

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT JAMMU**

Reserved on 08.02.2023
Pronounced on 16.02.2023

CRMC No. No. 291/2016
IA No. 1/2016

Neeraj Shastri and another

.....Appellant/Petitioner(s)

Through :- Mr. Varut Kumar, Advocate

v/s

State of J&K and another

.....Respondent(s)

Through :- Mr. Amit Gupta, AAG

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioners have challenged the complaint filed by the respondents against them alleging the commission of offences under Section 26 (2) (i) read with Section 59 (i) of the Food Safety and Standards Act, 2006 (hereinafter to be referred as the FSS Act), which is stated to be pending before the Court of Judicial Magistrate 1st Class, Reasi.

2) It is alleged in the impugned complaint that on 12.08.2014, respondent No. 1/complainant during a routine inspection visited the shop/premises under the name and style of "M/s Jadhish Chander Mengi Wine Shop", situated at Bus Stand, Reasi. The complainant is stated to have collected the sample of food article "Chinab Orange Gin" and after completing the requisite formalities, the sample was sent for analysis to the Food Analyst. As per the report of the Food Analyst dated 15.01.2015, the sample was

found to be containing permitted synthetic food colour and hence, the same was declared as unsafe, besides being declared as misbranded. The requisite sanction was sought by the Designated Officer from the Commissioner, Food Safety J&K, Jammu, who vide his order dated 04.03.2016 granted sanction to prosecute the petitioners and co-accused for distributing and manufacturing the food articles that was declared unsafe and misbranded by the Food Analyst.

3) With the aforesaid allegations, the complaint was lodged before the learned Magistrate on 30.04.2016 and vide impugned order dated 30.04.2016, the learned trial Magistrate recorded the satisfaction that the petitioners and co-accused have committed offence under Section 26 (2) (i) of the Food Safety and Standards Act, 2006, read with Section 59 (i) of the said Act. Accordingly, the process has been issued against the petitioners, who happened to be the partners of M/s Dogra Distilleries, the manufacturer of the subject food articles.

4) The petitioners have challenged the impugned complaint and the order whereby the process has been issued against them primarily on the grounds that the complaint has been filed against them beyond the period of limitation and as such, it was not open for the learned trial Magistrate to take cognizance of the offence and issue the process against the accused. It has also been contended that the prosecution against the petitioners without impleading the partnership firm, of which they happen to be the partners, is not maintainable.

5) I have heard learned counsel for the parties and perused the record of the case.

6) As per the complaint, the sample of the food articles in question was collected by the Food Safety Officer on 12.08.2014, whereafter it was sent to the Food Analyst for analysis. The Food Analyst rendered his report on 15.01.2015. The sanction for prosecution was granted on 04.03.2016, whereas the complaint was filed before the trial Magistrate on 30.04.2016.

7) Section 77 of the FSS Act provides for time limit for prosecution. It reads as under:

“77. Time limit for prosecutions.—Notwithstanding anything contained in this Act, no court shall take cognizance of an offence under this Act after the expiry of the period of one year from the date of commission of an offence:

Provided that the Commissioner of Food Safety may, for reasons to be recorded in writing, approve prosecution within an extended period of up to three years.”

8) From a perusal of the aforesaid provision, it is revealed that the Court is debarred from taking the cognizance of an offence under the FSS Act after expiry of the period of one year from the date of commission of the offence. However, the Commissioner of Food Safety is vested with the power to approve prosecution within an extended period upto three years, subject to the condition that he has to record reasons for doing so.

9) Coming to the facts of the instant case, the report of the Food Analyst was obtained by the respondents on 15.01.2015, the sanction for prosecution was granted on 04.03.2016, whereas the complaint was laid before the trial Magistrate on 30.04.2016, meaning thereby that the complaint has been filed

by the respondents against the petitioners and co-accused beyond the prescribed period of limitation of one year.

10) Learned counsel for the respondents has vehemently argued that once the Commissioner of Food Safety has granted sanction for prosecution in terms of order dated 04.03.2016, it has to be presumed that he has extended the period for launching the prosecution. This argument appears to be without any substance for the reason that the requirement of proviso to Section 77 of the FSS Act is that the Commissioner of Food Safety has to record reasons in writing for approving the prosecution beyond the period of one year. A perusal of order dated 04.03.2016 issued by the Commissioner of Food Safety reveals that no reasons have been recorded by the said authority for approving the prosecution beyond the period of one year from the date when the offence is alleged to have been committed i.e. 12.08.2014. The order does not even mention that sanction for prosecution is being approved beyond the period of one year and it does not assign any reason for approving the sanction after the period of one year. The requirement of law is that the reasons have to be recorded in writing for approving the prosecution after the expiry of one year, which in the instant case is clearly missing in the order of sanction. Therefore, it cannot be stated that requirements of proviso to Section 77 of the FS Act have been complied with in the instant case.

