

Manish Gupta vs The State Of Madhya Pradesh on 1 April, 2021

Equivalent citations: AIRONLINE 2021 MP 286

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Bench: Gurpal Singh Ahluwalia

THE HIGH COURT OF MADHYA PRADESH 1
MCRC 11462 of 2021
Manish Gupta vs. State of MP

Gwalior, Dated : 01/04/2021

Shri Nirmal Sharma, Counsel for the applicant.

Smt. Uma Kushwah, Panel Lawyer for the respondent/ State.

This application under Section 482 of CrPC has been filed for quashing the FIR in Crime No.13/2021 registered at Police Station Bairad, District Shivpuri for offence under Sections 420, 272 of IPC and under Sections 51, 26(2)(ii) of Food Safety and Standards Act, 2006 (in short " the Act, 2006").

It is the case of the applicant that on 18/11/2020, the Food Safety Officer conducted a raid on Manish Milk Dairy and took samples of milk, which was alleged to be kept for sale. As per the report of Food Analyst, the said sample was found to be of substandard quality and accordingly, FIR has been registered under the above- mentioned Sections. It is the case of the applicant that some proceeding has been initiated before the SDM which is pending consideration and since there is a provision for penalty, therefore, the registration of FIR in the light of pending proceeding before the Court of SDM is bad as it amounts to double jeopardy. It is submitted that the applicant is running a Milk Dairy and it is incorrect to say that the milk was kept for sale. In fact, the milk products were produced and sapreta was left after preparation of food products. It is further submitted that since the adjudicating authority or the Tribunal as provided under Sections 69 and 70 of the Act, 2006 is empowered to impose penalty, therefore, the THE HIGH COURT OF MADHYA PRADESH 2 MCRC 11462 of 2021 Manish Gupta vs. State of MP registration of FIR is beyond the purview of the Act, 2006. It is further submitted that the Act, 2006, is a complete Act in itself and has its own procedure as well as penal provisions. It is submitted that under Section 68 of the Act, 2006 provides for competent authority, Section 69 provides for compounding the offence and Sections 70 and 71 provides for powers of the Appellate Tribunal. It is submitted that under Section 69 of the Act, the competent authority has authority to compound the offence and accordingly, initiation of proceedings under the IPC is bad.

Heard the learned Counsel for the applicant. According to the FIR, the sample of milk which was collected, was found to be of substandard quality and the milk fat was found to be 0.4 per cent against minimum of 4.5 per cent. Similarly, S.NF was found to be 8.2 per cent against minimum of

8.5 per cent.

It is the case of the applicant that since the Act, 2006 is a complete Act in itself and provides for separate procedure for penalties, therefore, the FIR is not maintainable as it would amount to double jeopardy.

Article 20(2) of the Constitution of India reads as under:

"(2) No person shall be prosecuted and punished for the same offence more than once." Section 300 of CrPC reads as under:-

300. Person once convicted or acquitted not to be tried for same offence. (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while THE HIGH COURT OF MADHYA PRADESH 3 MCRC 11462 of 2021 Manish Gupta vs. State of MP such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub- section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last- mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first- mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 188 of this Code.

Explanation.- The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section." From the plain reading of above-mentioned Sections, it is clear that until and unless a person has already been tried for an offence and the judgment on merits has been

passed, it cannot be said that the prosecution of the suspect/accused is bad because of double jeopardy.

In the present case, it is not the case of the applicant that any THE HIGH COURT OF MADHYA PRADESH 4 MCRC 11462 of 2021 Manish Gupta vs. State of MP penalty has already been imposed on him. Further, the offence has also been registered under Sections 420 and 272 of IPC. It is not the case of the applicant that he had already displayed in his shop that adulterated or substandard milk is sold. It is the defence of the applicant that the milk was not kept for the purpose of sale but it was a sapreta after manufacturing of milk products. According to the FIR, he is running a Milk Dairy. The applicant has not produced any licence to show that he is competent to produce any milk product. Further, it would be a defence of the applicant that the sample which has been collected, was not a milk but it was a sapreta and it was not meant for sale. Further, the applicant has not clarified as to why he had kept the sapreta in his shop, specifically when according to him, the same was not meant for sale. Further, it is not the case of the prosecution as well the applicant that it was displayed by the applicant that the so-called milk/sapreta was not meant for sale. Selling any adulterated or substandard product to the innocent customers by projecting that the said product is a pure and safe for human consumption, would certainly be an offence under Section 420 of IPC.

So far as the offence under Section 272 of IPC is concerned, the defence of the applicant that the milk was not kept for sale, cannot be accepted at this stage. If the milk/sapreta was not meant for sale, then he should not have kept the same in the shop and should have kept somewhere else or should have destroyed. Prima facie, it is clear that THE HIGH COURT OF MADHYA PRADESH 5 MCRC 11462 of 2021 Manish Gupta vs. State of MP the sample of milk which has been collected by the Officer, was meant for sale, and it was not sapreta as claimed by applicant.

So far as the contention of the Counsel for the applicant that since the Act, 2006 is a complete Act in itself which provides for separate procedure for penalty is concerned, the Counsel for the applicant could not point out any provision of the Act, 2006 which bars the applicability of provisions of General Criminal Law or IPC.

The Act, 2006 merely provides for penalties for contravening the provisions of the Act, 2006, whereas the offence under Sections 420 and 272 of IPC are different from the provisions of the Act, 2006. In absence of any bar under the Act, 2006, this Court is of the considered opinion that the Police is well within its right to resort to the provisions of IPC.

The Supreme Court in the case of State of Madhya Pradesh vs. Rameshwar and Others, reported in (2009) 11 SCC 424 has held as under:-

"48. Mr. Tankha's submissions, which were echoed by Mr. Jain, that the M.P. Co-operative Societies Act, 1960 was a complete Code in itself and the remedy of the prosecuting agency lay not under the criminal process but within the ambit of Sections 74 to 76 thereof, cannot also be accepted, in view of the fact that there is no bar under the M.P. Co-operative Societies Act, 1960, to take resort to the provisions of the general criminal law, particularly when charges under the Prevention of

Corruption Act, 1988, are involved.

49. The judgments referred to by Mr. Tankha regarding the tendency to convert civil disputes into criminal cases to pressurize the accused, are unimpeachable, but the same will not apply to the facts THE HIGH COURT OF MADHYA PRADESH 6 MCRC 11462 of 2021 Manish Gupta vs. State of MP of this case where a conspiracy to cheat the Bank is alleged." Where the innocent consumers are being cheated by selling adulterated or substandard or unfit eatables, then this Court is of the considered opinion that the prosecution of the applicant for offence under Sections 420 and 272 of IPC is permissible. It is not the case of the applicant that he has already been punished under the Act, 2006.

Thus, the bar as contained under Section 26 of General Clauses Act would not apply.

Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that no case is made out for quashing the FIR in Crime No.13/2021 registered at Police Station Bairad, District Shivpuri for offence under Sections 420, 272 of IPC and under Sections 51, 26(2)(ii) of the Act, 2006. Accordingly, the application fails and is hereby dismissed.

Office is directed to send a copy of this order to Superintendent of Police Shivpuri as well as to SHO, Bairad, District Shivpuri for keeping the same in the Police Case Diary.

(G.S. Ahluwalia) Judge MKB MAHENDRA KUMAR BARIK 2021.04.03 16:39:20 +05'30'