

Atul Saraf vs The State Of Madhya Pradesh on 21 May, 2024

Author: Pranay Verma

Bench: Pranay Verma

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IN THE HIGH COURT OF MADHYA PRADESH

AT I N D O R E
BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

MISC. CRIMINAL CASE No. 21562 of 2023

BETWEEN: -

ATUL SARAF S/O SAUBHAGYA SARAF, AGED
ABOUT 45 YEARS, OCCUPATION: BUSINESS
57 ARVIND NAGAR, KOYLA FATAK DISTT.
UJJAIN (MADHYA PRADESH)

(BY SHRI VIVEK SINGH - ADVOCATE)

AND

THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER THROUGH
POLICE STATION UNHEL, DISTT. UJJAIN
(MADHYA PRADESH)

(BY SHRI KAPIL MAHANT - PANEL LAWYER))

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Reserved on : 22.04.2024

Pronounced on : 21.05.2024
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This petition having been heard and reserved for on
on for pronouncement this day, the court passed the following

ORDER

1. By this petition preferred under Section 482 of the Cr.P.C. the petitioner has prayed for quashing the FIR registered at Police Station Unhel, District Ujjain vide Crime No.459/2020 for offences punishable under Sections 272, 420 of the IPC.

2. As per the prosecution, on 09.11.2020, firm Pukhraj Enterprises, Unhel, Tehsil Nagda, District Ujjain of which the petitioner is the owner was inspected during which it was found that he is preparing and selling impure/adulterated mava for human consumption. Similar cases had been registered against him previously also and he has been a habitual offender. On the basis of the inspection in which it was found that instead of making pure mava from milk, the petitioner is

making adulterated mava and selling the same for earning higher profits, a complaint was lodged by the Food Safety Officer with the Police on 06.12.2020 on the basis of which investigation was conducted and FIR has been registered against the petitioner for offences punishable under Sections 272, 420 of the IPC.

3. This petition has been preferred by the petitioner on the ground that even if the entire allegations as levelled against the petitioner are accepted to be true at their face value, no offence under Section 420 of the IPC is made out against him. There is no prima facie material to show that the petitioner deceived or cheated any person by his act of preparing adulterated mava. The essential ingredients for invocation of Section 420 of the IPC are not available against the petitioner even as per the case of the prosecution. It is further submitted that in view of the allegations levelled against the petitioner, offence under Section 272 of the IPC cannot be invoked against him. The allegation against the petitioner is of preparing adulterated food item. The matter would hence be governed by the provisions of Food Safety and Standards Act, 2006 which has an over riding effect on the provisions of Section 272 of the IPC. The allegation against the petitioner being of manufacturing and selling unsafe food for human consumption, the liability, if any, would be under the Act, 1954 and not under Section 272 of the IPC. Reliance has been placed by the learned counsel for the petitioner on the decision of this Court in Dinesh Sahu V/s. The State of Madhya Pradesh, Criminal Revision No.1462/2015 decided on 03.10.2017 and of the Apex Court in Ram Nath V/s. The State of Uttar Pradesh and Others (2024) 3 SCC 502.

4. Per contra, learned counsel for the respondent has submitted that there is sufficient material available on record to proceed with against the petitioner. In view of the allegations levelled against him the offences under Sections 272 and 420 of the IPC are very well made out and it cannot be said that there is no ground whatsoever to proceed against the petitioner. The case is still under investigation and at this stage FIR cannot be quashed in view of which the petition deserves to be dismissed.

5. I have considered the submissions of the learned counsel for the parties and have perused the record.

6. For constituting an offence of cheating under Section 420 of the IPC there should be someone who should be deceived by fraudulently or dishonestly inducing him to deliver any property to any person or to make, alter or destroy the whole or any part of valuable security or anything which is signed or sealed and which is capable of being converted into a valuable security. In the present case there is nothing to indicate that the petitioner induced any person to deliver any property to any person or made him alter or destroy the whole or any part of valuable security or anything which is signed or sealed and is capable of being converted into a valuable security. It is not the case of prosecution that someone was induced to purchase or procure the spurious mava and that such person on the basis of such inducement parted away with any property or valuable security. In absence of any such allegation the offence under Section 420 of the IPC against the petitioner cannot be said to be made out.

