M/S. OMPARKASH SHIVPRAKASH

v.

K.I. KURIAKOSE AND ORS.

NOVEMBER 1, 1999

[K.T. THOMAS AND M.B. SHAH, JJ.]

Prevention of Food Adulteration Act, 1954.

Sections 16(1) 16A and 20-A—Power of court to implead manufacturer, distributor or dealer in a case under the Act.—Invocation of—When—Held, power under Section 20-A cannot be invoked until the trial begins and after the trial ends—It can be invoked only after reaching the stage envisaged in Section 254(1)—Criminal Procedure Code, 1973—Sections 2(g), 251, 254(1), 262 and 319.

Food Inspector filed a complaint before the trial court against five persons under Section 16(1) of the Prevention of Food Adulteration Act, 1954. Fifth accused filed a petition for impleading the appellant firm on the ground that it had purchased the food article not conforming to the prescribed standard from the appellant which was allowed by the trial court. Against the order of the trial court, appellant moved the High Court under Section 482 of the Criminal Procedure Code on the ground that it could not have been impleaded before the commencement of the trial which was dismissed by the High Court. Aggrieved by the order of the High Court, the appellant has filed the present appeal.

Allowing the appeal, the Court

HELD: 1. Power of the court to implead the manufacturer, distributor or dealer, in cases involving offences under the Prevention of Food Adulteration Act, 1954 is envisaged in Section 20-A of the Act. The essential conditions for invoking the power under Section 20-A are that (1) the trial should have begun already; (2) the trial must be of any offence under the Act allegedly committed by a person other than the manufacturer or distributor or dealer of the food article; (3) the court must have been satisfied that such manufacturer or dealer or distributor is also concerned with the offence; (4) such satisfaction must have been formed "on the evidence adduced before the

A court." [273-B, E, F]

2. Section 319 of the Criminal Procedure Code empowers the court to proceed against any person appearing to be guilty of the offence and who has not been made an accused. One of the differences between Section 319 of the Cr.P.C. and Section 20-A of the Act is that, while in the former even if it B appears to the court from the evidence (either during inquiry or trial of the offence), that another person is to be tried along with the already arraigned accused, then the court can proceed against that other person, while in the latter the satisfaction of the court that such manufacturer (distributor or dealer) is also concerned with that offence must be gathered from "the evidence C adduced before it during the trial". In other words, the power under Section 20-A cannot be invoked until the trial begins and after the trial ends. [273-G, H; 274-A]

3. The term "trial" cannot be given a fixed meaning to be applied in all cases uniformly. The connotation of that word changes with the difference in D which the term is employed in a particular provision of any statute. [274-C-D]

The State of Bihar v. *Ram Naresh Pandey* AIR, (1957) SC 389 = [1957] SCR 279 relied on.

4.1. Section 16-A of the Act empowers a Judicial Magistrate of First E Class to try the offence under Section 16(1) of the Act in a summary way. The scrutiny of Sections 262, 251 and 254(1) of the Cr.P.C. reveals that the trial of offences under the Act begins when the Magistrate asks the accused whether he pleads guilty or not as envisaged in Section 251 Cr.P.C., if the Magistrate opts to hold summary trial. Hence, evidence in a trial under the F Act can be adduced only after recording the plea of the accused as envisaged in the said section. Thus, it is clear that a Magistrate can implead any person under Section 20-A of the Act only after reaching the stage envisaged in Section 254(1) Cr.P.C. Thus, the position is clear that power under Section 20-A cannot be invoked before the stage of adducing evidence in the trial, nor can it be invoked after the conclusion of the trial. [274-G-H; 275-B-C; H]

G *M/s. Bhagwan Das Jagdish Chander* v. *Delhi Administration,* [1975] 1 SCC 866 and *Municipal Corporation of Delhi* v. *R. Sahai and Ors. etc.,* AIR (1979) SC 1544 = [1979] 3 SCR 625, relied on.

Delhi Cloth and General Mills Co. Ltd. v. *State of M.P. and Ors.,* [1995] H 6 SCC 62 distinguished.

4.2. The plea of any of the accused was not recorded nor even asked by the Magistrate before he ordered impleadment of the appellant. The Magistrate has chosen to exercise the power prematurely and hence the action is without jurisdiction. [271-B; 276-A]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1152 of 1999.

From the Judgment and Order dated 10.6.99 of the Kerala High Court in Crl. M.C. No. 3107 of 1998-C.

V.A. Mohta and Deepak M. Nargolkar for the Appellants.

M.P. Vinod for the Respondent No. 1.

Romy Chakoo and Rajiv Mehta for the respondent Nos. 3-4.

G. Prakash for the State of Kerala.

The Judgment of the Court was delivered by

THOMAS, J. Leave granted.

