

R E P O R T A B L E

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 569 OF 2003

SAUMINDRA BHATTACHARYA

.....APPELLANT(S)

Versus

STATE OF BIHAR & ANR.

.....RESPONDENT(S)

O R D E R

This appeal arises out of the following facts:

2. On 6th April, 1999, the complainant Ajay Paul, an advocate by profession, purchased three bottles of Limca from a retailer at village Digha. One of the bottles was opened by the complainant and on consuming the same, he fell sick, vomitted several times, felt nauseated, had loose motions and had to spend a sum of Rs.3,000/- on medicines etc. The complainant also examined one of the bottles of Limca which remained unopened and found that it contained several dust particles. The complainant thereupon served a notice dated 9th April 1999 by registered post on the three accused, accused No.1 being the President of M/s. Coca Cola India, accused No.2 the Consumer Affairs Coordinator and accused No.3 the Manager of M/s. Bharat Coca Cola Bottling North East Pvt. Ltd. Patna alleging that he had been caused injury on account of consumption of

adulterated Limca. The complainant received a reply from
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the accused and it was pointed out therein that several such complaints had been received from other sources as well, and it appeared that Limca was being adulterated by some unscrupulous elements and an enquiry was going on in this connection. Dissatisfied with the said reply, the complainant filed a complaint under Sections 2, 16, 17 of the Prevention of Food Adulteration Act, 1954, hereinafter 'the Act' for short, read with Section 320 of the IPC. The complainant and three other witnesses were examined by the Magistrate. In the meanwhile, the report of the Public Analyst, Bihar, Patna was received and was also appended by the complainant and cognizance was duly taken by the magistrate. These proceedings were challenged by the accused under Section 482 of the CrPC. The High Court, vide the impugned judgment, has quashed the proceedings qua accused Nos.1 and 2 but has dismissed the petition with respect to the Manager, accused No.3. Accused No.3 is before us in the present appeal.

3. Mr. Ashok Desai, the learned senior counsel for the appellant, has raised only one argument during the course of hearing. He has pointed out that the Act itself provided a specific means and method whereby a complaint by a private party relating to food adulteration had to be entertained and in the absence of the stipulated procedure



having been followed, the Magistrate was not justified in even entertaining the complaint. In this connection, he has referred us to Sections 11, 12 and 20 of the Act.

4. We find that the complainant, though served, is not before us but Mr. Gopal Singh, the learned counsel for the State of Bihar, though handicapped, has pointed out that if a rigid view was taken about the manner in which proceedings under the Act were to be initiated by a private party, it would be virtually impossible to keep the manufacturers or dealers within the four corners of the law as they would have a carte blanche in carrying on with their nefarious activities. He has also submitted that after the report of Public Analyst had been appended, any lacuna which may have been earlier present had been filled in and the Magistrate had rightly taken cognizance of the matter.

5. We have considered the arguments advanced by the learned counsel. Sections 12 and 20 are reproduced below:

"12. Purchaser may have food analysed. - Nothing contained in this Act shall be held to prevent a purchaser of any article of food other than a food inspector or a recognised consumer association, whether the purchaser is a member of that association or not, from having such article analysed by the public analyst on payment of such fees as may be prescribed and from receiving from the public analyst a report of his analysis:

Provided that such purchaser or recognised consumer association shall inform the vendor at the time of purchase of his or

its intention to have such article so analysed;

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Provided further that the provisions of sub-section (1), sub-section(2) and sub-section(3) of section 11 shall, as far as may be, apply to a purchaser of article of food or recognised consumer association, who or which intends to have such articles so analysed, as they apply to a food inspector who takes a sample of food for analysis;

Provided also that if the report of the public analyst shows that the article of food is adulterated, the purchaser or recognised consumer association shall be entitled to get refund of the fees paid by him or it under this section.

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20. Cognizance and trial of offences.- (1) No prosecution for an offence under this Act, not being an offence under section 14 or section 14A shall be instituted except by, or with the written consent of, the Central Government or the State Government or a person authorised in this behalf, by general or special order, by the Central Government or the State Government;

Provided that a prosecution for an offence under this Act may be instituted by a purchaser or recognised consumer association referred to in section 12, if he or it produces in court a copy of the report of the public analyst alongwith the complaint.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under sub-section (1AA) of section 16 shall be cognizable and non-bailable."

Section 12, *inter alia*, provides that a purchaser may



have a food product analysed and for that purpose may submit the food sample to a public analyst but before doing so he has to inform the vendor at the time of purchase that he intends to have the article analysed. The second proviso further states that the procedure prescribed in sub-Sections (1), (2) and (3) of Section 11 would be applicable to such purchase and taking of samples as well. We find from the record that there is no averment whatsoever in the complaint or even in the evidence adduced by the complainant that the provisions of Section 12 and the two provisos in particular had been complied with or the sample which was required to be sealed and kept in the manner required by Section 11 had been kept in that way. We also notice that the proviso to Section 20 is categorical and brooks no ambiguity in that a prosecution for an offence under the Act can be instituted by a purchaser only if the report of the public analyst is produced alongwith the complaint.

6. We are, therefore, of the opinion that even assuming that some report of the public analyst had been put on record during the pendency of the complaint before the

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Magistrate, this factor will not cure the defect under Section 20 as the very institution of the complaint without the report of the public analyst was not authorised in law.

7. In Nazir Ahmad Vs. King Emperor, AIR 1936 PC 253 it has been held:

"that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."

and further

"it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves."

8. The observations aforesaid are extremely relevant to the facts of the present case. A very detailed procedure has been prescribed under which the samples are taken and handled (Section 11) and then as to how the complaints etc. are to be filed and entertained by the Magistrate (Ss.12 & 20). The procedure prescribed must, of necessity, be adopted without any departure.

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9. We are, therefore, of the opinion that the order of the High Court cannot be maintained. We, therefore, allow the appeal and quash the proceedings against accused No.3 as well.

.....J.
(HARJIT SINGH BEDI)

New Delhi;
September 10, 2009.

.....J.
(J.M. PANCHAL)



JUDGMENT