7. In regard to the aforesaid, learned counsel for the petitioner has rightly relied upon the decision of this Court in Dinesh Sahu (supra) in which it has been held as under :-

"8. Cheating has been defined in section 415 of the IPC which reads as under :-

415. Cheating - Whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any other person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

9. To constitute the offence of cheating within the meaning of section 420 IPC, somebody should be deceived by being fraudulently or dishonestly induced to deliver any property to any person or to make, alter or destroy the whole or any part of valuable security, or anything which is signed or sealed and which is capable of being converted into a valuable security.

10. In the instant case there is nothing to indicate that the petitioners had induced any person to deliver any property to any person or to make, alter or destroy the whole or any part of valuable security or anything which is signed or sealed and is capable of being converted into a valuable security. It is not the case of prosecution that somebody was induced to purchase or procure the spurious ghee and that such person indeed on the basis of such inducement, parted away with any property or valuable security. In absence of any such allegation, the offence under section 420 IPC against the petitioners cannot prima facie be made out.

14. Reference can be made to the decision of this court in the matter of Bansilal Agarwal Vs. State of M.P. (M.Cr.C.No.8629/2009) Order dated 3.2.2010 wherein following observations have been made in para 7 :-

"7. On consideration of the rival contention of both the counsel it is pertinent to note that the police had also registered the case against the applicants under the National Security Act and that registration has been challenged before the Division Bench of this Court as Writ Petition No.12015/09, wherein the Division Bench of this Court while ascertaining the legal ground for the detention of the applicant Bansilal under the National Security Act came to the conclusion that prima facie if some adulterated food articles were found in the premises of the applicant then certainly on that basis the case under section 420 IPC cannot be registered when the act for storing the adulterated articles has been specifically punishable under the Special Act. It is useful to quote the relevant para of the judgment passed by the Division Bench, which reads here as under :-

"The list of the cases registered against him nowhere shows that any of the case is in relation to misbranding or trying to sell the material manufactured by him in some different name. True it is that in some of the cases offences under Section 420 of the

Indian penal Code have been registered. Though the question is not directly before us, but we will have to observe that such registration in itself would not be sufficient because the First Information Reports do nowhere say that who were cheated and how an offence punishable under Section 420 of the Indian Penal Code is made out. We are of the prima facie opinion that offences punishable under section 420 of the Indian Penal Code are not made out because there is no material on record to show that somebody was cheated. It is nobody's case that the manufacturer or suppliers of ghee persuaded somebody to part with their property by telling them that the petitioners would be selling them pure ghee and by that further persuaded them that they would be getting pure ghee. There is nothing on record to show or suggest that somebody ever made any complaint that in absence of such a persuasion, he would not have purchased ghee nor would have parted with his property as price of ghee. Be that as it may, the question before us is that whether registration of an offence under section 420 of the Indian Penal Code and in some of the cases registration under section 188 of Indian Penal Code would add to the gravity for purposes of detention."

8. The allegation against the petitioner is that he has manufactured with an intention to sell unsafe food i.e. mava for human consumption and has thus become guilty of an offence of dealing with unsafe food. In similar fact situation the Apex Court in the matter of Ram Nath (supra) has held that the Act, 2006 gives overriding effect to the provisions of the said Act over any other law in so far as the law applies to the aspects of food in the field covered by the Act, 2006. When offence under Section 272 and 273 of the IPC are made out, even the offence under Section 59 of the Act, 2006 will be attracted. By virtue of Section 89 of the Act, 2006, Section 59 will override the provisions of Section 272 and 273 of the IPC and there cannot be any question of simultaneous prosecution under both the statutes. For ready reference the relevant part of the said order being material is reproduced as under :-

"20. Therefore, as far as offences relating to food and food safety are concerned, there are very exhaustive provisions made in FSSA dealing with all aspects of food and food security.

21. In the facts of these cases, the offence under Section 59 FSSA is very relevant, which reads thus:

"59. Punishment for unsafe food.--Any person who, whether by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is unsafe, shall be punishable--

(i) where such failure or contravention does not result in injury, with [imprisonment for a term which may extend to three months and also with fine which may extend to three lakh rupees]; [Subs. for "imprisonment for a term which may extend to six months and also with fine which may extend to one lakh rupees" by Act 18 of 2023, Section 2 and Sch. (w.e.f. 8-11-2023).]

