

Suraj Goods
Carriers Private
Limited
v.
The State of
Punjab

Pandit, J.

In view of what I have said above, this writ petition fails and is dismissed. In the circumstances of this case, however, I will make no order as to costs in these proceedings.

B.R.T.

APPELLATE CRIMINAL

Before D. Falshaw, C.J. and H. R. Khanna, J.

MUNICIPAL COMMITTEE, AMRITSAR,—Appellant.

versus

BUTA SINGH,—Respondent.

Criminal Appeal No. 605 of 1964.

1965

October, 21st.

Prevention of Food Adulteration Act (XXXVII of 1954)—S. 17—Offences committed by a firm—Whether all partners equally liable.

Held, that according to section 17 of the Prevention of Food Adulteration Act, 1954, which deals with the offences under the Act committed by companies, firms and other association of individuals, it is the duty of the prosecution to prove that the person sought to be made liable under the Act was, at the time of the commission of the offence, in charge of, and was responsible to, the company or firm for the conduct of its business. It is only when that initial onus is discharged by the prosecution in respect of a person, that the onus of proving the fact, referred to in the proviso that the offence was committed without his knowledge or that he exercised all due diligence for the prevention of such offence, would shift on to him. A director or partner can, however, escape liability if he can prove that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Appeal from the order of Shri N. K. Jain, Magistrate, 1st Class, Amritsar, dated the 26th February, 1964, acquitting the respondent.

RUP CHAND, ADVOCATE, for the Appellant.

J. K. KHOSLA, ADVOCATE, for the Respondent.

JUDGMENT

Khanna, J.

KHANNA, J.—Amarjit Singh, his father Buta Singh and Chattar Singh were tried in the Court of Magistrate, First Class, Amritsar, for an offence under section 16 of

the Prevention of Food Adulteration Act (No. 37 of 1954) (hereinafter referred to as the Act). The learned Magistrate convicted Amarjit Singh and Chattar Singh and sentenced the former to pay a fine of Rs. 800 and the latter to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 800. Buta Singh was acquitted. Municipal Committee, Amritsar, has filed this appeal by Special Leave under sub-section (3) of section 417 of the Code of Criminal Procedure, against the acquittal of Buta Singh.

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The prosecution case is that on 21st January, 1963, Food Inspector Ram Parkash went to the shop of the accused in Bazar Dhab Wasti Ram, Amritsar, where business is carried on under the name and style of Buta Singh Kuldip Singh. Amarjit Singh, accused was present at the shop and was selling *Haldi*. The Food Inspector, after giving due notice to Amarjit Singh, purchased 450 grams of *Haldi*, for 90 paise. The *Haldi* was divided into three equal parts and was put into bottles which were sealed. One of the bottles was handed over to Amarjit Singh, another was retained by the Food Inspector and a third was sent to the Public Analyst whose report Exhibit P.F. showed that the *Haldi* was adulterated as it contained rice starch to an extent of about 80 per cent. On complaint Exhibit P.G. having been filed by the Food Inspector, the three accused were tried. Food Inspector Ram Parkash was examined as a witness in respect of the above allegations.

Amarjit Singh accused, who is a student of a college, in his statement under section 342 of the Code of Criminal Procedure stated that on the day in question he was called by Chattar Singh, accused and was asked to look after the shop as Chattar Singh was going out for about an hour. Amarjit Singh, admitted having sold *Masala* to the Food Inspector, and, according to him, it was not *Haldi*. Amarjit Singh, added that a board had been affixed on the shop stating that the articles sold therein were meant for animal feed and not for human consumption. Chattar Singh, accused admitted that he was proprietor of firm Buta Singh-Kuldip Singh. According to him, the articles sold from the shop were meant for animal feed and not for human consumption. Buta Singh, accused stated that though he was the proprietor of the shop

Municipal Com- in question, it was Chattar Singh, who worked at the shop
 mittee, Amritsar and managed it. According to Buta Singh, he worked in
 v. the village and did not work at the shop in question. In
 Buta Singh defence Uttam Singh was examined, and according to
 Khanna, J. him Buta Singh, lived in village Sohal, where he owned
 land and did not work at his shop in the city.

The learned Magistrate held that the articles sold at the shop in question were articles of food meant for human consumption. Amarjit Singh, who actually sold the *Haldi* to the Inspector, as well as Chattar Singh, who was proprietor in charge of the shop, were convicted and sentenced as above. Buta Singh was acquitted because the learned Magistrate was of the view that he was not taking any active interest in the working of the shop.

In appeal Mr. Roop Chand, on behalf of the appellants has not been able to show that the finding of the trial Magistrate that Buta Singh did not take any part in the business of the firm Buta Singh-Kuldip Singh, is incorrect, but he has contended that as Buta Singh was a partner of the aforesaid firm he was equally liable for the offence under section 16 of the Act, and the mere fact that he was a dormant or a sleeping partner would not make any difference. In our opinion there is no force in the above contention. Offences under the Act committed by companies, firms and other association of individuals are dealt with in section 17 of the Act, sub-section (1) of which reads as under:—

“17. (1) Where an offence under this Act 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 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.”

The explanation added to this section goes to show that for the purposes of this section “Company” means any

body corporate, and includes a firm or other association of individuals, and "Director" in relation to a firm means a partner in the firm. Plain reading of the above provision of law makes it clear that it is the duty of the prosecution to prove that the person sought to be made liable under the Act was, at the time of the commission of the offence, in charge of, and was responsible to, the company for the conduct of its business. It is only when that initial onus is discharged by the prosecution in respect of a person, that the onus of proving the fact, referred to in the proviso that the offence was committed without his knowledge or that he exercised all due diligence for the prevention of such offence, would shift on to him. The object of the above provision is that if a person is shown to be director in charge of a company or partner in charge of a firm and is responsible for the conduct of the affairs of the company or the firm as the case may be, he cannot escape liability for offences relating to adulteration of food committed by the company or the firm by taking a plea that the actual sale of the adulterated food stuff was not made by him or other offence under the Act was not committed by him personally, but the thing was done by an employee, salesman or agent of the company or the firm. The section provides that such a plea would not exculpate the director in charge or partner in charge of the affairs of a company or a firm. Such a director or partner can, however, escape liability if he can prove that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. All the same it is essential, as stated above, to show that the director or partner, who is sought to be made liable under the Act was at the time of the commission of the offence in charge of the affairs of the company or the firm, as the case may be, and was responsible for the conduct of its business. As the material on record of the present case does not prove that Buta Singh was in charge of running the business at the shop in question, it would follow that no liability under the Act can be fastened upon him.

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We, therefore, find no force in the appeal which fails and is dismissed.

D. FALSHAW, C.J.—I agree.

Falshaw C.J.

R.S.