11) The cases that are barred by limitation are liable to be quashed without any further enquiry because there is a statutory bar for the Courts to take cognizance of offences in such cases. Instant case is one of such nature

as not only the sanction for prosecution has been granted after the period of limitation but the complaint has also been filed before the trial Magistrate well after the expiry of prescribed period of one year of limitation. The prosecution against the petitioners is, therefore, liable to be quashed on this ground alone.

12) The second ground urged by the petitioners is that without impleading the firm, of which the petitioners happen to be the partners, the prosecution against them is not maintainable. In this regard, reference has been made to the provisions contained in Section 66 of the FSS Act, which reads as under:

“66. Offences by companies.—(1) Where an offence under this Act which has been committed by a company, 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 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:

Provided that where a company has different establishments or branches or different units in any establishment or branch, the concerned Head or the person in-charge of such establishment, branch, unit nominated by the company as responsible for food safety shall be liable for contravention in respect of such establishment, branch or unit:

Provided further 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 or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), 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 attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, 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.

Explanation.—For the purpose of this section,—

(a) 'company' means anybody corporate and includes a firm or other association of individuals; and

(b) director', in relation to a firm, means a partner in the firm"

13) From a perusal of the aforesaid provisions, it is clear that when an offence has been committed by a company, 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, as well as the company, shall be deemed to be guilty of the offence. This provision extends the concept of vicarious liability to the persons responsible for the conduct of the business of the company, in a case where the offence has been committed by the company.

14) In criminal law, there is no concept of vicarious liability and it is only, if there is statute, which makes a person vicariously liable of the act of another person then such a person can be prosecuted for a criminal offence. Section 66 of the FSS Act makes a person, who is incharge of, and responsible for conduct of the business of the company, vicariously liable for the offence committed by the company.

15) Explanation to the aforesaid provisions provides that the company includes a firm or other association of individuals and the Director in relation to a firm, means a partner in the firm. Thus, the explanation makes it clear that the provisions contained in Section 66 of FSS Act are equally applicable to the case of the partnership firm.

16) The Supreme Court in the case of **Aneeta Hada vs. Godfather Travels and Private Limited, (2012) 5 SCC 661** while interpreting the provisions contained in Section 141 of the Negotiable Instrument Act, which

is in pari material with the provisions contained in Section 66 of the FSS Act held that arraigning of a company as an accused is imperative. It was further held that other categories of the offenders can only be brought in dragnet on the touchstone of the vicarious liability, as the same has been stipulated in the provision itself.

17) This Court has, in the case of **Ashish Damija vs. UT of J&K** (CRM(M) No. 14/2021 date of decision 04.08.2012) after analysing the ratio laid down by the Supreme Court in Aneeta Hada's case (supra), held that said ratio can be made applicable to the partnership firm as well. While holding so, this Court observed as under:

“14) The next question which falls for determination is as to whether the proposition of law laid down by the Supreme Court in the aforesaid cases can be made applicable to a case of partnership firm. As already noted, Explanation to Section 34 of the Drugs and Cosmetics Act provides that the company includes a firm and Director in relation to a firm means partner of a firm.

15) The Supreme Court in the case of **State of Karnataka v. Pratap Chand & Ors.**, (1981) 2 SCC 335, while dealing with a matter pertaining to prosecution of a partner of a firm under the Drugs and Cosmetics Act, 1940, observed that for the purposes of imposing liability on the company under the said Section, a company includes a body corporate, a firm or an association of individuals and that a Director in relation to a firm means a partner in that firm. The Court went on to observe that even in the case of partners, when a firm commits an offence, the requirement of either sub-section (1) or sub-section (2) to Section 22C of the Minimum Wages Act which is in pari material with Section 34 of the Drugs and Cosmetics Act, must be satisfied, which means that in terms of sub-section (1), the partner should be incharge of and responsible to the firm for the conduct of its business as contemplated in sub-section (1) of Section 34 of the Drugs and Cosmetics Act. Further, in terms of sub-section (2) of the said provisions, a partner may also be liable just as a Director is liable for the conduct of the business of the company, if the offence is committed with the consent or connivance of or is attributable to any neglect on the part of the partner concerned.

16) From the above it is clear that the requirement of impleading a company as an accused in a prosecution where the offence is alleged to have been committed by the company

is equally applicable to a partnership firm and the firm has to be impleaded as an accused along with the partner who is responsible for the conduct of business of the said firm.

