

Ashok Kumar Pal vs State Of U.P. And Another on 6 May, 2024

HIGH COURT OF JUDICATURE AT ALLAHABAD

?

A.F.R.

Neutral Citation No. - 2024:AHC:80364

Court No. - 92

Case :- APPLICATION U/S 482 No. - 1700 of 2024

Applicant :- Ashok Kumar Pal

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

Counsel for Applicant :- Manish Kumar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard learned counsel for the applicant and Sri Anish Kumar Upadhyay, learned AGA for the State.

2. The present 482 Cr.P.C. application has been filed to quash the entire proceedings of Complaint Case No.1340 of 2011 (State Vs. Ashok Kumar Pal), under Sections-51, 59(i) of the Food Safety and Standards Act, 2006 (hereinafter referred to as 'the Act, 2006'), Police Station-George Town, District-Allahabad (now Prayagraj), pending in the court of Additional Chief Judicial Magistrate, Court No.2, Allahabad as well as summoning order dated 12.09.2023.

3. Facts giving rise to the present case are that after collecting the sample of milk from his shop on 02.11.2010, the complaint was lodged against the applicant on 24.05.2011 under the provision of Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act, 1954'), on which the

Magistrate, after taking cognizance, had issued a summon on 12.09.2023 to applicant. This cognizance and summoning order was challenged by the applicant before this court in Application under Section 482 No. - 38175 of 2022 on the ground that on the date of filing the complaint, the provisions of the Act, 1954 were already repealed on 29.07.2010 and a new act namely the Act, 2006 had come into force. This application was allowed by the Court vide order dated 03.07.2023 and cognizance as well as summoning order dated 12.09.2023 was set aside, with the liberty to proceed against the applicant as per the provisions of the Act, 2006. Thereafter, learned court below again passed an order dated 12.09.2023 on the basis of same complaint filed against the applicant and summoned the applicant under Sections 51, 59(i) of the Act, 2006, which is under challenge in the present application.

4. Contention of learned counsel for the applicant is that once the earlier summoning order dated 12.09.2023 was set aside by this Court on the ground that that summoning order was passed under the Act, 1954, which was already repealed by the Act, 2006, therefore, fresh complaint should have been filed as per the Act, 2006, but, in the present case, the complaint filed under the Act, 1954 was taken into consideration and summoning order was passed on that complaint as well as material available with the complaint. Second contention of learned counsel for the applicant is that as per Section-77 of the Act, 2006, the prosecution on the basis of fresh complaint under the Act, 2006 is itself barred beyond three years because the sample was collected on 02.11.2010 and if a fresh complaint is filed under the Act, 2006, then the concerned court cannot take cognizance over the same in view of Section-77 of the Act, 2006, because more than three years has already expired from the date of commission of offence i.e. on the date of collection of sample of milk.

5. Per contra, learned AGA has submitted incorrect mentioning of sections in the complaint cannot make the complaint illegal because of adulterated food (milk), found in the shop of applicant, the complaint was filed against him and on the basis of the same complaint and material, learned Magistrate has passed the order as per the new Act, 2006. Therefore, there is no illegality in the impugned summoning order.

6. After hearing the submission of learned counsel for the parties and on perusal of record, it appears that earlier complaint dated 24.05.2011 was filed as per the procedure of Section 20 of the Act, 1954 after taking sanction from the District Magistrate. Section 20 of the Act, 1954 is being quoted as under:

20. Cognizance and trial of offences.-(1) [No prosecution for an offence under this Act not being an offence under section 14 or section 14A] shall be instituted except by, or with the written consent of, [the Central Government or the State Government or a person authorised in this behalf, by general or special order, by the Central Government or the State Government:

Provided that a prosecution for an offence under this Act may be instituted by a purchaser [or recognised consumer association] referred to in section 12, [if he or it produces] in court a copy of the report of the public analyst along with the complaint.

[(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under sub-section (1AA) of section 16 shall be cognizable and non-bailable).]?

