

Sri.Shivayogi Chandrashekar Ammingad vs The State Of Karnataka on 17 December, 2021

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IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 17TH DAY OF DECEMBER, 2021

BEFORE

THE HON'BLE MRS.JUSTICE M.G.UMA

CRL.P NO.101081/2019

BETWEEN

SRI.SHIVAYOGI CHANDRASHEKAR AMMINGAD
AGE: 44 YEARS, OCC: BUSINESS,
R/O: M/S. AMMINAGAD AGENCY,
SUBAS ROAD, OPP: K.C.C. BANK, DHARWAD.

...PETITIONER

(BY SRI.VENKATESH M.KHARVI, ADV.)

AND

THE STATE OF KARNATAKA
THROUGH FOOD SAFETY OFFICER,
HDMC(A), CIRCLE-1,
R/BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
DHARWAD.

RESPONDENT

(BY SRI.PRAVEEN K.UPPAR, HCGP)

THIS CRIMINAL PETITION IS FILED U/S 482 OF CR.P.C.,
SEEKING TO QUASH THE ENTIRE PROCEEDINGS SO FOR AS THE
PETITIONER IS CONCERNED IN CC NO.105/2019 ON THE FILE OF 2ND
ADDL. CIVIL JUDGE AND 2ND JMFC COURT, DHARWAD FOR OFFENCE
PUNISHABLE UNDER SECTION 59(1) OF FOOD SAFETY AND
STANDARD ACT, 2006.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION THIS
DAY, THE COURT MADE THE FOLLOWING:

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ORDER

Though the matter is listed for admission, with consent of the learned counsel appearing for the parties, it is taken up for final disposal.

2. The petitioner being the sole accused in C.C.No.105/2019 which arises out of the private complaint on the file of the II Additional Civil Judge and JMFC-II Court at Dharwad (hereinafter referred to as 'the trial court' for short) for the offence punishable under Section 59(i) of the Food Safety and Standards Act, 2006 (hereinafter referred to as 'the Act' for short) is before this court seeking to quash the criminal proceedings initiated against him.

3. Brief facts of the case are that, respondent- complainant filed private complaint before the trial court against the petitioner herein, alleging that he is running an agency by name M/s Ammingad Agency, at Dharwad. The respondent visited the said premises on 30.08.2018 at 5.15 p.m. and on verification, it is found that accused had stored 'Jalani Jaljira' sealed bottles for sale i.e., for human consumption. He purchased and collected four sealed bottles in accordance with law and forwarded the said sample for analysis to the Food Laboratory at Belagavi. The laboratory at Belagavi examined the sample and gave a report to the effect that the product is unsafe for human consumption. Accordingly, the private complaint came to be lodged against the accused for the above said offence.

4. The learned Magistrate took cognizance of the offence vide order dated 31.01.2019, registered C.C.No.105/2019 and issued process to the accused to appear before the court. Being aggrieved by the same, the petitioner is before this court seeking to quash the criminal proceedings in its entirety.

5. Heard learned counsel Sri.Venkatesh M.Kharvi for the petitioner and learned HCGP Sri.Praveen K.Uppar for the respondent.

6. It is the specific contention of the petitioner that the company which had manufactured the 'Jalani Jaljira' is not arrayed as an accused by the complainant. The petitioner is only a retailer who is dealing with the product. He has not manufactured, as the bottles in question which are in sealed condition. Section 66 of the Act requires that the Company is to be arrayed as an accused and in the absence of the Company which manufactured the product being arrayed as an accused, the petitioner is not liable to answer the charge. The trial court without considering this fact proceeded to take cognizance of the offence. Hence, he prays for allowing the petition.

7. Learned HCGP opposing the petition submitted that the complainant arrayed the petitioner as an accused, as the bottles in question were seized from the shop belonging to the petitioner. However, he conceded that, as per Section 66 of the Act, the company which manufactured the product should have been arrayed as an accused. He would further submit that an opportunity may be given to the complainant to array the company as one of the accused. Hence, he requested to pass appropriate order.

8. On consideration of the materials on record, it is noticed that, four bottles which were found in the premises of the accused kept for sale, were held to be unsafe for consumption. Admittedly, the Company which manufactured the said product is not arrayed as an accused. It is the specific contention of the complainant that the present petitioner had not manufactured the said product, but he kept it for sale. Under such circumstances, definitely the Company which manufactured the product should have been arrayed as an accused.

9. Section 66 of the Act squarely applies to the present case and the Company, every person who at the time of the offence was committed was in charge of, and was responsible to the Company for the conduct of its business, as well as the Company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Therefore, I do find considerable force in the contention taken by the learned counsel for the petitioner. The learned Magistrate has not considered this fact of the case but proceeded to take cognizance of the offence vide order dated 31.01.2019. Therefore, the said order taking cognizance of the offence punishable under Section 59(i) of the Act against the petitioner is liable to be quashed.

10. At this juncture, learned counsel for the petitioner seeks quashing of the entire criminal proceedings initiated against the petitioner. But I do not find any merit in the contention taken by the petitioner that, the entire proceedings against the petitioner is to be quashed. The defect found is a curable defect and the complainant can take necessary steps to implead the company and the person who was responsible for the conduct of the business at the relevant point of time, as accused. Hence, I am of the opinion that, liberty may be reserved with the complainant to file necessary application before the Trial Court. If in case, such an application is filed before the Trial court, the petitioner will be having an opportunity to oppose the said application, if he thinks fit to do so. Hence, I answer the above point in the 'affirmative' and proceed to pass the following:

: ORDER :

The petition is hereby allowed.

The impugned order dated 31.01.2019 passed in C.C.No.105/2019 on the file of the II Additional Civil Judge and JMFC-II Court at Dharwad taking cognizance of the offence punishable under Section 59(1) of the Act against the petitioner is hereby set aside.

However, liberty is reserved with the complainant to take necessary steps to implead the Company which manufactured the product in question and the person who was responsible for the conduct of the business at the relevant point of time, as accused.

On filing such an application, the Trial Court can proceed to consider the application giving opportunity to the accused to oppose the same and dispose it off, in accordance with law.

Sd/-

JUDGE MBS/EM/-