

Rajeev Kumar Jain vs The State Of Madhya Pradesh on 23 February, 2022

Author: Deepak Kumar Agarwal

Bench: Deepak Kumar Agarwal

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HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

Misc. Criminal Case No. 561/2021

(Rajeev Kumar Jain Vs. State of M.P. & Anr.)

Gwalior dated 23.02.2022.

Shri Sanjay Bahirani with Shri Amit Lahoti, learned counsel
for the petitioner.

Shri Anil Shukla, learned Public Prosecutor for the
respondents/State.

Petitioner has filed this petition under Section 482 of the Cr.P.C. for quashing the FIR registered at Police Station Kotwali, District Ashoknagar at Crime No.772/2020 for the offences punishable under Sections 420, 272 of IPC and Sections 51, 52, 26(2)(ii) of Food Safety and Standards Act, 2006.

2. The brief facts of the case are that Sub Inspector of Police Ravi Kaushal of Police Station Ashoknagar during patrolling on 21.11.2020 when reached hospital crossing, got secret information that the petitioner Rajeev Kumar is preparing spurious ghee in his godown and has stocked the ghee for sale. He along with two independent witnesses Sunil Ahirwar and Phool Singh Kalawat reached on the spot along with police force and raided the godown of petitioner at Ghosi Mohalla. On seeing the police personnel he tried to hide and he has been caught. On enquiry, he disclosed his name as Rajeev Kumar Jain, S/o Ramesh Chand Jain. During search the Police found 27 tin packs ghee were stored in the godown, out of

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which 20 tins were packed in cartoons, five tins of cow desi ghee, which was kept in wrapper, two tins of Nandini Desi ghee, total 400 kg. ghee was stored there. On physical examination it appears that the ghee is spurious. They also found gas chulha, electronic tol kanta, big utensils, 10 pouch of vegetable oil, 5 pouch of soyabean oil, palm oil and two packets of polithin and they were seized. The cost of the ghee was about Rs. two lakhs. As per SI Ravi Kaushal, petitioner by making and selling spurious ghee was cheating the purchaser. He also took sample of 200-200 gms. of ghee and after

completing the necessary procedure came to Police Station and registered case under sections 420, 272 of IPC and sections 51, 52, 26(2)(ii) of Food Safety and Standards Act, 2006 bearing Crime No. 772/2020. The statement of witnesses were recorded and the petitioner was arrested. The sample of ghee were sent through Deputy Director, Food and Safety, Ashoknagar. The report of Food Analyst has come on 15.1.2021 to the effect that the sample sent was as per norms, ie., no adulteration was found.

3. It is contended by learned counsel for the petitioner that the petitioner has been falsely implicated in this case. Learned counsel for the petitioner has filed the registration certificate of firm, license to sell ghee issued by Food and Drugs Department and the tax invoice of purchase and sell of ghee. Counsel for the petitioner further submits that there is no evidence available on record against

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the present petitioner to frame charges against aforesaid offence. It is further submitted that the FIR is based on false and fabricated story of the prosecution because at the time of inspection nothing was found in the godown. The respondent No.2 has registered the FIR against the petitioner under the aforesaid sections but prior to registering the FIR the procedure contemplated under section 42 of the Food Safety Act, 2006 has not been followed. It is further contended that while seizing the article by police authority, it was not sealed by them.

4. In support of his contention, learned counsel for the petitioner has placed reliance on Jitendra Kumar Jain Vs. State of Punjab, 2008(2) FAC 437, M.Cr.C.39005/2019 (Balmukund Garg Vs. State of MP & Anr.) and Cr.R. No.1462/2015 (Dinesh Sahu Vs. The State of MP). He further submits that even if the allegations mentioned in the FIR is taken at their face value and accepted in the entirety, then also it does not prima-facie constitute any offence against the petitioner. He also submits that the allegation in the FIR and other material does not disclose any cognizable offence against the petitioner. On the basis of aforesaid, he prays for quashing the FIR/charges framed against him.

5. Per contra, learned Public Prosecutor for the State has opposed the submissions and submitted that there is sufficient material available against the present petitioner to constitute the offence

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against him under the aforesaid sections, hence requested to reject the petition under Section 482 of Cr.P.C.

6. I have heard learned counsel for the parties and perused the material available on record.

7. The Supreme Court has held in the case of State of Haryana Vs. Bhajan Lal reported in (1992 Supp (1) SCC 335) that the High Court can quash the FIR to protect the accused from malicious prosecution. When a criminal proceeding is instituted with mala-fide intention to harass the person, the court can quash the entire proceeding for the ends of justice. The Supreme Court has issued seven guidelines which should be followed by the Court in the exercise of its inherent powers vested

by section 482 Cr.P.C., which reads as under:-

(i) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

(ii) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order

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of a magistrate within the purview of Section 155(2) of the Code.

(iii) Where the un-controverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(iv) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a magistrate as contemplated under Section 155(2) of the Code.

(v) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can even reach a just conclusion that there is sufficient ground for proceeding against the accused.

(vi) Where there is an express legal bar engrafted in any of the provision of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious

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redress for the grievance of the aggrieved party.

(vii) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

8. From perusal of the record, it appears that the respondents in utter violation of the Act of 2006, registered a case against present petitioner. The Act of 2006 makes it amply clear that prescribed procedure has to be followed for prosecuting an offender before taking any cognizance under the Act, but the same has not been followed by the respondents in the present case. In view of the

sample report according to which the seized ghee was not adulterated, hence no offence is made out against the petitioner.

9. In the light of aforesaid, the application filed by the petitioner is allowed. The impugned FIR (Annexure A-1) registered at Crime No.772/2020 at Police Station, Kotwali, District Ashoknagar is hereby quashed.

10. With aforesaid, the application stands disposed of.

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(Deepak Kumar Agarwal)
Judge

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