7. Under the new Act, 2006, the procedure for launching the prosecution has been mentioned in Section 42 of the Act, 2006. As per Section 42 of the Act, 2006 the prosecution can be initiated only after the designated authority's recommendation and thereafter sanction of Commissioner of Food Safety. Section 42 of the Act, 2006 is being quoted as under:

?42. Procedure for launching prosecution.?(1) The Food Safety Officer shall be responsible for inspection of food business, drawing samples and sending them to Food Analyst for analysis.

(2) The Food Analyst after receiving the sample from the Food Safety Officer shall analyse the sample and send the analysis report mentioning method of sampling and analysis within fourteen days to Designated Officer with a copy to Commissioner of Food Safety.

(3) The Designated Officer after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution.

(4) The Commissioner of Food Safety shall, if he so deems fit decide, within the period prescribed by the Central Government, as per the gravity of offence, whether the matter be referred to,?

(a) a court of ordinary jurisdiction in case of offences punishable with imprisonment for a term up to three years; or

(b) a Special Court in case of offences punishable with imprisonment for a term exceeding three years where such Special Court is established and in case no Special Court is established, such cases shall be tried by a Court of ordinary jurisdiction.

(5) The Commissioner of Food Safety shall communicate his decision to the Designated Officer and the concerned Food Safety Officer who shall launch prosecution before courts of ordinary jurisdiction or Special Court, as the case may be; and such communication shall also be sent to the purchaser if the sample was taken under section 40.?

8. From the perusal of Section 20 of the Act, 1954 as well as Section 42 of the Act, 2006, it is clear that for launching the prosecution on the basis of complaint, procedure is different in both the Acts. In the Act, 1954 only the District Magistrate can grant sanction for the prosecution, but in the Act, 2006, it is the Commissioner of Food Safety, who, after getting recommendation of Designated Officer can grant sanction for prosecution. Therefore, any complaint filed under the Act, 1954 after the repeal of the same, will not be a valid complaint for the Act, 2006 unless same is filed as per procedure of the Act, 2006.

9. Even the complaint filed under the Act, 1954 after its repeal is not saved by Section 97 of the Act, 2006 except in certain circumstances. For ready reference Section 97 of the Act, 2006 is being quoted as under:

97. Repeal and savings.?(1) With effect from such date as the Central Government may appoint in this behalf, the enactment and orders specified in the Second Schedule shall stand repealed:

Provided that such repeal shall not affect:?

(i) the previous operations of the enactment and orders under repeal or anything duly done or suffered thereunder; or

(ii) any right, privilege, obligation or liability acquired, accrued or incurred under any of the enactment or Orders under repeal; or

(iii) any penalty, forfeiture or punishment incurred in respect of any offences committed against the enactment and Orders under repeal; or

(iv) any investigation or remedy in respect of any such penalty, forfeiture or punishment, and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed:

(2) If there is any other law for the time being in force in any State, corresponding to this Act, the same shall upon the commencement of this Act, stand repealed and in such case, the provisions of section 6 of the General Clauses Act, 1897 (10 of 1897) shall apply as if such provisions of the State law had been repealed.

(3) Notwithstanding the repeal of the aforesaid enactment and Orders, the licences issued under any such enactment or Order, which are in force on the date of commencement of this Act, shall continue to be in force till the date of their expiry for all purposes, as if they had been issued under the provisions of this Act or the rules or regulations made thereunder.

(4) Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act or Orders after the expiry of a period of three years from the date of the commencement of this Act.?

10. From the perusal of Section 97 of the Act, 2006, it is explicit that only those proceedings that commence or duly done under the Act, 1954 are saved, but proceeding done under the Act, 1954 after its repeal cannot be said to be duly done under the Act, 1954.

11. It is also clear from Section 97(ii) of the Act, 2006, if sample of adulterated food (including milk) is collected from a food business operator during the existence of the Act, 1954 then his liability acquired under the Act, 1954 will not be affected by the new Act, 2006, and despite repealing the Act, 1954, legal proceeding may be continued under the Act of 1954.

