

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KUMAR AGARWAL

ON THE 17th OF MARCH, 2023

MISC. CRIMINAL CASE No. 27698 of 2019

Between: -

**RAVINDER KUMAR AGARWAL S/O LATE SHRI
BADRILAL AGARWAL, AGED ABOUT 52 YEARS,
OCCUPATION: DIRECTOR R/O MADHUVAN
COLONY ROAD, KATEDAN HYDERABAD-500077
(ANDHRA PRADESH)**

.... PETITIONER

(BY MR. D.K. AGARWAL - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH FOOD SAFETY OFFICER GUNA
(MADHYA PRADESH)**
- 2. FOOD SAFETY OFFICER THE STATE OF
MADHYA PRADESH GUNA (MADHYA PRADESH)**
- 3. COMMISSIONER THE STATE OF MADHYA
PRADESH EDGAH HILLS BHOPAL (MADHYA
PRADESH)**

.... RESPONDENTS

(BY MR. C.P. SINGH - PANEL LAWYER)

*This application coming on for hearing this day, the court passed the
following:*

ORDER

The present petition has been filed by the petitioner under Section 482 of Cr.P.C. for quashing the complaint filed under Sections 26, 27 and 59 of the Food and Safety Standards Act, 2006 (herein after referred to as "the Act of 2006") and for quashing the

orders directing issuance of the warrant of arrest against the petitioner in Criminal Case No.829/2013 (State of M.P. Through Food Safety Officer, Guna Vs. Ajeet Jain and others) pending before JMFC, Guna.

2. The brief facts of the case are as follows. On the basis of a complaint filed before the JMFC, Guna by the respondents herein, notice was directed to be issued to the petitioner who was arrayed as accused No.4. On 02.02.2019, bailable warrants were directed to be issued against the petitioner and on 11.05.2019, 04.06.2019 and on 22.06.2019 non- bailable warrants of arrest were directed to be issued against the petitioner. The offender in this case is Ravi Foods Pvt. Ltd. (Unit-II) which came into existence in the year 1988 as a manufacturer of biscuits and other bakery products at Hyderabad.
3. According to the Ld. Counsel for the respondents, a sample of Elaichi Flavored Cream Biscuits was taken from the Food Safety Officer, Guna from one Ajeet Jain who is accused No.1 and Panchnama was prepared on spot on 23.02.2012 with regard to the seizure of the said biscuits. The sample was sent to food analyst Bhopal, which is found to be misbranded by its report dated 06.03.2012 and it was again sent for analysis to the CFTRI at Mysore and by report dated 21.05.2012, the sample was found unfit for human consumption because of the presence of Emulsifiers (322.471) (Licithin). In view of the second report from the Mysore Laboratory which reflects that the food product which was Dukes Cream, Elaichi Flavored Biscuits was found unfit for human consumption, the complaint was filed by the respondents against four persons.

4. The first accused was Ajeet Jain (retailer), the proprietor of Shanti Sales from whom the sample was seized. Second accused was Shishir Goyal, who was owner of Firm Nirmal Chandra - Sharad Chandra Goyal, the distributor in this case. The third accused was nominee Mr. B. Dinkar, the Laboratory In-charge of Ravi Foods Pvt. Ltd. (Unit-II) at Madhuban Colony at Kattendan, Hyderabad and the fourth accused was the Directors of Ravi Foods Pvt. Ltd., (Unit-II). Undisputedly, the company - Ravi Foods Pvt. Ltd., has not been made an accused in this case. The sanction for prosecution was granted on 08.04.2013 which is prior to the institution of the complaint case before the learned trial Court on 10.05.2013. The sanction for prosecution has also been granted only with regard to the aforementioned four persons. No prosecution sanction has been given with regard to the prosecution company itself.
5. The arguments of learned counsel for the petitioner is restricted to two points. First, that the company has not been impleaded and therefore, in view of Section 66 of the Act of 2006, the Directors could only be held vicariously liable and in the absence of company itself as an accused, the Directors could not be held vicariously liable. Secondly, the complainant was aware that B. Dinkar, who was the Food Safety Officer of the company was nominated to represent the company and, therefore, in the light of the first proviso to Section 66 of the Act of 2006, the Directors of the company could not have been prosecuted.
6. As regards special statutes which provides for prosecution of the Directors for the offences committed by the companies, it is settled

law that the Directors can not be prosecuted in isolation where the company has not been made an accused (**Aneeta Hada Vs. Godfather Travels and Tours Pvt. Ltd., (2012) 5 SCC 661 and Sanghi Brothers Indore (p) Ltd. Vs. Premchand, 2011 SCC Online MP 1299**), **Sharad Kumar Sanghi Vs. Sangita Rane (2015) 12 SCC 781 Para 11, Managing Director Vs. State of Karnataka (2018) 17 SCC 275 and Hindustan Unilever Ltd. Vs. State of M.P. (2020)10 SCC 751 Para 23**. Undisputedly, in this case the company has not been proceeded against. Therefore, in view of the aforesaid judgments of the Supreme Court and the settled law that in special statutes which provides for the prosecution of a company for the offence committed by it, the Directors could only be vicariously liable if the company itself is made an accused. Therefore, on that ground itself the prosecution of the petitioner herein who is one of the Directors of the company is impermissible in law.

7. Besides, the proviso to Section 66 of the Act of 2006 makes it very clear that where a person In-charge of an Establishment or Unit nominated by the company as responsible for the food safety shall be the person who will be liable for contraventions in respect of such Establishment, Branch or Unit. Undisputedly, in this particular case, the manufacturer of the offending food product is based at Hyderabad and the accused No.3 is the Food Safety Officer who works at the Hyderabad Establishment which manufactures the offending products. Once, his inclusion as an accused has been made in this case, then only such a nominee, and not the Directors, shall be responsible. The said inference can be drawn by the manner in which first proviso is worded which, by necessary implication, makes such a nominee entirely liable for the contravention in respect

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of the Establishment, Branch or Unit, where the offending food material was manufactured.

8. Thus, in view of what has been stated and considered hereinabove, the petition succeeds. Further proceedings against the petitioner stands quashed as he is the Director of Ravi Foods Pvt. Ltd., and the company Ravi Foods Pvt. Ltd. itself has not been made as an accused in this case and, therefore, he cannot be held vicariously liable for the act of the company. The case before the Trial Court shall continue as regards the other accused, if any.

(DEEPAK KUMAR AGARWAL)
JUDGE

Adnan