

Dharampal Satyapal Ltd vs The State Of Maharashtra And 3 Ors on 30 March, 2022

Bench: Chief Justice, Soumitra Saikia

Page No.# 1/7

GAHC010062722022

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/116/2022

DHARAMPAL SATYAPAL LTD.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF COMPANIES
ACT, 1956 AND HAVING THE REGD. OFFICE AT 98, OKHLA INDUSTRIAL
ESTATE, PHASE-3, NEW DELHI ALSO AT M/S DHARAMPAL SATYAPAL LTD.,
BYLANE II, INDUSTRIAL ESTATE, BAMUNIMAIDAN, GUWAHATI, ASSAM-
781021 THROUGH AUTHORIZED SIGNATORY MR. SHANTANU SARMA, S/O.
LT. TARAK CHANDRA SARMA, R/O. DISHA ENCLAVE, FLAT NO.5B2,
ARUNODAY PATH, CHRISTIANBASTI, GUWAHATI, 781005.

VERSUS

THE STATE OF MAHARASHTRA AND 3 ORS.
THROUGH DIRECTOR GENERAL OF POLICE POLICE HEADQUARTERS,
OLD COUNCIL HALL SHAHEED BHAGAT SINGH MARG MUMBAI-400001.

2:SANJAY T SALUNKHE
SENIOR POLICE INSPECTOR CRIME BRANCH
SOLAPUR CITY COMMISSIONER OF POLICE OFFICE IIND FLOOR
GANDHI CHOWK
SOLAPUR
MAHARASHTRA.

3:THE COMMISSIONER OF POLICE

KAMRUP (M) AT GUWAHATI
REP. BY THE PUBLIC PROSECUTOR
STATE OF ASSAM.

4:THE OFFICER IN CHARGE
CHANDMARI POLICE STATION POLICE
KAMRUP (M) AT GUWAHATI
REP. BY THE PUBLIC PROSECUTOR
STATE OF ASSA

Advocate for the Petitioner : DR. A SARAF

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 30.03.2022 Heard Dr. A. Saraf, learned senior counsel appearing for the appellant. Also heard Mr. M. Phukan, learned Additional Public Prosecutor, Assam, appearing for respondent nos. 3 and 4.

This writ appeal arises out of the order dated 22.03.2022 passed by the learned Single Judge in WP(C) 12/2022, the proceedings initiated by respondent nos. 1 and 2 under the provisions of Food Safety and Standards Act, 2006 (hereinafter referred to as "2006 Act") as well as the provision of the Indian Penal Code, and the subsequent search and seizure made by the Maharashtra Police in the factory premises of the writ appellant on 09.03.2022, at Guwahati in Assam.

The brief facts of the case are that the appellant company is incorporated under the provisions of the Companies Act, 1956, which has its manufacturing unit situated in the industrial estate, Guwahati, Assam, where the company manufactures, inter alia, 'Pan Masala'. According to the appellant, 'Pan Masala' is defined under Regulation 2.11.5 of the Food and Safety Standards (Food Products Standards and Food Activities) Regulation, 2022 as follows:

"2.11.5: Pan Masala means the food generally taken as such or in conjunction with pan, it may contain -

Betelnut, lime, coconut, catechu, saffron, cardamom, dry fruits, mulethi, sabnarmusa, other aromatic herbs and spices, sugar, glycerine, glucose, Page No. # 3/7 permitted natural colours, menthol and non-prohibited flavours. It shall be free from added coal tar colouring matter and any other ingredient injurious to health.

It shall also conform to the following standards, namely, Total ash Not more than 8.0 per cent by weight (on dry basis) Ash insoluble Not more than 0.5 per cent by weight (on dry basis) In dilute HCl acid."

In the State of Maharashtra, the Commissioner of Food Safety, who has been appointed under the 2006 Act for the State of Maharashtra, had passed an order on 15.07.2021 under section 30(2)(a) of the 2006 Act prohibiting manufacture, storage, distribution or sale of, inter alia, 'Pan Masala' in the

State of Maharashtra. Therefore, 'Pan Masala' is a prohibited item in Maharashtra. To manufacture, sell, store or distribute 'Pan Masala' is also an offence inter alia, section 26(2)(iv) of the 2006 Act, which reads as under:

"26. Responsibilities of the food business operator. -

(1) *** ***(2) No food business operator shall himself or by any person on his behalf manufacture, store, sell or distribute any article of food -

| | | | |
|-------|---|-----|-----|
| (i) | *** | *** | *** |
| (ii) | *** | *** | *** |
| (iii) | *** | *** | *** |
| (iv) | Which is for the time being prohibited by the Food Authority or | | |

Central Government or the State Government in the interest of public health; or

(v) *** ***(v)"

The admitted position is that there is no similar prohibition either on manufacture, storage, distribution or sale of 'Pan Masala' in the State of Assam. On 06.12.2021, at 20:10 hours, an FIR was lodged at Solapur Police Station, Maharashtra, where the informant is the Food Safety Officer, Solapur, states that a consignment of prohibited food items, which included 'Rajanigandha Pan Page No.# 4/7 Masala', had been seized from one Mohammad Imran, aged about 42 years, resident of Hyderabad, the total value of which is Rs. 1,99,387.00. The FIR was lodged under section 26(2)(i) and 26(2)(iv) of the Food Safety and Standards Act, 2006 and section 188/272/273/328 IPC.

