

Ritesh Talreja vs The State Of Madhya Pradesh on 24 November, 2022

Author: Anil Verma

Bench: Anil Verma

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 24th OF NOVEMBER, 2022

MISC. CRIMINAL CASE No. 2746 of 2021

BETWEEN: -

RITESH TALREJA S/O SHRI RAJKUMAR
TALREJA, AGED ABOUT 36 YEARS,
OCCUPATION: BUSINESS SINDHI COLONY,
GALI NO.1, NEEMUCH CANTT (MADHYA
PRADESH)

.....PETITIONER

(SHRI VIJAY KUMAR ASUDANI, LEARNED
COUNSEL FOR THE PETITIONER .)

AND

THE STATE OF MADHYA PRADESH

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STATION HOUSE OFFICER THR. P.S.

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NEEMUCH CANTT (MADHYA PRADESH)

FOOD SAFETY OFFICER FOOD AND

2 SAFETY ORGANIZATION FOOD AND

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SAFETY ORGANIZATION (MADHYA
PRADESH)

....RESPONDENT

(SHRI VISHAL PANWAR PL APPEARING ON
BEHALF OF ADVOCATE GENERAL.)

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

ORDER

The petitioner has filed present petition under section 482 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C") for quashment of FIR dated 28/12/2020 arising out of Crime no. 636/2020 registered at police station - Neemuch Cant, Neemuch MAHANAG arising therefrom.

2. Facts of the case in brief are that on 29/10/2020, Sanjeev Kumar Mishra, Food Safety Officer, Neemuch had inspected the shop in the name of M/s Prabhulal Rajkumar, which was owned by the petitioner. He took out food article sample from his shop in total 1047.8 kg food product worth of Rs. 60,076/- had been destroyed from his shop being not fit for human consumption. Samples were sent to the State Food Laboratory, Bhopal and as per the report dated 18/11/2020 given by the food analyst, the samples had been shown to be sub-Standards / misbranded. Thereafter, respondent no. 2 ought to have initiate the proceeding under the provision of Food Safety and Standards Act, 2006 (in short "the Act"), but he lodged FIR at police station - Neemuch Cant, Neemuch. Accordingly, the aforesaid offence was registered.

3. Learned counsel for the petitioner submits that the petitioner is running a kirana shop in the name of M/s Prabhulal Rajkumar and have been issued licence under the provision of the Food Safety and Standards Act, 2006. As per the provisions of the Food Safety and Standards Act, 2006, the respondent no. 2 did not initiate any proceeding for imposition of penalty. There is specific provision for the aforesaid punishment in the Food Safety and Standards Act, 2006, but surpassing / violating the provisions of said special enactment, the respondent lodged FIR against the petitioner at police station - Neemuch Cant, Neemuch and the police registered his FIR, which was entirely without jurisdiction, since it is settled law, if there is specific legislation for the special purpose, then the proceedings should have been initiated under the provisions of the said special legislation. The provisions of sections 42, 51, 52 of the Food Safety and Standards Act, 2006 has been violated. The entire action of the respondent is perverse, arbitrary and malafide and against the settled provisions of law. Hence learned counsel prays that the FIR dated 28/12/2020 arising out of Crime no. 636/2020 registered at police station - Neemuch Cant, Neemuch under sections 269, 272, 273 and 420 of IPC and all the proceedings arising therefrom be quashed.

4. Per-contra, Learned GA for the respondent/State opposed the prayer and prays for rejection of present petition by submitting that 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. There is no arbitrary action, illegality or perverse or abuse of power, hence this petition may be dismissed with costs.

5. Heard learned counsel for both the parties and perused the record.

6. In this regard, I may reproduce the section 89 of the Food Safety and Standards Act, 2006, which is as under :

"89. Overriding effect of this Act over all other food related laws.-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

7. Learned counsel for the petitioner has placed reliance upon the judgment delivered by Hon'ble Supreme Court in the case of Sharat Babu Digumarti Vs. Government (NCT of Delhi) reported in (2017) 2 SCC 18, in which it has been held that :

"32. Section 81 also specifically provides that the provisions of the Act shall have effect MAHANAG contained in any other law for the time being in force.

All provisions will have their play and significance, if the alleged offence pertains to offence of electronic record. It has to be borne in mind that IT Act is a special enactment. It has special provisions. Section 292 of the IPC makes offence sale of obscene books, etc. but once the offence has a nexus or connection with the electronic record the protection and effect of Section 79 cannot be ignored and negated. We are inclined to think so as it is a special provision for a specific purpose and the Act has to be given effect to so as to make the protection effective and true to the legislative intent. This is the mandate behind Section 81 of the IT Act. The additional protection granted by the IT Act would apply."

8. But Hon'ble Supreme Court in the case of the State of Maharashtra and another Vs. Sayyed Hassan Sayyed Subhan and others (Criminal Appeal no. 1195/2018 decided on 20/09/2018) has 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. 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 the IPC and at the same time, an offence under any other law. 2 The High Court ought to have taken note of Section 26 of the General Clauses Act, 1897 which Signed by: AMOL N reads as follows:

"Provisions 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."

9. On the basis of the law laid down by Hon'ble Supreme Court in the case of the State of Maharashtra (supra), it is clear that 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.

10. Co-ordinate Bench of this Court in the case of Manish Gupta Vs. State of Madhya Pradesh (MCRC no. 11462/2021 decided on 01/04/2021) has held as under :

"Where the innocent consumers are being cheated by selling adulterated or subStandards or unfit eatables, then this Court is of the considered opinion that the prosecution of the applicant for offence under Sections 420 and 272 of IPC is

permissible. It is not the case of the applicant that he has already been punished under the Act, 2006. Thus, the bar as contained under Section 26 of General Clauses Act would not apply "

11. In the instant case, it is clear that respondent no. 2 did not proceed against the petitioner under the provisions of the Food Safety and Standards Act, 2006, therefore, he can be punished for the offence punishable under section 269, 272, 273 and 420 of IPC.

12. Learned counsel for the petitioner has placed reliance upon the order/judgment delivered in the case of Neeraj Verma Vs. State of Madhya Pradesh (MCRC no. 3222/2015 decided on 30th September, 2015), but the same was based on different set of fact having no relevancy of the subject matter in hand.

13. In view of the aforesaid deposition of law, considering the totality of the facts and circumstances of the case, this court is of the considered opinion that no case is made out for quashment of FIR dated 28/12/2020 arising out of Crime no. 636/2020 registered at police station - Neemuch Cant, Neemuch under section 269, 272, 273 and 420 of IPC and all the proceedings arising therefrom.

14. Accordingly, present petition filed under section 482 of Cr.P.C fails and is hereby dismissed.

Certified copy, as per Rules.

(ANIL VERMA) JUDGE amol