added which is not permitted. Since the prohibited item Ponceau 4R was added to the food, prima facie it was unsafe food. Similarly, substandard food is defined in Section 3(1)(c)(zx) as the food article that does not meet the specified standard, since the specified standard was (2024:HHC:10261) 1% and the acidity was 0.94%. Therefore, prima facie, the food article was sub-standard.

28. No other point was urged.

29. In view of the above, the petition fails and the same is dismissed.

30. The observation made here-in-above shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla) Judge 25th October, 2024 (Nikita)