12. Section 6 of the General Clauses Act, 1897 also does not save the proceeding under the repeal Act if no cause of action arises before the repeal of the Act. Section-6 of General Clauses Act, 1897 is being quoted as under:

?6. Effect of repeal.?Where this Act, or any 33[Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not?

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or any thing duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.?

13. Apex Court in the case of Hindustan Unilever Limited. Vs. State of Madhya Pradesh reported in (2020) 10 SCC 751 also discussed the effect of the repeal Act in the light of Section-6 of General Clauses Act, 1897. Paragraph no.16 of the Hindustan Unilever (supra) is being quoted as under:

?16. In terms of Section 6 of the General Clauses Act, 1897, unless different intention appears, the repeal of a statute does not affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed. But in the 2006 Act, the repeal and saving clause contained in Sections 97(1)(iii) and (iv) specifically provides that repeal of the Act shall not affect any investigation or remedy in respect of any such penalty, forfeiture or punishment and the punishment may be imposed, ?as if the 2006 Act had not been passed?. The question as to whether penalty or prosecution can continue or be initiated under the repealed provisions has been examined by this Court in *State of Punjab v. Mohar Singh* [*State of Punjab v. Mohar Singh*, AIR 1955 SC 84 : 1955 Cri LJ 254] , wherein this Court examined Section 6 of the General Clauses Act which is on lines of Section 38(2) of the Interpretation Act of England. It was held as under : (AIR pp. 87-89, paras 6 & 9) ?6. Under the law of England, as it stood prior to the Interpretation Act of 1889, the effect of repealing a statute was said to be to obliterate it as completely from the records of Parliament as if it had never been passed, except for the purpose of those actions, which were commenced, prosecuted and concluded while it was an existing law [*Vide Craies on Statute Law*, 5th Edn., p. 323.] . A repeal therefore without any saving clause would destroy any proceeding whether not yet begun or whether pending at the time of the enactment of the repealing Act and not already prosecuted to a final judgment so as to create a vested right [*Vide Crawford on Statutory Construction*, pp. 599-600w.] . To obviate such results a practice came into existence in England to insert a saving clause in the repealing statute with a view to preserve rights and liabilities already accrued or incurred under the repealed enactment.

Later on, to dispense with the necessity of having to insert a saving clause on each occasion, Section 38(2) was inserted in the Interpretation Act of 1889 which provides that a repeal, unless the contrary intention appears, does not affect the previous operation of the repealed enactment or anything duly done or suffered under it and any investigation, legal proceeding or remedy may be instituted, continued or enforced in respect of any right, liability and penalty under the repealed Act as if the repealing Act had not been passed. Section 6 of the General Clauses Act, as is well known, is on the same lines as Section 38(2) of the Interpretation Act of England.

9. The offence committed by the respondent consisted in filing a false claim. The claim was filed in accordance with the provision of Section 4 of the Ordinance and under Section 7 of the Ordinance, any false information in regard to a claim was a punishable offence. The High Court is certainly right in holding that Section 11 of the Act does not make the claim filed under the Ordinance a claim under the Act so as to attract the operation of Section 7.

Section 11 of the Act is in the following terms:

?11. Repeal.?The East Punjab Refugees (Registration of Land Claims) Ordinance 7 of 1948 is hereby repealed and any rules made, notifications issued, anything done, any action taken in exercise of the powers conferred by or under the said Ordinance shall be deemed to have been made, issued, done or taken in exercise of the powers conferred by, or under this Act as if this Act had come into force on 3rd day of March, 1948.? ?

? The truth or falsity of the claim has to be investigated in the usual way and if it is found that the information given by the claimant is false, he can certainly be punished in the manner laid down in Sections 7 and 8 of the Act.

