

Hari Shankar Singh @ Hari Shankar Prasad vs The State Of Jharkhand ... Opposite ... on 27 February, 2024

Author: Sanjay Kumar Dwivedi

Bench: Sanjay Kumar Dwivedi

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Cr.M.P. No. 2009 of 2018

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr.M.P. No. 2009 of 2018

1.Hari Shankar Singh @ Hari Shankar Prasad

2.Dharmendra Kumar @ Dharmendra Kumar Singh

3.Kesaw Singh @ Keshaw @ Keswam Singh... Petitioners

-Versus-

The State of Jharkhand

... Opposite Party

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner

: Mr. Arvind Kumar Choudhary, Advocate

For the Opposite Party-State : Mr. Shashi Kumar Verma, Advocate

5/27.02.2024. Heard Arvind Kumar Choudhary, learned counsel for the petitioner and Mr. Shashi Kumar Verma, learned counsel for the State.

2. This petition has been filed for quashing the entire criminal proceeding including the order taking cognizance dated 20.02.2018 in connection with Rail(Muri) P.S. Case No.01 of 2016, Corresponding to G.R. No.05 of 2016, pending as against the petitioner by which cognizance has been taken against the petitioner for the offence under Sections 272 and 273 of the Indian Penal Code and Sections 50 and 59 of the Food Safety and Standard Act, 2006 (herein after to be read as "the Act, 2006), pending in the court of the learned Judicial Magistrate, Ranchi.

3. The FIR has been registered alleging therein that case is registered on the basis of statement of Officer in charge, Rail Police Station, Muri that on 11.8.2015 he received secret information that some material in plastic bag are lying at the main gate of platform no.1 of railway station upon which he entered a sanha in police station and proceeded for its verification. Thereafter in presence of two independent witnesses four plastic bags were open and found that 2 plastic bags were packed with Frooti punch 500 ML total 300 pieces in 1 plastic bag RC Cola 300 ML total 47 pieces. On perusal it was found that all are in expiry date then seizure memo has been prepared. The seized plastic bags belong to Hari Shankar Singh who runs Amulya stall and he is selling expiry date materials from his stall at Ranchi, Hatia and other stations. On 14.8.2015 Keshaw Singh and

Dharmendra Singh came to police station and disclosed that he worked as salesman at the said stall and seized bags belongs to Hari Shankar Singh claims for the seized plastic bags upon which they asked for relevant papers but they did not give the same.

4. The learned counsel for the petitioners submits that the petitioners are innocent and petitioner no.1 is owner of Amulya Stall at Muri Railway Station and petitioner nos.2 and 3 were working as salesman in the said stall. He submits that no ingredients of section 272, 273 and 413 of IPC is made out. He submits that procedure for registration of the case under section 42 of the Act of 2006 is concerned that has not been followed and the FIR is registered by Officer incharge of Muri Railway Station and the case is against the provision of statute which is a special Act. He further submits that the designated officer appointed under section 36 of the Act can scrutinize the report of analyst and decide whether the prosecution can be lodged and he can send the said recommendation within specified period of time for sanctioning such prosecution and after sanction by the competent authority the case can be lodged.

5. Learned counsel for the State opposed the prayer on the ground that case is made out and rightly the case has been lodged.

6. In view of the above submissions, the only question which required to be looked into by this Court is that whether in absence of following the procedure under Section 42 of the Act, 2006 the prosecution can stand against the petitioner or not. The provision of Section 42 of the Act, 2006 which lays down the procedure for launching prosecution for any offence under said Act is quoted herein below:

"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."

7. On perusal of the above provision of Section 42 of the Act, 2006, it is crystal clear that the Food Safety Officer appointed or authorised under Section 37 of the Act, 2006 can draw the sample of food and send the same for analysis to the Food Analyst within a specified period of time. The Designated Officer appointed under Section 36 of the Act, 2006 can make a scrutiny of the report of the Food Analyst and decide whether the prosecution can be launched and he can send his recommendation within a specified period of time to the Commissioner of Food Safety for sanctioning such prosecution and after sanctioning by the competent authority, the case can be lodged. There is no doubt that the Food Safety Officer can lodge the case with the recommendation of the Commissioner of Food Safety. In the case in hand, nothing is on the record to indicate that the investigation was authorized to the Food Safety Officer under Section 37(2) of the Act, 2006. The State has not produced material in the case by way of filing counter affidavit which indicate that Section 42 of the Act, 2006 was followed in the present case while lodging the prosecution. In absence of authorisation of the Investigating Officer as Food Safety Officer under Section 37(2) of the Act, 2006 and in absence of following the procedure for launching the prosecution under Section 42 of the Act, 2006, the Court comes to a conclusion that the petitioner is not liable to be prosecuted under Sections 50 and 59 of the Act, 2006.

8. In view of the aforesaid facts, the entire criminal proceedings pending as against the petitioner including the order dated 20.02.2018 in connection with Rail(Muri) P.S. Case No.01 of 2016, Corresponding to G.R. No.05 of 2016, pending in the court of the learned Judicial Magistrate, Ranchi is, hereby, quashed.

9. Accordingly, this petition stands allowed and disposed of.

10. Interim order dated 12.09.2019 stands vacated.

11. It is further well settled that if the case is pending and certain development is there before the learned court and if the High Court comes to the conclusion that the case of interference is made out at any stage that power can be exercised.

(Sanjay Kumar Dwivedi, J.) SI/,