

Shri.Amol S/O Vidyadhar Mohandas vs The State Of Karnataka on 5 September, 2023

Author: M.Nagaprasanna

Bench: M.Nagaprasanna

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NC: 2023:KHC-D:10247
CRL.P No. 101080 of 2020

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 5TH DAY OF SEPTEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 101080 OF 2020

BETWEEN:

1. SHRI. AMOL S/O VIDYADHAR MOHANDAS,
AGE. 35 YEARS, OCC. BUSINESS,
R/O. PLOT NO. 1202, SAHYADRI NAGAR,
BELAGAVI-591108.
2. SHRI. JAMMER S/O HASAN SAYYAD,
AGE. 34 YEARS, OCC. DRIVER,
R/O C/O. PLOT NO. 1202,
SAHYADRI NAGAR, BELAGAVI-591108.

... PETITIONERS

(BY SRI. SANTOSH PUJARI, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
R/BY THE STATE PUBLIC PROSECUTOR,
DHARWAD BENCH, DHARWAD,

VIJAYALAKSHMI

M KANKUPPI

THROUGH GOKARNA POLICE STATION,
UTTARA KANNADA-581326.

... RESPONDENT

Digitally signed by (BY SRI. V.S. KALASURMATH, HCGP)
VIJAYALAKSHMI M

KANKUPPI

THIS CRIMINAL PETITION IS FILED U/SEC.482 OF CR.P.C.,

Date: 2023.09.11

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PRAYING TO CALL FOR RECORDS AND QUASH THE COMPLAINT AND FIR DATED 30/07/2020 VIDE ANNEXURES-A AND A-1 AND ALL THE PENDING PROCEEDINGS ON THE FILE OF COURT OF ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, COURT, KUMTA, UTTARA KANNADA AGAINST THE PETITIONERS, IN GOKARNA POLICE STATION CRIME NO.54/2020 FOR THE OFFENCES PUNISHABLE UNDER SECTION 5, 8, 9 AND 11 OF KARNATAKA PREVENTION OF COW SLAUGHTER AND CATTLE PROTECTION ACT 1964, AND 192, 192 (A) AND 179 OF INDIAN MOTOR VEHICLES ACT, 1988 AND SECTION 429 AND 379 OF INDIAN PENAL CODE VIDE ANNEXURE-B AND TO GRANT EXEMPLARY DAMAGES TO THE

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CRL.P No. 101080 of 2020

PETITIONERS FOR ILLEGALLY REGISTERING GOKARNA POLICE STATION CRIME NO.54/2020 DATED 30.07.2020, AGAINST THE PETITIONERS, VIDE ANNEXURE-A1.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioners are before this Court calling in question the proceedings in C.C No.571/2021, registered for the offences punishable under Sections 5, 8, 9 and 11 of the Karnataka Prevention of Cow Slaughter and Cattle Protection Act, 1964 and Sections 192, 192 (A), 179 of the Indian Motor Vehicles Act, 1988, 429 and 379 of IPC.

2. Learned counsel for the petitioners would submit that the issue in the lis stands answered in a batch of matters disposed by the Co-ordinate Bench of this Court in Crl.P.Nos.100856/2019 C/w. Crl.P.No.100248/2020, dated 5.12.2022. The Co-ordinate Bench of this Court has held as follows:

ORDER Since the issues involved in these petitions are similar and the challenge is to the very same proceedings, they are taken up NC: 2023:KHC-D:10247 together and disposed of by a common order.

2. The petitioners have been charge sheeted for the offences punishable under Sections 420, 429, 197, 198, 201, 204, 218, 465 and 473 of the Indian Penal Code, 1860 (for short, "IPC"), Sections 4, 8, 9 and 11 of the Karnataka Prevention of Cow Slaughter & Cattle Preservation Act, 1964, Section 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960 and Section 63 read with Section 31 Clause 7 of the Food Safety and Standards Act, 2006 (for short, "Act").

3. The Police initiated action on a complaint filed by one Joshine Antony who claims to be an Honorary Animal Welfare Officer of Animal Welfare Board of India, and in the complaint, it was alleged that three cold storages situated in the Kanbargi Industrial Area, Belagavi for procuring beef from the illegal slaughter houses in and around the Belagavi are processing them in the unit for the purpose of exporting. It was further alleged that, it is functioning without any license under the Act and not maintaining any industrial safety. It was further alleged that the meat stored in these NC: 2023:KHC-D:10247 cold storages are not fit for consumption by the public, as they have not been procured from reliable legal slaughter houses. Thus, they are cheating the public, and the Government, by sending contaminated and unhygienic meat to foreign countries.