Appellant is a firm. It has now been impleaded as the 6th accused in a prosecution case launched by the Food Inspector, Cochin Corporation, for the offence under Section 16(1) of the Prevention of Food Adulteration Act, 1954 (for short "the Act"). Appellant moved the High Court under Section 482 of the Code of Criminal Procedure (for short "the Code") to quash the order by which the appellant was impleaded as an accused in the criminal case. A learned Single Judge of the High Court dismissed the petition as per the order which is now being challenged before us.

The skeletal facts, for dealing with the questions raised, are these:

Food Inspector of Cochin Corporation filed a complaint before a judicial magistrate court at Ernakulam, against five persons shown as accused alleging that on 16.9.1995 another Food Inspector, who was attached to the mobile vigilance squad, had visited the business premises of the first accused and took sample of 750 grams of Toor Dhall and divided it into three parts as prescribed by the Rules; when one of the parts of the sample was analysed by the Public Analyst it was found not conforming to the standards prescribed for Toor Dhall and that it contained Kesari Dhall which is a prohibited

A substance. As the first accused told the Food Inspector that he purchased the article from second accused the Food Inspector sent a letter to the second accused (third accused is the Managing Partner of the second accused firm). In reply to the letter the third accused informed that he purchased the food article from the 4th accused firm (of which 5th accused is the person in charge of the business). Thus the Food Inspector has arrayed all the above five B persons as accused in the complaint.

The 5th accused soon after entering appearance in the court filed a petition to implead the appellant firm as an accused in the case on the premise that 5th accused purchased the Toor Dhall from the appellant company. C On 23.1.1998 an order was passed by the learned magistrate on the said petition on the following lines :

> "Heard the Petitioner and the other accused persons. Since A.P.P. is not available, he could not be heard. However the bill No. OS/td/046 dated 7.4.1995 produced by the petitioner shows that they purchased D Toor Dhall from M/s. Omprakash Shivprakash Akola. Hence, for the ends of justice it is necessary that they shall be impleaded as an accused in this case. Hence the petition is allowed and M/s. Omprakash Shivprakash Ltd., Kiranabazar, Akola, represented by Sanjay Kumar is impleaded as an accused in this case. Issue summons to him."

E Learned Single Judge repelled the contention of the appellant that it could not have been impleaded at that stage and in support of such stand learned Single Judge relied on the decisions in *M/s Bhagwan Das Jagdish Chander* v. *Delhi Administration,* [1975] 1 SCC 866 and *Delhi Cloth and General Mills Co. Ltd.* v. *State of M.P. and Ors.,* [1995] 6 SCC 62, besides F two other decisions of the same High Court. Learned Single Judge has observed thus :

> "It is clear from the above noted decisions of the Supreme Court and this Court that the manufacturer can be impleaded at any stage of the trial and it need not be after framing charge under Section 246 of the G Code of Criminal Procedure, if the case is tried as a summons case, instituted otherwise than on a police charge. Therefore, the arguments advanced by the senior counsel of the petitioner, relying upon the decision of a two judge bench of the Supreme Court while considering the commencement of trial under general provisions of the Criminal Procedure Code, has no application to the commencement of trial of H a case for the purpose of the special provision in Section 20-A of the

P.F.A. Act. Hence, the contention of the petitioner that Annexure-C order passed by the learned Magistrate, impleading him as accused before commencement of the trial in this case is not sustainable is of no force." A

It can be pointed out now that the plea of any of the accused was not recorded nor even asked by the magistrate before he ordered impleadment of the appellant. Power of the court to implead the manufacturer, distributor or dealer, in cases involving offences under the Act, is envisaged in Section 20-A of the Act. It reads thus : B

"Where at any time during the trial of any offence under this Act alleged to have been committed by any person, not being the manufacturer, distributor or dealer of any article of food, the court is satisfied, on the evidence adduced before it, that such manufacturer, distributor or dealer is also concerned with that offence, then, the court may, notwithstanding anything contained in sub-section (3) of Section 319 of the Code of Criminal Procedure, 1973 (2 of 1974), or in Section 20 proceed against him as though a prosecution had been instituted against him under Section 20." C D

The above provision overrides the ban contained in Section 20 of the Act that no prosecution shall be instituted for the offences under the Act except by or with the consent of the authorities mentioned in the Section. The essential conditions for invoking the power under Section 20-A are that (1) the trial should have begun already; (2) the trial must be of any offence under the Act allegedly committed by a person other than the manufacturer or distributor or dealer of the food article; (3) the court must have been satisfied that such manufacturer or dealer or distributor is also concerned with the offence; (4) such satisfaction must have been formed "on the evidence adduced before the court." E F

Section 319 of the Code empowers the court to proceed against any person who is not being made an accused already, if it appears from the evidence collected in the inquiry or trial of an offence that such person has committed an offence for which he could be tried together with the already arraigned accused. One of the differences between Section 319 of the Code and Section 20-A of the Act is that, while in the former even if it appears to the court from the evidence (either during inquiry or trial of the offence), that another person is to be tried along with the already arraigned accused, then the court can proceed against that other person, while in the latter the G H

A satisfaction of the court that such manufacturer (distributor or dealer) is also concerned with that offence must be gathered from "the evidence adduced before it during the trial". In other words, the power under Section 20-A cannot be invoked until the trial begins and after the trial ends.

