

PETITIONER:
STATE (DELHI ADMINISTRATION)

Vs.

RESPONDENT:
I. K. NANGIA AND ANR.

DATE OF JUDGMENT 23/10/1979

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
FAZALALI, SYED MURTAZA

CITATION:
1979 AIR 1977 1980 SCR (1)1046
1980 SCC (1) 258
CITATOR INFO :
D 1988 SC1128 (1)

ACT:

Process, issue of-Test for issue of process-Criminal Procedure Code, 1973, Section 204 Prevention of Food Adulteration Act, 1954, Section 17(2), scope of-In a case where the manufacturer of an article of food is a company, which has nominated a person under sub-section (2) of section 17 of the Act, as the person responsible, whether sales manager of one of its branches can be prosecuted for an offence punishable under section 16(1)(a) read with section 7(1) of the Act, when the article of food sold at the branch is found to be adulterated within the meaning of section 2(ia) of the Act.

Prevention of Food Adulteration Act, 1954, section 17(2)-Whether, after the introduction of the new section 17 by Act No. 34 of 1976, when an offence is committed by a company, which has nominated a person responsible under Section 17(2), it is not permissible to prosecute any other officer of the company not being nominated under sub-section (2), unless there is allegation that the offence had been committed with the consent or connivance of or was attributable to any neglect on the part of such officer.

HEADNOTE:

On August 31, 1976, the Food Inspector lifted a sample of 'Postman' brand refined ground nut oil from M/s. Amar Provision & General Stores, which was sold/supplied to it by M/s. Gainda Mull Hem Raj on August 20, 1976 and the same was found, as per the Public Analyst's report dated September 9, 1976, to be adulterated due to the presence of Castor oil (not an edible oil). This adulterated article of food was supplied/sold to Gainda Mull Hemraj by M/s. Ahmad Oomer Bhoy through its sales managers at Delhi, T. K. Nangia and Y. P. Bhasin.

On June 23, 1977, the Delhi Administration filed a complaint under section 7(1) read with Section 16(1)(a) and Section 17 against (i) M/s. Ahmed Oomer Bhoy Ahmed Mills, Bombay manufacturers of well known brand Postman groundnut oil (ii) their distributors M/s. Gainda Mull Hemraj, New Delhi, a partnership firm, and its managing Partner Meher Chand Jain (iii) M/s. Amar Provision and General Stores,

Netajinagar Market, New Delhi and its owner Amrik Lal, the retailer (iv) Y. A. Khan, Manager, Quality Control, Ahmed Mills appointed by the manufacturers as the person responsible under section 17(2) of the Act, and (v) The two sales managers, Delhi Branch of M/s. Ahmed Oomer Bhoy, manufacturers, I.K. Nangia and Y. P. Bhasin.

The Metropolitan Magistrate, Delhi by his order dated April 1, 1978 found that there was a prima facie case against all except the two sales managers and issued process accordingly. He dismissed the complaint against the respondents on the ground "that they were not concerned with the manufacturer of the article in question, but had only effected the sale thereof". The Delhi Administration moved the High Court in revision against dismissal, but it declined to interfere.

1017

Allowing the appeal by special leave the Court,

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HELD: 1. At the initial stage, if there is strong suspicion which leads the Court to think that there is a ground for presuming that the accused had committed an offence, then it is not open to the Court to say that there was no sufficient ground for proceeding against the accused. [1020 C-D]

In the instant case, the allegations in the complaint constitute a prima facie, case against the respondents of having committed an offence under section 7(1) read with section 16(1)(a) of the Prevention of Food Adulteration Act, 1954. The words "were in charge of" and "responsible to it for the conduct of its business" are wide enough to include all the business activities of M/s. Ahmed Oomer Bhoy at Delhi who have their office at Delhi and the two respondents are the sales Managers. [1020 E, G-H, 1021 A]

State of Bihar v. Ramesh Singh, [1978] 1 SCR 257; applied.

2. The person actually effecting the sale of an adulterated article of food is directly liable under section 7(i) of the Act. The manufacturers M/s. Ahmed Oomer Bhoy, Bombay became liable because they were directly selling the adulterated article through their branch office at Delhi. The respondents I. K. Nangia and Y. P. Bhasin also became liable because of the words "by any person on his behalf" in Section 7 which includes their agents and servants. In view of this, the learned Metropolitan Magistrate should not have dismissed the complaint against the respondents. [1021 C-F]

3. On the plain meaning of the new section 17, introduced by Act 34 of 1976, when an offence has been committed by a company, where there is no nomination under s 17(2), 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, is deemed to be guilty of the offence and is liable to be proceeded against and punished. Notwithstanding the nomination of a person under s. 17(2), any director, manager, secretary or other officer of the company [not being a person nominated under sub-s. (2)] can also be vicariously made liable if 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 such person". [1023 B-D]

