

Naresh Kumar Dhingra And Another vs State Of Punjab on 22 August, 2022

Author: Sandeep Moudgil

Bench: Sandeep Moudgil

CRM-M-36785-2022

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36785-2022
DECIDED ON: 22.08.2022

NARESH KUMAR DHINGRA AND ANR.

.....PETITIONERS

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vishal Deep Goyal, Advocate
for the petitioners.

Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J.

The present petition seeks quashing of impugned order dated 08.01.2019 (Annexure P-5) passed by learned Judicial Magistrate Ist Class, Ludhiana, vide which the petitioners have wrongly been summoned to face trial in case bearing FIR No.194, dated 14.11.2013 (Annexure P-1), under Sections 420, 273 and 120-B of the IPC, registered at Police Station Laddowal, District Ludhiana City and impugned order dated 28.10.2021 (Annexure P-6), passed by learned Additional Sessions Judge, Ludhiana, whereby revision filed by the petitioners against the impugned order dated 08.01.2019 (Annexure P-5), has wrongly been dismissed.

2. The brief facts of the case are that the present case has been registered against the accused on the allegations that on 14.11.2013, the complainant, along with other police party and other Health Officers, reached the premises of JMD Oils Pvt. Ltd., from where, (1) Sainik Banaspati 1/2 litre 1 of 5 each MTG Dec/12 Best before 6 months, total 40 boxes each containing 32 pouches each, 40 x 32 =

1280 pouches, (2) Sainik Banaspati boxes (two litres each) MTG APR/13 best before 6 months, total 100 box containing 8 Dibbas each $100 \times 8 = 800$ Dibbas, (3) Sainik Banaspati boxes (5 kg each) MTG/APR 13 best before 6 months total 68 box containing 2 Dibbas each $= 68 \times 3 = 136$ boxes, (4) Sainik Banaspati (1/2 litre Pouch each) MTG FEB 13, best before 6 months total 50 boxes containing 32 pouches $= 50 \times 32 = 1600$ pouches, (5) Sainik Banaspati (1 litre each pouch MTG Feb 13 best before 6 months, total 93 boxes containing 16 pouches each $93 \times 16 = 1488$ pouches, were recovered. Thereafter, investigation of the case was conducted by various officers including the Gazetted Officers of the police and they found that the accused have committed the offences under Section 420, 273, 120-B of IPC. Earlier, Sh. Gurpreet Singh, PCS, ACP, Rural, Gill, Ludhiana filed cancellation report, which was not accepted by the then Commissioner of Police by observing that he does not agree with the findings. The lab test report clearly indicates that samples were sub-standard and not conforming to norms. Hence, he directed the Investigating Officer to re-investigate the case. After the completion of investigation, the challan was presented against two accused Anoop Singh and Inderjit Singh. However, other accused persons namely J.R. Dhingra, Gulshan Kumar, Krishan Kumar, Naresh Kumar, Sanjay Dhingra and Manoj Kumar were kept in column No.2, of the final report under section 173 Cr.P.C, mentioning therein that revisionists Gulshan Kumar and Sanjay Dhingra had resigned from the Company long back on 5.4.2000 and that Manoj Kumar also had resigned from the Company on 21.10.2010 and due to this reason, these persons were kept in column No.2.

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3. After framing of charge, Harpreet Kaur, Assistant Commissioner, Food Safety, Moga, appeared and deposed that as the articles were found to have expired and on inquiry from Anoop Singh and Inderjit Singh, regarding the true owner of JMD Oils Pvt. Ltd., they handed over the Memorandum and Articles of Association of JMD Oils Pvt. Ltd., Ex. PW1/A, which had the name of the partners of JMD Oils Pvt. Ltd. The above named persons namely Anoop Singh and Inderjit Singh were employees and as per the memorandum the names of the partners, under whose instance and guidance the said business was being carried upon, were J.R. Dhingra, Sanjay Dhingra, Naresh Kumar, Krishan Kumar, Gulshan Kumar, Bharat Wadhwa and Manoj Kumar, who were the partners in JSM Veg Pvt. Ltd., which was subsidiary of JMD Oils Pvt. Ltd. Thereafter, the prosecution moved application under Section 319 Cr.P.C. for summoning the above referred accused persons as additional accused, which was allowed vide impugned order dated 08.01.2019 by the learned Lower Court.

4. Thereafter, three separate revision petitions were filed by all the accused persons against the order dated 08.01.2019, passed by the learned Lower Court, whereupon the revision petitions were allowed in favour of Sanjay Dhingra, Gulshan Kumar and Manoj Kumar and dismissed qua accused Naresh Kumar Dhingra and Krishan Kumar Dhingra, vide common order dated 28.10.2021, passed by the learned Additional Sessions Judge, Ludhiana. Hence present petition.

5. Learned counsel for the petitioners contends that no offence is made out against the petitioners and the FIR in question is nonest in the eyes of law. It is also submitted that the godown of the company is not a public place and it is only for the storage purpose, in which the goods of all types 3

of 5 are stored that includes the goods for sale, expiry dated goods, damaged goods or any other types of goods. He has further submitted that the goods are made available for consumption to the public after due verification and all the measures required for safety of products. It is asserted by the learned counsel for the petitioners that the petitioners claim that all the packing of vanaspati oils or any other packing, which were having life time for expiry, were good for consumption as those were fulfilling all the parameters, as required under the Food Safety and Standards Act, 2006. He further asserted that the learned Appellate Court has passed the impugned order dated 28.10.2021, without taking into consideration the fact that no evidence was collected by the Investigating Officer against the petitioners and even no statement of any witness was recorded for selling of the expiry date food articles with the label of JMD Oils Pvt. Ltd., and J.S.M. Veg Oils Pvt. Ltd.

6. I have heard the learned counsel for the petitioners and also gone through the record of the case file.

7. Keeping in view the fact that it has come in evidence in the shape of Form No.32, that Naresh Dhingra was again appointed as Additional Director on 15.12.2003. Earlier, he resigned from the Company on 05.04.2000. Accused Krishan Dhingra is still Director of the company and as per evidence on file, he, along with Naresh Dhingra, was looking after the affairs of the Company, when the raid was conducted. So, there are sufficient evidence against both these accused namely Naresh Dhingra and Krishan Dhingra that they were looking after the affairs of the Company at the time of raid, therefore, they were rightly summoned by invoking the provisions of section 319 Cr.P.C. The provision of Section 319 Cr.P.C., reads as under:-

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8. In view of the above, there is substantial evidence against the petitioners to be tried along with the other co-accused as additional accused. Hence, the present petition fails and is dismissed.

(SANDEEP MOUDGIL) JUDGE 22.08.2022 Poonam Negi Whether speaking/reasoned Yes/No Whether reportable Yes/No 5 of 5