When does the "trial" begin as for an offence under the Act? The word B "trial" is not defined either in the Act or in the Code. However, the Code has distinguished the trial from inquiry as could be noted from Section 2(g) of the Code wherein the word "inquiry" is defined thus :

> "Inquiry means every inquiry, other than a trial, conducted under this C Code by a Magistrate or Court."

The term "trial" cannot be given a fixed meaning to be applied in all cases uniformly. The connotation of that word changes with the difference in which the term is employed in a particular provision of any statute. This Court has said in *The State of Bihar* v. *Ram Naresh Pandey,* AIR (1957) SC D 389 = [1957] SCR 279 thus:

> "The words 'tried' and 'trial' appear to have no fixed or universal meaning. No doubt, in quite a number of sections in the Code to which our attention has been drawn the words 'tried' and 'trial' have been used in the sense of reference to a stage after the inquiry. That E meaning attaches to the words in those sections having regard to the context in which they are used. There is no reason why where these words are used in another context in the Code, they should necessarily be limited in their connotation and significance. They are words which must be considered with regard to the particular context in which they are used and with regard to the scheme and purpose of F the provision under consideration."

We will examine the relevant provisions to ascertain as to when the trial in a case involving offences under the Act would commence. Section 16-A of the Act empowers a Judicial Magistrate of First Class to try the offence G under Section 16(1) of the Act in a summary way. Chapter XXI of the Code deals with summary trials of which Section 262 says that the procedure specified for trial of summons cases shall be followed for summary trial subject to some variations. Chapter XX is titled "Trial of Summon Cases by Magistrate". Section 251 of the Code is the commencing provision of that Chapter. It requires that when the accused appears or is brought before the H magistrate the particulars of offence shall be stated to him and he shall be

asked whether he pleads guilty or not. Section 254(1) of the Code says that if the magistrate does not convict the accused he shall proceed to hear the prosecution and "take all such evidence". A

The above scrutiny of the relevant provisions reveals that the trial of offences under the Act begins when the magistrate asks the accused whether he pleads guilty or not as envisaged in Section 251 of the Code, if the magistrate opts to hold summary trial. Hence, evidence in a trial under the Act can be adduced only after recording the plea of the accused as envisaged in the said section. Thus, it is clear that a magistrate can implead any person under Section 20-A of the Act only after reaching the stage envisaged in Section 254(1) of the Code. B C

As a matter of legal proposition this Court has clearly stated in *M/s Bhagwan Das Jagdish Chander* (supra) that "it is clear that the contemplated action can only be taken during the course of the trial". (The said decision has been referred to by the learned Single Judge in the impugned judgment.)

D

The other decision cited by the High Court in the judgment is *Delhi Cloth and General Mills Co. Ltd.,* (supra). In that case a three Judge Bench considered yet another facet of Section 20-A of the Act. However, there is no indication in the said decision that power under the Section could be used at any stage before trial commences.

E

In *Municipal Corporation of Delhi* v. *R. Sahai and ors. etc.,* AIR (1979) SC 1544 = [1979] 3 SCR 625, a two Judge Bench of this Court has stated that the power under Section 20-A can be exercised only during trial. The relevant facts in that case were that a magistrate acquitted an accused and thereafter he issued notice to the manufacturer purportedly under Section 20-A of the Act. When the said manufacturer challenged the action of the magistrate this Court laid emphasis to the words "during trial of any offence", and observed thus : F

> "The opening lines of Section 20-A clearly contemplate a contingency where the discretionary jurisdiction under this Act can be exercised only during the trial of any offence, that is to say, the stage at which the Magistrate can exercise the discretion under this section must be before the trail has concluded and ended in acquittal or conviction". G

Thus the position is clear that power under Section 20-A cannot be invoked before the stage of adducing evidence in the trial, nor can it be H

A invoked after the conclusion of the trial. In the present case, the magistrate has chosen to exercise the power prematurely and hence the action is without jurisdiction. We, therefore, set aside the impugned judgment of the High Court and that of the Magistrate. However, we make it clear that this judgment will not preclude the magistrate from considering the question afresh at the appropriate stage.

B

A.K.T. Appeal allowed.