4. To construe section 17(2) of the Act to mean that the only person liable to be proceeded is the named/nominated person under section 17(2) would render the Explanation to Section 17(2) wholly illusory. [1023 E-F]

5. Where there is a large business organisation, with a widespread network of sales organisation throughout the

country, it ought to nominate different persons for different places or face the consequences set forth in s. 17(1)(a)(ii). The Explanation appended to s. 17(2) does, in terms, contemplate that where a company has different establishments or branches or different units in any establishment or branch, it may nominate different persons in relation to different establishments or branches or units and the person so nominated in relation to any establishment or branch or unit shall be deemed to be the person responsible in respect of such establishment or branch or unit. The language of the Explanation shows a purpose and, therefore, a construction consistent with that purpose must reasonably be placed upon it. [1024 F-H, 1025 A]

1018

The Explanation to s. 17(2), although in terms permissive imposes a duty upon such a company to nominate a person in relation to different establishments or branches or units. There can be no doubt that this implies the performance of a public duty, as otherwise, the scheme underlying the section would be unworkable. [1024 A-D]

The Explanation lays down the mode in which the requirements of s. 17(2) should be complied with. Normally, the word 'may' implies what is optional, but for the reasons stated, it should in the context in which it appears, mean 'must'. There is an element of compulsion. It is a power coupled with a duty. Though the company is not a body or authority, there is no reason why the same principle should not apply. It is thus wrong to suggest that the Explanation is only an enabling provision, when its breach entails in the consequences indicated above. It is not left to one's choice, but the law makes it imperative. Admittedly, M/s. Anand Oomer Bhoy had not at the material time nominated any person, in relation to their Delhi branch. The matter is, therefore, squarely conversed by s. 17(1)(a)(ii). [1024D-E, H, 1025 A]

Julias v. Lord Bishop of Oxford, [1875-85] A.C. 214; quoted with approval.

6. The individual liability of the sales manager is distinct and separate from the corporate liability of the manufacturer. In case of a 'company prosecution', the company alongwith its agent, that is, the person nominated under s. 17(2) as well as the sales manager can both be prosecuted under s. 7(i) read with s. 16(1) (a). Notwithstanding the nomination of a person responsible under s. 17(2), there can also be prosecution of any director, manager, secretary, or other officer of the company under s. 17(4). But in such a case it is necessary for the prosecution to prove that the offence has been committed 'with the consent or connivance of, or is attributable to, any neglect on the part of such person'. [1025 B-D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 243 of 1979.

Appeal by Special Leave from the Judgment and Order dated 13-9-1978 of the Delhi High Court in Criminal Revision No. 271/78.

U. R. Lalit, R. Bana, M. N. Shroff and Miss A. Subhashini for the Appellant.

K.L. Arora, R. S. Sodhi and H. C. Gulati for Respondent No. 1.

V. B. Ganatra, I. N. Shroff and H. S. Parihar for Respondent No. 3.

The Judgment of the Court was delivered by
SEN J.-In this appeal, by special leave, from the judgment of the Delhi High Court, two questions arise which are one of very general importance. The first is, in a case where the manufacturer of an article of food is a company, which has nominated a person under sub-so

1019

(2) of s. 17 of the Prevention of Food Adulteration Act, 1954, as the person responsible, whether the sales manager at one of its branches can be prosecuted for an offence punishable under s.16 (1) (a) read with s.7 (i) of the Act, when the article of food sold at the branch is found to be adulterated within the meaning of s.2 (ia) of the Act. The second is, whether after the introduction of the new s.17 by Act 34 of 1976, when an offence is committed by a company, which has nominated a person responsible under s.17 (2), it is not permissible to prosecute any other officer of the company not being nominated under subs. (2), unless there is allegation that the offence had been committed 'with the consent or connivance of, or was attributable to, any neglect on the part of such officer.

Upon the first question the facts lie within the smallest possible compass. On June 23, 1977 the Delhi Administration filed a complaint under s.7 (i) read with s.16 (1) (a) and s.17 against (1) M/s. Ahmed Oomar Bhoy, Ahmed Mills, Bombay, manufacturers of the well-known 'postman' brand or refined groundnut oil, (2) their distributors M/s. Gainda Mull Hem Raj, New Delhi, a partnership firm, and its managing Partner Mehar Chand Jain, (3) M/s. Amar Provision & General Store, Netaji Nagar Market, New Delhi and its owner Amrik Lal, the retailer, (4) Y. A. Khan, Manager Quality Control, Ahmed Mills appointed by the manufacturers as the person responsible under s. 17(2) of the Act, and (5) the two Sales Managers, Delhi Branch of M/s. Ahmed Oomer Bhoy, manufacturers, I. K. Nangia and Y. P. Bhasin.