4. The learned Magistrate after accepting charge sheet, took cognizance of the aforesaid offences and issued summons.

Taking exception of the same, petitioners/accused No.11, 13 and 14 are before this Court.

5. Learned counsel appearing for the petitioners submit that the offences punishable under the Food Safety and Standards Act, 2006 are substantive offences, and the cognizance taken on the basis of the final report submitted by the Police under Section 173 of the Criminal Procedure Code (for short, "Cr.P.C.") is without jurisdiction, since the cognizance can be taken for the aforesaid offences, only upon a complaint in writing by the officer concerned after obtaining sanction from the higher authorities as prescribed under Section 42 of the Act. They further submit that in the absence of any specific NC: 2023:KHC-D:10247 allegations to constitute the commission of offences under Sections 420 and 429 of the IPC, the cognizance taken by the learned Magistrate for the aforesaid offences is without any substance.

6. On the other hand, Sri. V.S.Kalasurmath, learned HCGP for the State and learned counsel for Respondent No.2 submit that the petitioners/accused No.11, 13 and 14 by procuring buffalo meat from illegal slaughter houses and by packing the same in an unhygienic condition have committed the aforesaid offences, and at this stage, the cognizance taken by the learned Magistrate does not warrant any interference and sought for dismissal of the petitions. They further submit that the charge sheet material discloses the commission of the offences alleged against the accused and the various contentions raised by the Petitioners can be considered only after full fledged trial.

7. I have examined the submissions of the learned counsel for the parties.

8. To constitute the commission of offences under Sections 420 and 429 of the NC: 2023:KHC-D:10247 IPC, a person must be induced to part with the property with a dishonest intention to cheat him. In the instant case, there is no allegation that the

Petitioners either induced any member of public or government to part with the moveable or immovable property with an intention to cheat them. Admittedly the alleged cheating was not in any form of making alteration or destroying any valuable security in any manner and the allegation is that the goods in the form of food items are alleged to be of sub standard, contaminated which does not constitute the offence of cheating. Hence, in the absence of essential ingredients, the cognizance taken for the offences u/s 419, 420 IPC is impermissible.

9. Section 32 of the Food Safety and Standards Act, 2006 prescribes that, it is only the Designated Officer who can look into the allegations made against any establishment doing any activity in food business after obtaining license under Section 31 of the said Act, and in which event for any complaint regarding failure to comply with any of the regulations, the Designated Officer under Section 32 of the said Act is the authority to take appropriate NC: 2023:KHC-D:10247 action including issuance of notices to the alleged violator of the regulations.

10. Section 42 of the said Act prescribes the procedure for launching prosecution and the responsibility of launching prosecution would be on Food Safety Officer in which regard he can take reference to and rely upon the reports submitted by the Food analyst to whom the sample was sent for analysis.

11. Section 42(5) of the Act prescribes that the Commissioner of Food Safety shall communicate the decision to the Designated Officer and the Food Safety Officer concerned shall launch prosecution before courts of ordinary jurisdiction or Special court, as the case may be; and such communication shall also be sent to the purchaser, if the sample was taken under Section 40 of the Act.

12. A conjoint reading of these provisions clearly indicate that the Food Safety Officer alone is competent to conduct search, seize and investigate any contravention of the provisions of the Act and launch prosecution against the offenders before the jurisdictional court. In the instant case, the NC: 2023:KHC-D:10247 Police without authority of law have conducted the raid and investigated the offences under the Act. Since the cognizance can be taken for the aforesaid offences under the Act only upon a complaint in writing by the Food Safety officer and not on the basis of the final report submitted by the Police, the cognizance taken on the basis of the Final Report submitted by the Police is one without authority of law.

13. Therefore, in view of the preceding analysis, the continuation of the criminal proceedings against the petitioners/accused No.11, 13 and 14 herein will be an abuse of process of law. Accordingly, I pass the following;

ORDER

i) The criminal petitions are allowed.

ii) The impugned proceeding in C.C.No.25/2020 pending on the file of the JMFC III Court, Belagavi insofar it relates to petitioners/accused No.11, 13 and 14 is hereby quashed.

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3. The learned HCGP on perusal of the order would not dispute the position that the issue stands answered by the Co- ordinate Bench of this Court supra.

4. In the light of the issue standing answered by the Co-ordinate Bench, further proceedings permitted to continue would become an abuse of the process of law.

5. For the aforesaid reasons, I pass the following:

ORDER

i) The criminal petition is allowed.

ii) The impugned proceedings in CC.No.571/2021 pending on the file of the Additional Civil Judge and JMFC Court, Kumata, Uttar Kannda qua the petitioners stands quashed.

Sd/-

JUDGE Vb/ct:bck