If we are to hold that the penal provisions contained in the Act cannot be attracted in case of a claim filed under the Ordinance, the results will be anomalous and even if on the strength of a false claim a refugee has succeeded in getting an allotment in his favour, such allotment could not be cancelled under Section 8 of the Act. We think that the provisions of Sections 4, 7 and 8 make it apparent that it was not the intention of the legislature that the rights and liabilities in respect of claims filed under the Ordinance shall be extinguished on the passing of the Act, and this is sufficient for holding that the present case would attract the operation of Section 6 of the General Clauses Act.

It may be pointed out that Section 11 of the Act is somewhat clumsily worded and it does not make use of expressions which are generally used in saving clauses appended to repealing statutes; but as has been said above the point for our consideration is whether the Act evinces an intention which is inconsistent with the continuance of rights and liabilities accrued or incurred under the Ordinance and in our opinion this question has to be answered in the negative.?

14. So far as the second contention of learned counsel for the applicant is that now the prosecution is barred by Section-77 of the Act, 2006 is concerned, for that, it is clear from the perusal of Section-77 of the Act, 2006 that even after the approval of Commissioner of Food Safety, cognizance of an offence by the court can be taken up to three years. For ready reference, Section-77 of the Act, 2006 is being quoted as under:

?77. Time limit for prosecutions.?Notwithstanding anything contained in this Act, no court shall take cognizance of an offence under this Act after the expiry of the period of one year from the date of commission of an offence:

Provided that the Commissioner of Food Safety may, for reasons to be recorded in writing, approve prosecution within an extended period of up to three years.?

15. From the perusal of Section-77 of the Act, 2006, it is explicit that the court can take cognizance up to three years from the date of commission of the offence. A commission of an offence under the Act, 2006 can be considered on the date when the sample was collected. In the present case, the

sample was collected on 02.11.2010 and the proceeding was initiated under the Act, 1954, despite repealing the same. Therefore, that proceeding was not saved u/s 97 of the Act, 2006. Therefore, even if the fresh complaint is filed under the Act, 2006 then the concerned court cannot take cognizance in view of the bar of Section-77 of the Act, 2006. Therefore, the contention of learned counsel for the applicant is correct that now the prosecution is barred u/s 77 of the Act, 2006 as the sample of the milk was collected on 02.11.2010, therefore, cognizance cannot be taken in a fresh complaint filed under the Act, 2006.

16. In the present case, this court by the order dated 03.07.2023 had set aside the earlier summoning order dated 12.09.2023 on the ground that on the date of filing the complaint under the Act, 1954, the Act, 2006 already repealed it and liberty was also granted to proceed in accordance with the Act, 2006 but the opposite party no.2 has not initiated any proceeding as per the Act, 2006, even then, the learned Magistrate has erroneously passed a fresh summoning order dated 12.09.2023 on the basis of the same, a complaint, which was filed as per the procedure of the Act, 1954, even a sample of milk was collected on 02.11.2010, which itself was after the repeal of the Act, 1954. Therefore, not only the summoning order dated 12.09.2023 is erroneous, but also the entire proceeding of the Complaint Case No.1340 of 2011 (State Vs. Ashok Kumar Pal) is itself illegal as the same was initiated on the basis of the complaint filed under the Act, 1954 (Repealed Act), not as per the procedure of the Act, 2006 which was prevalent at the time of filing the complaint.

17. Therefore, the proceeding of Complaint Case No.1340 of 2011 (State Vs. Ashok Kumar Pal), under Sections-51, 59(i) of the Act, 2006, Police Station-George Town, District-Allahabad (now Prayagraj), pending in the court of Additional Chief Judicial Magistrate, Court No.2, Allahabad as well as summoning order dated 12.09.2023 is hereby set aside.

18. As already observed hereinabove that more than three years has expired from the date of commission of offence, therefore, cognizance cannot be taken by the concerned court, even on the fresh complaint in view of Section-77 of the Act, 2006. Therefore, Food Safety Officer, cannot be permitted to file a fresh complaint under the Act, 2006 because the court cannot take cognizance on that complaint in view of Section-77 of the Act, 2006.

19. With the aforesaid observations, the present application is allowed.

Order Date :- 6.5.2024 S.Chaurasia