It appears that consequent to filing of the said FIR, investigation was made and it was found that the seized items were manufactured in Guwahati, Assam. The Investigating Officer visited the factory premises of the appellant at Chandmari, Guwahati, on 09.03.2022, having been assisted by the police officers of the concerned police station and, therefore, sealed the entire machinery and goods lying in the factory premises and the factory was also sealed. Aggrieved by the said act on the part of the respondent nos. 1 and 2, the appellant filed a writ petition, being WP(Crl.) 12/2022. The learned Single Judge, vide interim order dated 22.03.2022 has given limited relief to the writ petitioner/appellant inasmuch as the writ petitioner and its employees have been given access to every part of the multi-storied building where the seized machinery are situated, but the plant and machinery remained sealed. The relevant portion of the order passed by the learned Single Judge is reproduced below.

"Sale of Rajanigandha Pan Masala is prohibited in Maharashtra but not prohibited in Assam. Under Section 102 of the CrPC Police is not empowered to seize immovable property. Therefore, the petitioner is prohibited from using the movable machineries used for manufacturing Rajanigandha Pan Masala within the premises of the petitioner. It is hereby directed that the petitioner and its employees shall have access to every part of the multistoried building where the said seized machineries are situated. Except the seized machineries the petitioner and its employees will be at

liberty to use other properties situated inside the building.

Continuation of this order after appearance of the respondent nos. 1 and

2 shall be considered after hearing both sides."

Aggrieved by the order passed by the learned Single Judge, writ petitioner is before this court in appeal.

Page No.# 5/7 Our attention is drawn by the learned senior counsel for the writ appellant to the non-compliance of the mandatory provision of subsection (3) of section 102 of the Code of Criminal Procedure. Section 102 CrPC reads as under:

"102. Power of police officer to seize certain property.

(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer. (3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court [or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.

Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale."

Sub-section (3) of section 102 CrPC makes it mandatory upon the police officer, who is conducting the seizure, to report the seizure to the Magistrate having jurisdiction in the area forthwith. For this reason, when this matter came up before us yesterday (20.03.2022), we had asked the learned Additional Page No.# 6/7 Public Prosecutor, Assam, appearing for respondent nos. 3 and 4 to obtain instructions whether this provision had been complied with in the present case. Today, the learned Additional Public Prosecutor has placed before us a written instruction dated 29.03.2022, received from the Deputy Commissioner of Police, Central District, Guwahati, stating that the visiting team of Solapur Police, Maharashtra, had not informed the local court regarding the action/seizure at the

writ appellant's premises at Chandmari on 09.03.2022. This it states is in violation of section 102(3) CrPC. We make this report of the Deputy Commissioner of Police, Central District, Guwahati, a part of the record and is now marked as Annexure-A. It is settled position of law that the police officer, who is conducting the seizure under section 102 CrPC, is mandated to inform the concerned Magistrate forthwith about the search and seizure and if this provision is violated, then the entire exercise would be in violation of law.

That apart, we are also prima facie of the view that manufacture, storage, distribution or sale of 'Pan Masala' is not prohibited in the State of Assam though it is so in the State of Maharashtra. There is no evidence and, in fact, there is no allegation in the FIR that the appellant company had sold 'Pan Masala' to anyone in Maharashtra. In view thereof, we find that the action done at the behest of respondent nos. 1 and 2, so far as it is related to sealing of the appellant's factory premises as well as the seizure of plant, machinery and finished goods of the appellant company is prima facie beyond their jurisdiction. In view of the above, let the factory of the appellant company be unlocked, seals removed and be handed over to the manager/occupier of the appellant company. This shall, however, be done in presence of the concerned Deputy Commissioner and competent police officer of the concerned police station and Page No.# 7/7 the report/Memo thereof will be handed over in the court of the concerned Magistrate (Judicial) forthwith. The appellant company will be allowed to take possession of the manufactured goods only after giving a bank guarantee of Rupees One Crore.

Meanwhile, the appellant shall implead the Central Food Safety Officer, North Eastern Region, Guwahati, Assam, as well as the Commissioner, Food Safety, Maharashtra, as respondent nos. 5 and 6 respectively. Let notices be issued to respondent nos. 1 and 2 as well as the newly impleaded respondent nos. 5 and 6.

Appellant shall take steps within 48 hours for service of notice upon the said respondents.

List again on 01.04.2022.

Let copy of this order be furnished to the learned Additional Public Prosecutor, free of cost, for onward compliance and for information to the concerned officers.

JUDGE

CHIEF JUSTICE

Comparing Assistant