

Sarita Devi vs The State Of Jharkhand on 5 September, 2024

Author: Anil Kumar Choudhary

Bench: Anil Kumar Choudhary

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1067 of 2019

Sarita Devi, aged about 39 years, wife of Dilip Kumar Ram,
resident of Karra Road, Baraik Toli, Khunti, P.O. & P.S.-
Khunti, Dist.- Khunti Petitioner

Versus

1.

The State of Jharkhand

2. Dr. Rashmi Romila Sanga, In-charge, Food Safety Officer, Khunti, P.O. & P.S.- Khunti, Dist.-
Khunti Opposite Parties For the Petitioners : Mr. Nilesh Kumar, Adv.

Ms. Alka Kumari, Adv.

For the State : Mr. Mukesh Kumar, Addl. PP
For the O.P. No. 2 : Mr. Lav Kumar Tiwary, Adv.

PRESENT

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 Cr.P.C. with a prayer for quashing entire criminal proceeding including the order dated 24.07.2019 in connection with Khunti P.S. case no. 55 of 2018 corresponding to G.R. Case No. 141 of 2018 whereby and where under, learned SDJM, has taken cognizance for the offence punishable under Sections 272, 273, 460, 467, 468, 471 of IPC and Section 7 of the Essential Commodities Act and Section 16 of the Prevention of Food Adulteration Act which has been repealed by Section 97 of the Food Safety and Standards Act, 2006.

3. The allegation against the petitioner is that the petitioner being the proprietor of M/s Sarita Flour Mill, was caught adulterating flour and edible oil by misbranding them and made such flour and oil noxious for sale, so that, the same to be consumed by general public. On the basis of the written report submitted by In- charge Food Safety Officer, Khunti, the police registered Khunti P.S. case no. 55 of 2018 and took up investigation of the case and after completion of the investigation, submitted charge sheet against petitioner for having committed the offences punishable under

Sections 272, 273, 460, 467, 468, 471 of IPC as well as Section 7 of the Essential Commodities Act and Section 16 of the Prevention of Food Adulteration Act, 1954 and on the basis of the same, learned SDJM, Khunti has taken cognizance of the said offence.

4. Learned counsel for the petitioner relying upon the judgment of the Hon'ble Supreme Court of India, in the case of Ram Nath vs. State of Uttar Pradesh & Ors. reported in (2024) 3 SCC 502, para 30 of which reads as under :

"30. The decision of this Court in Swami Achyutanand Tirth [Swami Achyutanand Tirth v. Union of India, (2014) 13 SCC 314 : (2014) 5 SCC (Cri) 647] does not deal with this contingency at all. In State of Maharashtra [State of Maharashtra v. Sayyed Hassan Sayyed Subhan, (2019) 18 SCC 145 : (2020) 3 SCC (Cri) 592] , the question of the effect of Section 97 FSSA did not arise for consideration of this Court. The Court dealt with simultaneous prosecutions and concluded that there could be simultaneous prosecutions, but conviction and sentence can be only in one. This proposition is based on what is incorporated in Section 26 of the GC Act. We have no manner of doubt that by virtue of Section 89 FSSA, Section 59 will override the provisions of Sections 272 and 273IPC. Therefore, there will not be any question of simultaneous prosecution under both the statutes." (Emphasis supplied) submits that by virtue of Section 89 of the Food Safety and Standards Act, 2006, Section 59 of the said Act will override the provisions of Sections 272 and 273 of the IPC, therefore, there will not be any question of simultaneous prosecution under both the statutes that is under the penal provisions of the Food Safety and Standards Act, 2006 and section 272 and 273 of IPC. It is next submitted that the offence under Sections 466, 467, 468 and 471 of IPC is not made out nor the offence punishable under Section 7 of the Essential Commodities Act is made out in the absence of any violation of any control order and since the Prevention of Food Adulteration Act has been repealed, so taking cognizance under section 16 of the said section is also not sustainable in law, hence, it is submitted that the prayer as prayed for in this criminal miscellaneous petition be allowed.

