

Date Of Decision: 13.08.2024 vs M/S Baba Store Kullu on 13 August, 2024

Author: Sandeep Sharma

Bench: Sandeep Sharma

2024:HHC:7129 IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA Cr. Revision No.252 of 2022 Date of Decision: 13.08.2024 .

State of Himachal PradeshPetitioner Versus M/s Baba Store Kullu, Himachal Pradesh ... Respondent

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? 1 For the Petitioner: Mr. Rajan Kahol, Mr. Vishal Panwar and Mr. B.C.Verma, Additional Advocate Generals, with Mr. Ravi Chauhan, Deputy Advocate General.

For the Respondents: Mr. G.R.Palsra, Advocate, for respondent No.1.

Mr. Yash Pal, Advocate vice Mr. Narender and 3.

Sandeep Sharma, Judge(oral):

Instant Criminal Revision Petition filed under Section 397/401 of the Code of Criminal Procedure, having been filed by the petitioner-State, lays challenge to judgment dated 17.09.2021 passed by learned Additional Sessions Judge-1, Mandi, District Mandi, Himachal Pradesh in Criminal Revision No.02 of 2015, reversing the order dated 28.08.2014 passed by learned Chief Judicial Magistrate, Mandi, H.P., in Cr.M.A. No.352-IV/2014 in Food Act No.64-I/2013/26- Whether the reporters of the local papers may be allowed to see the judgment?

2024:HHC:7129 III/ 2013, whereby prayer made on behalf of the respondents for their discharge under Section 258 of Cr.P.C, came to be dismissed.

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2. Precisely, the facts of the case, as emerge from the record are that Food Safety Officer, Mandi, H.P., filed a complaint under Section 34 of the Food Safety and Standards Act, 2006 (for short 'Act') against the respondents, alleging therein that respondent No.3, Vinod Kumar Bhardwaj, had stored

prohibited tobacco products meant for human consumption in his possession for sale and distribution to the general public. It also came to be alleged in the complaint that respondent No.1, M/s Baba Store Kullu, is also liable to be prosecuted on account of the fact that respondent No.2, M/s Friends Traders, consigned his products to respondent No.1. Having taken cognizance of allegations contained in the complaint, trial Court vide order dated 05.04.2013, issued process against the accused named in the complaint i.e. petitioners herein. Pursuant to process issued against them, respondents-accused put in appearance and on their having furnished bail bonds, they were enlarged on bail. During the pendency of the complaint, accused moved an application under Section 258 Cr.P.C., for their discharge on the ground that no offence is made out against accused persons. However, such prayer of them was rejected and vide order dated 28.08.2014, application, as detailed hereinabove, filed on behalf of the accused was dismissed.

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3. Being aggrieved and dissatisfied with order dated 28.08.2014 passed by trial Court, accused preferred Criminal .

Revision Petition before learned Additional Sessions Judge-1, Mandi, District Mandi, Himachal Pradesh, which came to be allowed vide order dated 17.09.2021. Vide aforesaid order, learned Additional Sessions Judge, while setting aside summoning order, also quashed the complaint on the ground that no case much less under Section 34 of the Act is made out against the accused, named in the complaint.

In the aforesaid background, petitioner-State has approached this Court in the instant proceedings, praying therein to set aside order dated 17.09.2021 passed by learned Additional Sessions Judge and thereafter, restore the order dated 28.08.2014 passed by trial Court.

4. Having heard learned counsel for the parties and perused material available on record vis-à-vis reasoning assigned in the impugned order passed by learned Additional Sessions Judge, this Court finds no illegality or infirmity in the same and as such, no interference is called for. There is no dispute that Food Safety Officer, at whose instance complaint under Section 34 of the Act, came to be instituted against the accused, named in the complaint, had never recovered tobacco product from the possession of the accused, rather he simply instituted complaint on the basis of cash memo, which was allegedly issued by the accused in lieu of sale of tobacco products.

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5. To invoke Section 34 of the Act, it was incumbent upon the complainant i.e. Food Safety Officer to prove that prohibited .

tobacco products meant for human consumption were found in possession of the accused for the purpose of the sale and distribution to general public. However, in the instant case before initiation of complaint, no prohibited tobacco products meant for human consumption were ever recovered from the possession of the accused or from their business premises, rather in complaint it came to

be alleged that respondent No.3 was having prohibited tobacco products meant for human consumption in his possession for sale and distribution to general public.

6. Learned trial Court merely on the basis of cash memo and alleged bills adduced on record, proceeded to issue process against the accused, named in the complaint. Otherwise also, bare perusal of Section 34 of the Act, clearly reveals that at first instance Commissioner of Food Safety can serve emergency prohibition notices and orders to the food business operators that too if the designated officer is satisfied that the health risk condition exists with respect to any food business and on application made by him to the Commissioner of Food Safety for imposing the appropriate prohibition, prohibitory orders are required to be passed. Any person who knowingly contravenes such an order shall be guilty of an offence 2024:HHC:7129 and shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to rupees two .

lakhs.

7. In the instant case before initiation of proceedings under Section 34 of the Act, at no point of time, document, if any, ever came to be adduced on record suggestive of the fact that Food Inspector had served prohibition notices and orders, if any, issued by the Commissioner of Food Safety to the accused, who allegedly were possessing prohibited tobacco products meant for human consumption. Since, in the case at hand very basic ingredients of Section 34 of the Act, are missing and there is nothing to connect accused, named in the complaint, with sale and purchase of prohibited tobacco products meant for human consumption, accused named in the complaint, rightly filed application under Section 258 Cr.P.C for their discharge. However, even at that stage learned trial Judge without bothering to go through the provisions contained under Section 34 of the Act, proceeded to dismiss the application reiterating that prima-facie he is convinced that there is sufficient material available on record to proceed against the accused, named in the complaint. Needless to say, by now it is well settled that while issuing process, Court is not expected to act as post office, rather there has to be application of mind and application of mind must reflect in the 2024:HHC:7129 order. Since, in the instant case bare perusal of summoning order reveals that Court, while issuing process, failed to take note of .

provision of Section 34 of the Act, learned Additional Sessions Judge rightly set aside the summoning order. Since, no material, worth credence, ever came to be adduced on record alongwith the complaint suggestive of the fact that accused, named in the complaint, were indulging in the sale and purchase of prohibited tobacco products meant for human consumption and merely on the basis of cash memo, complaint came to be instituted against the accused, named in the complaint, learned Additional Sessions Judge rightly quashed the complaint, which otherwise would not have survived for the reasons, as detailed hereinabove.

8. In this regard, reliance is placed upon the judgment rendered by Hon'ble Apex Court in Pepsi Foods Limited and another vs. Special Judicial Magistrate and others, (1998) 5 Supreme Court Cases 749, wherein it has been held as under:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise 2024:HHC:7129 the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

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9. No doubt, at the time of framing of charge or issuing process, Court is not expected to sift entire evidence adduced on record alongwith the complaint or charge sheet, but certainly court is expected to see documents to infer prima facie case, if any, against the accused, named in the complaint or charge sheet. Since in the instant case, very foundation of the case under Section 34 of the Act is shaky/weak, no illegality or infirmity can be said to have been committed by learned Additional Sessions Judge, while passing impugned order, which otherwise appears to be based upon proper appreciation of facts as well as law.

10. Consequently, in view of the above, the present appeal fails and is accordingly dismissed alongwith pending applications, if any.

(Sandeep Sharma), Judge August 13, 2024 (shankar)