17) Similar view has been taken by the High Court of Bombay in the case of Philip J. vs. Ashapura Minechem Ltd. & anr. (Criminal Writ petition Nos.2909-10, 2914 -15 of 2013 decided on 29.01.2016). In the said case, the Court has held that the conclusions drawn by the Apex Court in the case of Aneeta Hada (supra) are not based merely on the fact that the company is a separate legal entity and juristic person but these conclusions are drawn on the basis of the fact that Section 141 of the NI Act deals with vicarious liability. It was observed that the Supreme Court had arrived at an irresistible conclusion for maintaining the prosecution under Section 141 of the NI Act, arraigning of the company as an accused is imperative, mainly and mostly on the basis of vicarious liability of the Directors of the company and not necessarily because the company is a juristic person and it has its own respectability. The Court went on to observe that the main basis for arriving at its conclusion by the Supreme Court was the vicarious liability which the Directors or partners of the firm can have towards the company and hence without joining the company on the touchstone of vicarious liability, they cannot be prosecuted. Ultimately, the Court held that the ratio laid down in the case of Aneeta Hada (supra) can be made equally applicable in the case of partnership firm and that the partners are liable to be sued for their vicarious liability.

18) Gujarat High Court in the case of Oanali Ismailji Sadikot vs. State of Gujarat, (Special Criminal Application (Quashing) No. 4536 of 2015 decided on, 03 March 2016), has laid down that for maintaining the prosecution against the Director under Section 141 of the NI Act, arraigning of company as an accused is imperative and in view of the Explanation to Section 141 of the said Act, this legal position needs to be automatically made applicable in the case of prosecution against a partnership firm also. The Court went on to hold that it has to be held that for maintaining prosecution against a partner under Section 141 of the Negotiable Instruments Act, arraigning of partnership firm as an accused is imperative.

19) Similar views have been expressed by a Coordinate Bench of this Court in the case of Patel Nishit Vinod Chandra, Corona Remedies Private Limited vs. State of J&K (CRMC No.29/2017 decided on 06.09.2019) in the context of Section 34 of the Drugs and Cosmetics Act.

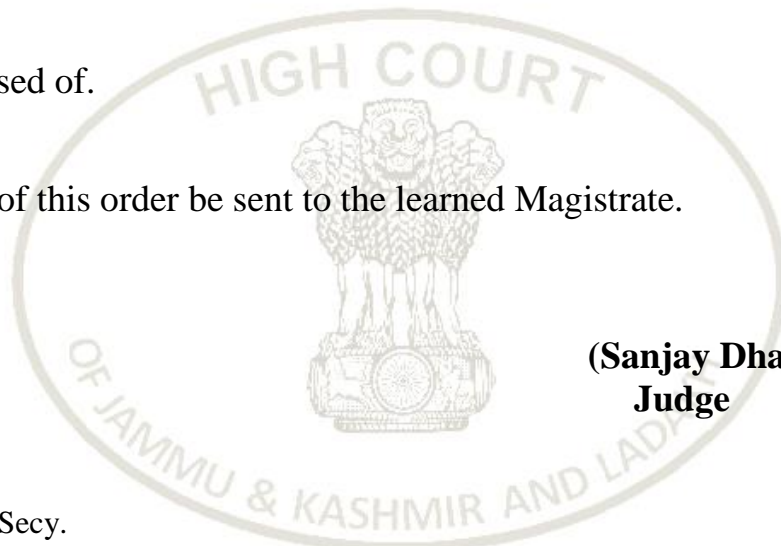
20) From the forgoing analysis of the law on the subject, it is clear that without impleading a partnership firm as an accused, prosecution against its partners under Section 34 of the Drugs and Cosmetics Act is not maintainable. In the instant case, the respondent/complainant has impleaded only the partners of the manufacturing firm M/S Adwin Pharma without impleading the firm as an accused in the complaint. Thus, on this ground alone, the proceedings against the petitioners herein are not sustainable.”

18) For the foregoing analysis of law on the subject, it is clear that without impleading the partnership firm as an accused in the impugned complaint, the criminal prosecution against the petitioners, who happen to be the partners of the manufacturing firm, namely, “Dogra Distilleries” cannot proceed. On this ground also, the prosecution against the petitioner is liable to be quashed.

19) Viewed in the above context, the petition is allowed and the impugned complaint and the proceedings emanating there-from to the extent of the petitioners are quashed.

20) Disposed of.

21) Copy of this order be sent to the learned Magistrate.



(Sanjay Dhar)
Judge

JAMMU
16.02.2023
Karam Chand/Secy.

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No