5. Learned Spl. P.P. on the other hand vehemently oppose the prayer of the petitioner and submits that all the offences in respect of which, learned Magistrate has taken cognizance, are made out against the petitioner, hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

6. Having heard the submissions made at the Bar and after going through the materials available in the record, so far as the offence punishable under Section 460 of the IPC is concerned, the same provides that when a person voluntarily causes or attempts to cause death or grievous hurt to any person, at the time of committing lurking house trespass by night, or house breaking by night, then every person jointly committing such lurking house trespass by night or house breaking by night, shall be punished. Now coming to the facts of the case, there is absolutely no allegation against the petitioner of committing lurking house trespass by night, or house breaking by night nor there is any allegation against the petitioner of voluntarily causing or attempt to causing death or grievous hurt

to any person. So in the considered opinion of this court, the offence punishable under Section 460 of IPC is not made out.

7. So far as the offence punishable under Section 467 of IPC is concerned, the same provides punishment for forgery of any valuable security or WILL or an authority to adopt a son etc. but there is no allegation, even remotely, of the same or similar nature, made anywhere in the FIR, Case Diary or even in the charge sheet. Hence, in the considered opinion of this Court, the offence punishable under Section 467 of IPC is not made out even if the entire allegations made against the petitioner are considered to be true in their entirety.

8. So far as the offence punishable under Section 468 of IPC is concerned, the same relates to committing forgery intending that the document or electronic record, shall be used for the purpose of cheating. Now coming to the facts of the case, there is no allegation against the petitioner of committing any forgery of any document or electronic record, hence in the considered opinion of this Court, the offence punishable under Section 468 of IPC is not made out; even if the entire allegations made against the petitioner are considered to be true in their entirety.

9. So far as the offence punishable under Section and Section 16 of the Prevention of Food Adulteration Act 1954 is concerned, since Section 97 of the Food Safety and Standards Act, 2006 has repealed inter alia the Prevention of Food Adulteration Act 1954, with effect from 05.08.2011 and the date of the occurrence alleged in this case being 06.04.2018 to 11.04.2018, so certainly, learned SDJM, has committed grave illegality by taking cognizance of statute which has already been repealed.

10. So far as the offence punishable under Section 272 and 273 of IPC is concerned, certainly, the allegations made against the petitioner prima facie, is sufficient to constitute the offence punishable under Section 272 and 273 of IPC.

11. So far as the judgment of the Hon'ble Supreme Court of India, in the case of Ram Nath vs. State of Uttar Pradesh & Ors. (supra) is concerned, the same prohibits simultaneous prosecution for the provisions under section 272 and 273 of the IPC and Section 59 of the Food Safety and Standards Act, 2006 but coming to the facts of there is no prosecution against the petitioner under section 59 of the Food Safety and Standards Act, 2006, so in the considered opinion of this court, there is no bar to proceed with the case, for the offence punishable under Section 272 and 273 of the IPC.

12. In view of the discussion made above, as the offences punishable under Sections 460, 467, 468, 471 of IPC as well as Section 7 of the Essential Commodities Act and Section 16 of the Prevention of Food Adulteration Act is not made out, even if the allegations made out against the petitioner are considered to be true in their entirety, so the order dated 24.07.2019 passed by learned SDJM, Khunti in connection with Khunti P.S. case no. 55 of 2018 corresponding to G.R. Case No. 141 of 2018 is quashed and set aside, so far as the same relates to cognizance of the said offences only.

13. It is made clear that the said order of cognizance will continue only in respect of the offence punishable under Section 272 and 273 of IPC.

14. In the result, this criminal miscellaneous petition is allowed to the aforesaid extent.

15. In view of the disposal of this criminal miscellaneous petition, the interim order, passed earlier, stands vacated.

16. The Registry is directed to intimate the court concerned forthwith.

(Anil Kumar Choudhary, J.) High Court of Jharkhand, Ranchi Dated, the 5th September, 2024
Smita /AFR