It was alleged that on August 31, 1976, S.D. Sharma, Food Inspector, New Delhi Municipal Committee lifted a sample of 'Postman' brand refined groundnut oil from M/s. Amar Provision & General Store, which was sold/supplied to it by M/s. Gainda Mull Hem Raj on August 20, 1976, and the same by the Public Analyst by his report dated September 9, 1976 was found to be adulterated due to the presence of 'castor oil' (Not an edible oil). It was further alleged that this adulterated article of food was supplied/sold to M/s. Gainda Mull Hem Raj by M/s. Ahmed Oomer Bhoy on August 20, 1976 through its Sales Managers at Delhi, I. K. Nangia and Y. P. Bhasin.

The Metropolitan Magistrate, Delhi by his order dated April 1, 1978 found that there was a prima facie case against M/s. Ahmed Oomer Bhoy, the manufacturers of the 'Postman' brand refined groundnut oil, their distributors at Delhi M/s. Gainda Mull Hem Raj and M/s. Amar Provision Store, the retailer, as well as against Y. A. Khan, the Quality Control Manager, Ahmed Mills, but declined to issue any

1020

process against the respondents I. K. Nangia and Y. P. Bhasin, the two Sales Managers of M/s. Ahmed Oomer Bhoy at Delhi observing that though they had effected the sale of the adulterated article of food 'they were not concerned with the manufacture of the article in question but had only effected the sale thereof'. He accordingly, dismissed the complaint against them holding that their prosecution was misconceived.

The Delhi Administration moved the High Court in revision but it declined to interfere.

There can be no doubt that the order made by the learned Metropolitan Magistrate refusing to issue any process against the respondents is wholly unwarranted. It cannot be said that there is no material for presuming that these respondents had not committed an offence and, therefore, it was not open to the learned Metropolitan Magistrate to come to the conclusion that there was no basis for proceeding against them. The test as laid down by this Court in the State of Bihar v. Ramesh Singh is that at the initial stage, if there is a strong suspicion which leads the Court to think that there is a ground for presuming that the accused has committed an offence, then it is not open to the Court to say that there was no sufficient ground for proceeding against the accused.

In the instant case, the allegations in the complaint constitute a prima facie case against the respondents of having committed an offence under s.7 (i) read with s.16 (1) (a) of the Act. In the complaint, the material allegations are as follows:

"6. That the adulterated article of food was supplied/ sold to M/s. Gaimda Mull Hem Raj on 20-8-76 by M/s. Ahmed Oomer Bhoy through its sales managers at Delhi I. K. Nangia and Y. P. Bhasin.

7. That accused Y. A. Khan is the Quality Control Manager of accused No. 5 and accused I. K. Nangia and Y. P. Bhasin are the Sales Managers (Local Branch) of accused No. 5 and were incharge of and responsible to it for the conduct of its business at the time of commission of offences by accused No. 5."

The words "were incharge of" and "responsible to it for the conduct of its business" are wide enough to include all the business activities of M/s. Ahmed Oomer Bhoy at Delhi. It is a common ground that they have a Delhi Office at 2-A/3, Asaf Ali Road, New Delhi, and 1021

that the two respondents I.K. Nangia and Y. P. Bhasin are the Sales Managers.

The complaint makes a specific allegation that the respondents were incharge of and were responsible to their employers for the conduct of their business at Delhi. S. D. Sharma, Food Inspector, PW 1 has stated during the enquiry under s. 202 of the Code of Criminal Procedure that the adulterated article of food in question was sold by them to the distributors M/s. Gaimda Mull Hem Raj vide bill No. 62 dated August 20, 1976. Further, he goes on to, say, that they were incharge of and responsible to M/s. Ahmed Oomer Bhoy for the conduct of their business in Delhi at that time.

Now, the person actually effecting the sale of an adulterated article of food is directly liable under s.7 (i) of the Act, which reads:

"7. No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute.

(i) any adulterated food;"

The manufactures M/s, Ahmed Oomer Bhoy, Bombay became liable because they were directly selling the adulterated article through their branch office at Delhi. The respondents I. K. Nangia and Y. P. Bhasin also became liable because of the words "by any person on his behalf" which include their agents and servants. That appears to be the true construction of the section. In view of this, the learned Metropolitan Magistrate could not have dismissed the

complaint against the respondents.

It appears that M/s. Ahmed Oomer Bhoy, Bombay had appointed the accused Y. A. Khan, Manager Quality Control, Ahmed Mills to be the person responsible for the company under s.17 (2) on July 31, 1976. It is argued on the strength of s. 17 (1) (a) (i) that the respondents could not, therefore, be prosecuted for the offence committed by M/s. Ahmed Oomer Bhoy. This contention, in our opinion, needs only to be stated to be rejected. Not only does it involve attributing to the Legislature something which was never intended, but it conflicts with the ordinary canons of constructions.