(ii) where such failure or contravention results in a non-

grievous injury, with imprisonment for a term which may extend to one year and also with fine which may extend to three lakh rupees;

(iii) where such failure or contravention results in a grievous injury, with imprisonment for a term which may extend to six years and also with fine which may extend to five lakh rupees;

(iv) where such failure or contravention results in death, with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and also with fine which shall not be less than ten lakh rupees."

(emphasis supplied) Any person, whether by himself or by any other person on his behalf, manufactures or, stores or, sells or imports unsafe food for human consumption, becomes guilty of an offence of dealing with unsafe food. As can be noted, there are different punishments provided, starting from imprisonment for 3 months and extending to imprisonment for life and a fine, depending upon the extent and nature of injury caused by unsafe food. The fine is in the range of rupees three lakh to rupees ten lakh.

22. In these appeals, we are dealing only with Sections 272 and 273IPC. The same read thus:

"272. Adulteration of food or drink intended for sale.-- Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

273. Sale of noxious food or drink.--Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

23. Section 272 is an offence of adulteration of any article of food or drink. The definition of food under clause (a) of Section 3 FSSA also includes a liquid. If adulteration of an article of food is made which makes such articles noxious as food or drink, the person who adulterates is guilty of an offence punishable under Section 272IPC. It contemplates the accused adulterating food with the intention to sell adulterated food. Thus, intention is an ingredient of the offence. When by adulterating an article of food or liquid, it becomes harmful or poisonous, it can be said that it becomes noxious. If, by adulteration, an article of food becomes noxious, it becomes unsafe food within the meaning of Section 3(zz) FSSA.

24. Section 273IPC applies when a person sells or, offers or exposes for sale any article of food or drink which has been rendered noxious or has become unfit for food or drink. Section 273 incorporates requirements of knowledge or reasonable belief that the food or drink sold or offered for sale is noxious. Section 59 FSSA does not require the presence of intention as contemplated by Section 272IPC. Under Section 59 FSSA, a person commits an offence who, whether by himself or by any person on his behalf, manufactures for sale or stores or sells or distributes any article of food for human consumption which is unsafe. So, the offence under Section 59 FSSA is made out even if there is an absence of intention as provided in Section 272IPC. However, knowledge is an essential ingredient in sub-section (1) of Section 48, and therefore, it will be a part of Section 59 FSSA. The maximum punishment for the offence under Section 272IPC is imprisonment for a term which may extend to six months or with a fine. The substantive sentence for the offence punishable under Section 273 is the same, whereas, under Section 59, the punishment is of simple imprisonment extending from three months to a life sentence with a fine of Rupees 3 lakhs up to 10 lakhs.

Conclusion

26. Thus, there are very exhaustive substantive and procedural provisions in FSSA for dealing with offences concerning unsafe food.

27. In this context, we must consider the effect of Section 89 FSSA. Section 89 reads thus:

"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 of virtue of any law other than this Act."

The title of the Section indeed indicates that the intention is to give an overriding effect to FSSA over all "food- related laws". However, in the main section, there is no such restriction confined to "food-related laws", and it is provided that provisions of FSSA shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. So, the section indicates that an overriding effect is given to the provisions of FSSA over any other law.

29. Therefore, the main Section clearly gives overriding effect to the provisions of FSSA over any other law insofar as the law applies to the aspects of food in the field covered by FSSA. In this case, we are concerned only with Sections 272 and 273IPC. When the offences under Sections 272 and 273IPC are made out, even the offence under Section 59 FSSA will be attracted. In fact, the offence under Section 59 FSSA is more stringent.

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.

9. Thus in view of the aforesaid discussion, even if the allegations as levelled against the petitioner are taken to be true at their face value, no offence against him is made out under Section 420 of the IPC. Since the offence for which the petitioner has been charged is in respect of manufacturing for the purpose of sale unsafe food for human consumption, the provisions of Section 272 of the IPC cannot be invoked against him though he may be liable to be prosecuted by appropriate proceedings in accordance with law.

10. Consequently the petition deserves to be and is accordingly allowed. FIR No.459/2020 registered at Police Station Unhel, District Ujjain for offences punishable under Sections 272, 420 of the IPC against the petitioner is hereby quashed. The respondents shall however be at liberty to initiate appropriate proceedings in accordance with law against the petitioner and they would be free to act in accordance with the Food Safety and Standards Act, 2006 for offences punishable under Section 59 of the said Act.

11. The petition is accordingly allowed and disposed off.

(PRANAY VERMA) JUDGE ns