

Yogesh Rathore vs The State Of Madhya Pradesh on 2 August, 2023

Author: Vivek Rusia

Bench: Vivek Rusia

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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE VIVEK RUSIA
ON THE 2 nd OF AUGUST, 2023
MISC. CRIMINAL CASE No. 43908 of 2022

BETWEEN: -
YOGESH RATHORE S/O BADRILAL RATHORE, AGED
ABOUT 21 YEARS, GRAM RAWTI TEHSIL RAWTI
DISTRICT RATLAM (MADHYA PRADESH)

(BY SHRI SUKH LAL GWALIORY-ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH STATION
HOUSE OFFICER THROUGH POLICE STATION
THANDLA DISTRICT JHABUA (MADHYA
PRADESH)
2. JILA DANDADHIKARI/ JILADHEESH DISTRICT
JHABUA (MADHYA PRADESH)
3. STATE OF M.P. THROUGH KHAADY SURAKSHA
ADHIKARI, KHAADY AVM AUSHADHI
PRASHASAN THROUGH RAHUL SINGH ALAWA
KHAADY SURAKSHA ADHIKARI DISTRICT
JHABUA (MADHYA PRADESH)

(BY TARUN KUSHWAH- GOVERNMENT ADVOCATE)

This application coming on for orders this day, the court
following:

ORDER

The applicant has filed the present petition under Section 482 of Cr.P.C. seeking quashment of proceedings Criminal Case No. of 2122/2021 pending Judicial Magistrate First Class, Thandla, District Jhabua.

2. As per prosecution story, on 17.12.2020 red chilli powder was recovered from the possession of the applicant, therefore, an FIR was lodged by Food Safety Inspector for the offence punishable under Section 272, 273 and 420 of IPC and thereafter charge sheet has been filed before the JMFC.

3. Learned counsel for the applicant submits that on the basis of same incident complaint under Section 26 (2) (1) read with section 59 of the Food Safety and Standards Act, 2006 has already been registered, therefore for one offence applicant cannot try at two different court. Learned counsel has placed reliance on the order passed in case of Rakesh Gupta Vs. State of M.P. (Misc. Crim. Case No.4086/2008) passed by Coordinate Bench of this Court in which proceedings has been quashed for the offence punishable under Section 3/7 of the Essential Commodities Act because he had already been tried.

4. The Hon'ble Chief Justice had sent reference to the Division Bench in case of Vijay Prakash S/o Dulichandra Parekh Vs. State of M.P. (Misc. Criminal Case No.45912/2018. The reference is as under:

" Whether judgment/order pronounced in respect of a complaint governing provisions of Factories Act and Rules prohibit separate trial in respect of offence under the Indian Penal code in view of section 300 of Cr.P.C. and Article 20(2) of the Constitution of India."

5. This Court has answered the reference as under:

"31. It is clear from the aforesaid provisions that under the Factories Act and the Indian Penal Code the ingredients to constitute the offence are altogether different. Under the Factories Act there is a concept of vicarious liability of the occupier and the manager and they can be punished for the violations of notice of certain acts and omissions viz. not sending the information of accident in the factory, running the factory without obtaining appropriate license, not keeping the attendance register of labourers, not providing adequate training to the labourers, not adopting safety mechanism in the factory etc. whereas under sections 287, 338 & 304-A IPC they can be punished for negligent conduct with respect to the machinery, causing grievous hurt by act endangering life or personal safety of others and causing death by negligence. The Magistrate prosecuting the accused under the Act of 1948 cannot examine the applicability of sections 287, 338 & 304-A of the IPC because no FIR or complaint was filed against him under these provisions. The petitioner pleaded guilty and the Magistrate has imposed fine and punishment till rising of the Court which was happily accepted by the petitioner but so far the allegations under sections 287, 338 and 304-A IPC are concerned, they are yet to be examined by the competent Court, therefore, the ingredients of both provisions of the Act are altogether different. Hence, in view of the verdict of the Apex Court, as discussed above, there is no bar in prosecuting the petitioner under both the enactments and over and above the Act of 1948, there is no bar or prohibition of separate trial in respect of the offence under the IPC. The power given to the police officer and the Magistrate under the Cr.P.C

cannot be taken away to prosecute an offender who has committed an offence under the provisions of the IPC, if the Police receives an information about the commission of cognizable offence. In view of the law laid down in the case of Lalita Kumari vs/ Government of Uttar Pradesh and others reported in (2014) 2 SCC 1, the Police is bound to register an FIR and submit a final report before the competent Magistrate. Even in the Cr.P.C there is no bar or prohibition for the Police authority to register an FIR if an offence is said to have been committed under different enactments. During trial it is for the accused to come up with such plea and the same is liable to be considered by the competent Court while hearing the trial because, as held above, the ingredients of various penal provisions are liable to be examined as there is no bar in prosecuting the accused in two different enactments then the proceedings of the criminal trial and the IPC cannot be quashed by virtue of section 300 of the Cr.P.C and Article 20(2) of the Constitution of India.

32. Thus, we are of the opinion that the order passed by this Court in the case of Neeraj Verma (supra) in MCRC No.3222/15 does not lay down a correct proposition of law inasmuch as the judgment/order pronounced in respect of a complaint governing the provisions of the Factories Act and Rules does not prohibit separate trial in respect of the offences under the Indian Penal Code. The question of law is answered accordingly."

6. In view of above, the applicant can be tried under the Provision of Food Safety and Standards Act, 2006 and Indian Penal Code for the same incident.

7. Accordingly, Misc. Criminal Case is hereby dismissed.

(VIVEK RUSIA) JUDGE Praveen