

# Kishor Kumar Srivastava vs The State Of Jharkhand on 15 July, 2022

**Author: Sanjay Kumar Dwivedi**

**Bench: Sanjay Kumar Dwivedi**

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W.P. (Cr.) No.

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (Cr.) No. 325 of 2021

Kishor Kumar Srivastava, aged about 45 years, son of Candreshwar Prasad Srivastava, resident of upper Bazar, Nil Ratan Street, P.O. G.P.O., P.S. Kotwali, District- Ranchi ... Petitioner

-Versus-

1. The State of Jharkhand
2. Dr. S.S. Kullu, Food Safety Officer, Son of Sushil Chandra Kullu, resident of Kanke, P.O. & P.S. Kanke, District- Ranchi, permanent resident of Joretoli, Pakartand, P.O., P.S. & District- Simdega, at present posted as Food Safety Officer, Ranchi, Nepal House, Doranda, P.O. & P.S. Doranda, District- Ranchi ... Respondents

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CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

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For the Petitioner : Mr. Nilesh Kumar, Advocate  
For the State : Mr. Manoj Kumar, G.A.-III  
Mr. P.C. Sinha, A.C. to G.A.-III

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07/15.07.2022. Heard Mr. Nilesh Kumar, learned counsel for the petitioner and Mr. Manoj Kumar assisted by Mr. P.C. Sinha, learned counsel for the State.

2. This petition has been filed for quashing the FIR and the entire criminal prosecution in connection with Ratu P.S. Case No.230/2021 lodged as against the petitioner under Section 59 of the Food Safety and Standard Act, 2006 (hereinafter to be referred to as "the Act, 2006") as well as Sections 419, 420, 467, 468, 469, 471, 290, 120B of the Indian Penal Code as well as Sections 7 and 20 of COTPA (Cigarette and Other Tobacco Product Act, 2020), lodged by respondent no.2, pending in the court of the learned Judicial Magistrate, 1st Class, Ranchi.

3. On the written report dated 15.08.2021 of the Food Safety Officer (respondent) no.2, the case was lodged wherein it was alleged that on 14.08.2021 on secret information, he went to the office of M/s. Suraj Freight Carriers Pvt. Ltd., Kamre. The raid was conducted in the leadership of respondent no.2. It was further alleged that against the order of the State Government dated 28.05.2021, some cigarette and other pan masala was found present in the Carrier company in presence of local

independent witnesses, recovered pan masala and cigarette and the same has been seized. One Nirmal Kumar Sharma was apprehended from the spot. It was also alleged that recovered pan masala was banned in Jharkhand i.e. by an order issued by the Government of Jharkhand. It was suspected that cigarette was also against fixed standard and the same has illegally been packed. It was further alleged that the said go down has been taken on lease by the petitioner-Kishor Kumar Srivastava i.e. Transport Company namely M/s. Suraj Freight Carrier Pvt. Ltd. On the basis of search and seizure, the present case has been instituted.

4. Mr. Nilesh Kumar, learned counsel for the petitioner submits that the procedure for launching the case under Section 42 of the Act, 2006 has not been followed. He further submits that the FIR has been launched before the Officer-in-charge of the Ratu Police Station by the Food Safety Officer, which is absolutely against the provision of the statute i.e. the Special Act. He also submits that it is a settled principle that the provision of Special Law would prevail over and above the general law. He further submits that the final decision where the prosecution may be launched in court or where should be report to the adjudicating authority means only with the designated officer as provided under Section 42(3) of the Act, 2006. If the designated officer found that the contravention requires prosecution in court, he shall send his recommendation to the Commissioner of the Food Safety seeking sanction for prosecution.

5. Mr. Manoj Kumar, learned counsel for the State submits that the FIR has been lodged in accordance with law and the same is not contrary to any provision of law, as alleged by the petitioner.

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 the 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 counter affidavit which indicate that Section 42 of the Act, 2006 was followed in the present case while launching 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 Section 59 of the Act, 2006.

8. In view of the aforesaid facts, so far as the petitioner is concerned, the FIR and the entire criminal prosecution in connection with Ratu P.S. Case No.230/2021, pending in the court of the learned Judicial Magistrate, 1st Class, Ranchi is, hereby, quashed.

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

10. Interim order dated 11.05.2022 stands vacated.

(Sanjay Kumar Dwivedi, J.) Ajay/