

Narayan Sahu vs State Of U.P. And Another on 16 May, 2023

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Bench: Samit Gopal

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2023:AHC:106448

Court No. - 71

Case :- APPLICATION U/S 482 No. - 18134 of 2023

Applicant :- Narayan Sahu

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Narendra Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Narendra Kumar Tiwary, learned counsel for the applicant, Sri U.P. Singh, learned counsel for the State and perused the record.
3. The present Criminal Misc. Application U/S 482 Cr.P.C. has been filed by the applicant with the following prayers:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow this application and quash the entire proceedings of the Special Complaint Case No. 01 of 2016, State vs. Narayan Sahu, under Section 26/59 (iii) of

Food Safety and Standard Act, 2006, Police Station Kulpahar, District Mahoba, pending in the court of Ist Additional District Judge, Banda and also quash the summoning order dated 15.12.2016 and N.B.W. order dated 27.1.2020 passed by learned Ist Additional District Judge, Banda.

It is further prayed that this Hon'ble Court may kindly be pleased to stay the further proceedings of the Special Complaint Case No. 01 of 2016, State vs. Narayan Sahu, under Section 26/59 (iii) of Food Safety and Standard Act, 2006, Police Station Kulpahar, District Mahoba, pending in the court of Ist Additional District Judge, Banda and also stay the effect and operation of the summoning order dated 15.12.2016 and N.B.W. order dated 27.1.2020 passed by learned Ist Additional District Judge, Banda during pendency of the present application before this Hon'ble Court, otherwise the applicant shall suffer an irreparable loss and injury.

And/or to pass such other and further orders which this Hon'ble Court may deem fit and proper in the circumstances of the case."

4. The facts of the present case are that a complaint dated 11.8.2016 under Sections 26/59 (iii) of The Food Safety and Standard Act 2006 has been filed against the applicant by the opposite party no. 2 in which the applicant has been summoned vide order dated 15.12.2016 passed by the trial court. The allegations in the complaint are that the applicant was found selling 'kheshari dal' and from his possession 8 bags weighing 467 kilograms whole kheshari dal (sabut) was found which was seized. The same was sent to the Food Analyst who vide his report dated 30.4.2015 found the sample to be Kheshari Sabut and opined that the same is kheshari dal which has a prohibition and restriction on sale as per regulation 2.2.1. It is not fit for human consumption. Hence the sample is unsafe.

5. A short argument has been raised by learned counsel for the applicant that the recovery of said article was effected on 14.4.2015 by Inspector of Police and 8 bags weighing 467 kilograms of kheshari dal was recovered and the applicant was arrested on the spot. It is argued that a First Information Report was lodged on the basis of said recovery memo and the arrest of the applicant, as Case Crime No. 135 of 2015, under Section 2/3 of The Uttar Pradesh Kheshari Gram (Prohibition) Act, 1983 at Police Station Kulpahar, District Mahoba in which after investigation a charge sheet under the said sections have been filed against the applicant on which the trial court has taken cognizance vide order dated 30.8.2016. It is submitted that a co-ordinate Bench of this Court vide order dated 18.2.2019 passed in Application U/S 482 Cr.P.C. No. 5880 of 2019, Narayan Sahu vs. State of U.P. and another has stayed the proceedings of the said case. It is submitted that as such the present proceedings under the provisions of The Food Safety and Standards Act in which the applicant has been summoned, cannot proceed and are abuse of process of court. It is submitted that Section 300 Cr.P.C. and Article 22 of Constitution of India prohibit two proceedings on the same fact. The same is hit by double jeopardy and the proceedings thus be quashed. Learned counsel for the applicant has relied upon the judgement of the Apex Court in the case of T.P. Gopalakrishnan vs. State of Kerala: 2022 o Supreme(SC) 1268 (para-28 & 29) to buttress his arguments.

6. Per contra, learned State counsel opposed the prayer.

7. After having heard learned counsels for the parties, perusing the records and considering the limited argument of learned counsel for the applicant, it transpires that 8 bags of kheshari dal which is a prohibited item and unsafe for human consumption weighing 467 kilograms was recovered from the possession of the applicant. A First Information Report under Section 2/3 of The Uttar Pradesh Kheshari Gram (Prohibition) Act, 1983 at Police Station Kulpahar, District Mahoba was lodged against the applicant. In the said case charge sheet has been submitted against the applicant on which the trial court has taken cognizance and summoned him. A complaint under Section 26/59 (iii) of The Food Safety and Standards Act, 2006 dated 11.8.2016 has been filed against the applicant in which the applicant has been summoned by the trial court and the same is pending before the trial court. The prosecution with regards to the said cases are entirely of different enactments. Section 2 and 3 of The Uttar Pradesh Kheshari Gram (Prohibition) Act, 1983 reads as under:-

"2. Prohibition of cultivation, etc. of Kesari Gram and its products. - No person shall-

(a) cultivate Kesari Gram (*lathyrus sativus*);

(b) sell or offer or expose for sale, or have in his possession for purpose of sale, under any description or for use as an ingredient for the preparation of any goods intended for sale, Kesari Gram (*lathyrus sativus*) or any product thereof;

(c) manufacture Kesari Dal or any other product of Kesari Gram (*lathyrus sativus*) ;

Explanation.- For the purposes of this section, Kesari Gram flour, Kesari Dal flour, mixture of Kesari Gram or Kesari Dal or flour of either with Bengal Gram (*cicer arietinum*) or Bengal Gram Dal or Bengal Gram Dal flour or with any other Dal or any other flour, shall be deemed to be product of Kesari Gram.

3. Penalty.- Any person who contravenes the provisions of Section 2 shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to six years and shall also be punishable with fine which shall not be less than two thousand rupees."