The question turns upon a proper construction of the new s. 17, introduced by Act 34 of 1976, which in so far as material reads:

"17. (i) 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

1022

company for the conduct of the business of the company (hereafter 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 incharge 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.

(2) Any company may, by order in writing, authorise any of its directors or managers (such manager 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 establishments, or branches or different units in any establishment or branch, different persons may be nominated under this sub-section in relation to different establishments 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.

(3) x x x x x x x

(4) Notwithstanding anything contained in the foregoing sub-sections, 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

1023

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 that offence and shall be liable to be proceeded against and punished accordingly."

On the plain meaning of the section, when an offence has been committed by a company, where there is no nomination under s. 17 (2), 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, is deemed to be guilty of the offence and is liable to be proceeded against and punished. Notwithstanding the nomination of a person under s.17 (2), any director, manager, secretary or other officer of the company [not being a person nominated under sub-s. (2)] can also be vicariously made liable if 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 such person".

It is, however, strenuously urged that the company having nominated the accused Y. A. Khan, Quality Control Manager, Ahmed Mills to be the person responsible under s.17 (2), he is the only person liable to be proceeded against throughout the country and the prosecution of the respondents is wholly misconceived. Our attention has been drawn to the nomination form, and it says that he shall be responsible for the company. We are afraid, there is no substance in this contention. There is nothing in the document to show that the nomination is effective not only for the registered office of the company at Bombay but also for all its branches in different States. Such a construction would, in our opinion, render the Explanation to s. 17 (2) wholly illusory.

Where there is a large business organization with a widespread network of sales organisations throughout the country, it ought to nominate different persons for different places or face the consequences set forth in s.17 (1) (a) (ii). The Explanation appended to s.17 (2) does, in terms, contemplate that where a company has different establishments or branches or different units in any establishment or branch, it may nominate different persons in relation to different establishments or branches or units and the person so nominated in relation to any establishment or branch or unit shall be deemed to be the person responsible in respect of such establishment or branch or unit. The language of the Explanation shows a purpose and, therefore, a cons-

1024

truction consistent with that purpose must reasonably be placed upon it.

We are clear that the Explanation to s. 17(2), although in terms permissive, imposes duty upon such a company to nominate a person in relation to different establishments or branches or units. There can be no doubt that this implies the performance of a public duty, as otherwise, the scheme underlying the section would be unworkable. The case, in our opinion, comes within the dictum of Lord Cairns in *Julius v. Lord Bishop of Oxford*:

"There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something, in the conditions under which it is to be done, something in the title of the persons for whose benefit the power is to be exercised,

which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so."

The Explanation lays down the mode in which the requirements of s. 17 (2) should be complied with. Normally, the word 'may' implies what is optional, but for the reasons stated, it should in the context in which it appears, mean 'must'. There is an element of compulsion. It is power coupled with a duty. In Maxwell on Interpretation of Statutes, 11th Edn. at p. 231, the principle is stated thus:

"Statutes which authorise persons to do acts For the benefit of others, or, as it is sometimes said, for the public good or the advancement of justice, have often given rise to controversy when conferring the authority in terms simply enabling and not mandatory. In enacting that they "may" or "shall, if they think fit", or, "shall have power", or that "it shall be lawful" for them to do such acts, a statute appears to use the language of mere permission, but it has been so often decided as to have become an axiom that in such cases such expressions may have-to say the least-a compulsory force, and so could seem to be modified by judicial exposition." (Emphasis supplied).

Though the company is not a body or authority, there is no reason why the same principle should not apply. It is thus wrong to suggest

1025

that the Explanation is only an enabling provision, when its breach entails in the consequences indicated above. It is not left to one's choice, but the law makes it imperative. Admittedly, M/s. Ahmed Oomer Bhoy had not at the material time nominated any person, in relation to their Delhi branch. The matter is, therefore, squarely covered by s. 17 (1) (a) (ii).

On the two questions formulated, the answer is self-evident. The individual liability of the sales manager is distinct and separate from the corporate liability of the manufacturer. In case of a 'company prosecution', the company along with its agent, that is, the person nominated under s.17 (2) as well as the sales manager can both be prosecuted under s.7 (i) read with s.16 (1) (a). Notwithstanding the nomination of a person responsible under s. 17(2), there can also be prosecution of any director, manager, secretary or other officer of the company under s. 17(4). But in such a case it is necessary for the prosecution to prove that the offence has been committed 'with the consent or connivance of, or is attributable to, any neglect on the part of such person'.

The result, therefore, is that the order of the Metropolitan Magistrate is set aside and he is directed to issue summons to the respondents and proceed with the trial according to law.

V.D.K. Appeal allowed.

1026