

Sanjiv @ Rajiv Jain And Another vs State Of U.P. And Another on 27 July, 2023

Author: Neeraj Tiwari

Bench: Neeraj Tiwari

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2023:AHC:150301

Court No. - 87

Case :- APPLICATION U/S 482 No. - 18548 of 2023

Applicant :- Sanjiv @ Rajiv Jain And Another

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

Counsel for Applicant :- Prateek Samadhiya

Counsel for Opposite Party :- G.A.

Hon'ble Neeraj Tiwari,J.

1. Heard learned counsel for the applicants and learned A.G.A. for the State.
2. The present 482 Cr.P.2C. application has been filed to quash the impugned order dated 10.04.2023 passed by Additional Chief Judicial Magistrate- 1st (Court No. -1), Jhansi in Complaint Case No. 174 of 2011 (State Vs. Sanjiv @ Rajiv Jain and another), under Section 7/16 of Prevention of Food Adulteration Act, 1954.
3. Learned counsel for the applicants submits that under the provision of Section 7/16 Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "Act, 1954"), a complaint dated 3.1.2011 has

been filed before Additional Chief Judicial Magistrate, Jhansi upon which cognizance order dated 10.1.2011 has been passed. He next submitted that Act, 1954 has been repealed and substituted by Food Safety and Standards Act vide notification dated 29.7.2010 in Extraordinary Gazette of India. Therefore, any cognizance taken under the provision of old Act i.e. Act, 1954 is nullity in the eye of law. He next submitted that he has raised specific objection before the Court vide application dated 10.4.2023, which was rejected on the same date i.e. 10.4.2023 only on the ground that it has been filed at very belated stage. He next submitted that once Act, 1954 is repealed, any proceeding under repealed act is bad in the eye of law and whole proceeding is liable to be set aside.

4. Learned AGA though oppose, but could not dispute the factual submission made by learned counsel for the applicants.

5. I have considered the rival submissions made by learned counsel for the parties and perused the record. Facts of the case are undisputed. Once, Act, 1954 has been repealed by the Government of India vide notification dated 29.7.2010 notified in Extraordinary Gazette of India, no proceeding can be initiated under the repealed Act against the applicants. In the present case, even complaint was filed on 3.1.2011 i.e. after repealment of Act, 1954, therefore, cognizance order as well as impugned order dated 10.4.2023 is bad and liable to be set aside.

6. This issue was also subject matter before this Court in Criminal Revision No. 227 of 2012 (Avinash Chandra Bajpai & another Vs. State of U.P. and another) and this Court after considering fact of repealment of Act, 1954, has set aside the cognizance as well as summoning order vide order dated 6.9.2017. Relevant paragraphs are being quoted below;

"Upon hearing counsel for the parties and perusal of impugned order of cognizance and considering the fact that Prevention of Food Adulteration Act, 1954 has been repealed w.e.f. 29.7.2010 and in its place the Food Safety and Standard Act, 2006 has come into force from 29.7.2010, I find that the Magistrate has passed the impugned order of cognizance without due application of mind and has acted wrongly in issuing process against the revisionist for an offence under non-existing Act. After enforcement of Food Safety and Standard Act, 2006, the procedure under the new Act has to be adopted against the revisionist and no cognizance of offence under the old and already repealed Act may be taken. The impugned order is wrong and illegal and may not be allowed to stand."

7. In view of facts and law mentioned herein above, present proceeding against the applicants in the aforesaid case is hereby quashed.

8. Accordingly, application is allowed. No order as to costs.

9. It is open for the opposite party no. 2 to take fresh action against the applicants strictly in accordance with law, if required.

Order Date :- 27.7.2023 Arvind