8. Section 26 and 59 of The Food Safety Standards Act, 2006 read as under:-

"26. Responsibilities of the Food business operator.-

(1) Every food business operator shall ensure that the articles of food satisfy the requirements of this Act and the rules and regulations made thereunder at all stages of production, processing, import, distribution and sale within the businesses under his control.

(2) No food business operator shall himself or by any person on his behalf manufacture, store, sell or distribute any article of food-

(i) which is unsafe; or

(ii) which is misbranded or sub-standard or contains extraneous matter; or

(iii) for which a licence is required, except in accordance with the conditions of the licence; or

(iv) which is for the time being prohibited by the Food Authority or the Central Government or the State Government in the interest of public health; or

(v) in contravention of any other provision of this Act or of any rule or regulation made thereunder.

(3) No food business operator shall employ any person who is suffering from infectious, contagious or loathsome disease.

(4) No food business operator shall sell or offer for sale any article of food to any vendor unless he also gives a guarantee in writing in the form specified by regulations about the nature and quality of such article to the vendor: Provided that a bill, cash memo, or invoice in respect of the sale of any article of food given by a food business operator to the vendor shall be deemed to be a guarantee under this section, even if a guarantee in the specified form is not included in the bill, cash memo or invoice.

(5) Where any food which is unsafe is part of a batch, lot or consignment of food of the same class or description, it shall be presumed that all the food in that batch, lot or consignment is also unsafe, unless following a detailed assessment within a specified time, it is found that there is no evidence that the rest of the batch, lot or consignment is unsafe: Provided that any conformity of a food with specific provisions applicable to that food shall be without prejudice to the competent authorities taking appropriate measures to impose restrictions on that food being placed on the market or to require its withdrawal from the market for the reasons to be recorded in writing where such authorities suspect that, despite the conformity, the food is unsafe.

59. Punishment for unsafe food.-Any person who, whether by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is unsafe, shall be punishable,-

(i) where such failure or contravention does not result in injury, with imprisonment for a term which may extend to six months and also with fine which may extend to one lakh rupees;

(ii) where such failure or contravention results in a non- grievous injury, with imprisonment for a term which may extend to one year and also with fine which may extend to three lakh rupees;

(iii) where such failure or contravention results in a grievous injury, with imprisonment for a term which may extend to six years and also with fine which may extend to five lakh rupees;

(iv) where such failure or contravention results in death, with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and also with fine which shall not be less than ten lakh rupees."

9. In so far as argument with regards to two trials being faced by the applicant is concerned, the records show that the First Information Report was lodged against the applicant under Sections 2/3 of The Uttar Pradesh Khesari Gram (Prohibition) Act, 1983 whereas the present proceedings are under Sections 26/59 (iii) of The Food Safety and Standards Act, 2006.

10. In the case of State of Maharashtra Vs. Sayyed Hassan Sayyed Subhan : (2019) 18 SCC 145 it has been held by the Apex Court that there is no bar to a trial or conviction of an accused under two different enactments. The only bar is to the punishment of him twice for the offence. It has been held as under :-

"7. There is no bar to a trial or conviction of an offender under two different enactments, but the bar is only to the punishment of the offender twice for the offence. Where an act or an omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both enactments but shall not be liable to be punished twice for the same offence. [T.S. Baliah v. T.S. Rangachari, (1969) 3 SCR 65 : AIR 1969 SC 701] The same set of facts, in conceivable cases, can constitute offences under two different laws.

An act or an omission can amount to and constitute an offence under IPC and at the same time, an offence under any other law. [State of Bihar v. Murad Ali Khan, (1988) 4 SCC 655 : 1989 SCC (Cri) 27] The High Court ought to have taken note of Section 26 of the General Clauses Act, 1897 which reads as follows:

"26. Provision as to offences punishable under two or more enactments.--Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

8. In Hat Singh case [State of Rajasthan v. Hat Singh, (2003) 2 SCC 152 : 2003 SCC (Cri) 451] this Court discussed the doctrine of double jeopardy and Section 26 of the General Clauses Act to observe that prosecution under two different Acts is permissible if the ingredients of the provisions are satisfied on the same facts. While considering a dispute about the prosecution of the respondent

therein for offences under the Mines and Minerals (Development and Regulation) Act, 1957 and the Penal Code, this Court in State (NCT of Delhi) v. Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] held that there is no bar in prosecuting persons under the Penal Code where the offences committed by persons are penal and cognizable offences. A perusal of the provisions of the FSS Act would make it clear that there is no bar for prosecution under IPC merely because the provisions in the FSS Act prescribe penalties. We, therefore, set aside the finding of the High Court on the first point."

11. In so far as the judgement of T.P. Gopalakrishnan (Supra) relied by learned counsel for the applicant is concerned, the same is on a totally different footing. Double jeopardy has been explained in para-30 of the said judgement which reads as under:

"30. Double jeopardy is often confused with double punishment. There is a vast difference between the two. Double punishment may arise when a person is convicted for two or more offences charged in one indictment however, the question of double jeopardy arises only when a second trial is sought on a subsequent indictment following a conviction or acquittal on an earlier indictment. This doctrine is certainly not a protection to the individual from peril of second sentence or punishment, nor to the service of a sentence for one offence, but is a protection against double jeopardy for the same offence that is, against a second trial for the same offence."

12. The same would apply only once the trial of one matter has concluded following a conviction or acquittal and then the party is subjected to subsequent involvement on the same facts. The said case thus does not apply to the facts of the present case. In the present case the proceedings are under two different enactments for two separate offences. They are independently maintainable under law.

13. In view of the same, the present application under Section 482 Cr.P.C. does not call for any interference and thus is rejected.

(Samit Gopal) Judge Order Date :- 16.5.2023 {Naresh}