

Naveen Kumar Maurya vs State Of U.P. & Anr. on 8 January, 2021

Author: Alok Mathur

Bench: Alok Mathur

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

RESERVE JUDGMENT

Court No. - 29

Case :- U/S 482/378/407 No. - 2136 of 2020

Applicant :- Naveen Kumar Maurya

Opposite Party :- State Of U.P. & Anr.

Counsel for Applicant :- Amar Singh, Harish Chandra

Counsel for Opposite Party :- G.A.

Hon'ble Alok Mathur, J.

1. Heard Sri Harish Chandra, learned counsel for the applicant as well as learned Additional Government Advocate for the State of U.P.
2. The applicant is facing prosecution under sections, 272, 273 IPC and section 7/16 of The Prevention of Food Registration Act, 1954, pending in the Court of XIIth Additional District and Sessions Judge, Lucknow and has approached this Court assailing the order dated 21/07/2020 whereby his application for discharge has been rejected and has prayed for quashing of the proceedings of Session Trial No. 809 of 2012 - State Vs. Navin Kumar.

3. The applicant is owner of four tea shops, selling sweets and Namkeen to its customers, and on 10/04/2010 on basis of a complaint the concerned Food Inspector took samples of Besan Laddu, and subsequently sent the sample for analysis. The Public Analyst submitted his report on 21/05/2010 which disclosed presence of Khesari (Lathyrus Sativas) which makes the food item unfit for human consumption. After receiving the report from the food analyst an application was made by the Food Inspector on 24/07/2010 to the District Magistrate for sanction of prosecution against the applicant and the District Magistrate after considering the entire facts granted permission for prosecution of the applicant by means of order dated 29/11/2010. In pursuance to the grant of sanction by the District Magistrate, first information report was lodged at police station Nagram, District Lucknow as Case Crime No. 154 of 2010 under Sections 272/273 IPC. Subsequently after formal investigation a charge sheet no. 107/10 was filed on 13/08/2010 and the Magistrate took cognizance of the charge sheet on 27/11/2010 and a Criminal Case No. 336 of 2012 was registered and proceeded with against the applicant. The case was thereafter committed before the learned Sessions Judge for trial.

4. Apart from filing The First Information Report the Food Inspector also filed a criminal complaint before the Additional Chief Judicial Magistrate, 1st, Lucknow Under Section 7/16 of the Food Adulteration Act on 22/12/2010 which was registered as Complaint Case No. 3115 of 2010. Both the cases were committed for trial and the applicant is being tried jointly in both the cases.

5. The applicant preferred petition under Section 482 of the Cr.P.C. before this Court which was registered as CrI Misc Case No. 5349 of 2018 and by means of order dated 05/09/2018 the same was dismissed as withdrawn with liberty to the applicant to raise all the points at the time of final arguments in the trial. The order dated 05/09/2018 is quoted here in below:-

"learned counsel for the petitioner seeks permission to withdraw this application under section 482 CRPC with liberty to raise all the points taken at the time of final arguments in the trial.

In view of the aforesaid submission, this application under section 482 of the CRPC is dismissed as withdrawn aforesaid liberty at this stage."

6. The applicant thereafter, preferred an application under Section 216 Cr.P.C. for discharge of the applicant/accused and for dropping of the proceedings on 30/09/2018. In the said application for discharge the applicant had sought to take the benefit of the judgment of this Court in the case of M/S PepsiCo India Holdings (Pvt.) Ltd Versus State of U.P. wherein according to the applicant this Court has held that the authorities can take action in the matter of food adulteration only under the provision of the Food Safety and Standards Act, 2006 after coming into force of the said act and also that the police has no authority to investigate into such matters.

7. The Additional Sessions Judge/POCSO Court rejected the application for discharge only on the ground that after framing of the charges the trial Court is empowered either to acquit or convict the accused but the proceedings cannot be terminated. The Additional Sessions Judge/POCSO relied on the judgement of this Court in the case of Kisan Swva Sahakari Samiti Ltd vs Bachan Singh reported

in 1993 CrLJ 2540.

8. Hence this petition.

9. The learned counsel for the applicant vehemently submitted that it would be inequitable to permit the applicant to be prosecuted with regard to an offence under an enactment which no longer is in existence, and also relied upon the judgement of this Court in the case of M/S PepsiCo India Holdings (Pvt.) Ltd Versus State of U.P. where according to the applicant under similar circumstances this Court had dropped the proceedings against the accused therein.

10. The learned Additional Government Advocate has vehemently opposed the application for quashing of the proceedings in favour of the applicant and submitted that there is no infirmity in the impugned order passed by the Additional District and Sessions Judge, and the application for discharge which was filed by the applicant was rightly rejected in as much as after framing of the charges and examination of the prosecution witnesses the applicant could have been either convicted or acquitted but the proceedings could not have been set aside as prayed by the applicant.

11. The facts as are borne out from the records reveal that the genesis of the present controversy arose in April 2010 with the samples of the product sold by the applicant were taken by the Food Inspector and thereafter sent to the Public Analyst, who by report dated 21/05/2010 reported that the said product contained Khesari (Lathyrus Sativis) a product considered to be unfit for human, and consequently after seeking sanction for prosecution from the District Magistrate, the FIR was lodged on 30/11/2010. Apart from lodging of the first information report a criminal complaint under Section 7/16 of the Food Adulteration Act was also filed, and both the cases were clubbed and are pending consideration before the Additional District and Sessions Judge, Lucknow. The applicant preferred an application under section 482 Cr.P.C. being case no. 5349 of 2018 which was dismissed as withdrawn with liberty to the applicant to raise all the points taken at the time of final arguments in the trial.

12. The applicant immediately on withdrawal of the aforesaid petition under Section 482 Cr.P.C., moved an application under Section 216 of the Cr.P.C. for discharge which has been rejected by the impugned order. The issue as raised in the present application was also raised by the applicant in the earlier petition but the same was withdrawn with the liberty to raise all the issues during the final arguments in the trial. The applicant instead of raising the said arguments at the stage of final arguments in the trial, hurriedly moved an application for discharge. Liberty was granted to the applicant to raise all the issues at the stage of final arguments, and liberty was not granted to him to move an application for discharge.

13. The application preferred by the applicant under section 216 of the Cr.P.C. for discharge has been rejected by means of the impugned order, wherein the trial Court while rejecting his application has held that there is no provision for discharge of the accused once charges have been framed. The learned counsel for the applicant did not address this Court as to how the findings recorded by the trial Court rejecting the application for discharge were bad in law, nor is there any pleading in this regard, but only submitted that once the Prevention of Food Registration Act was

repealed by the enactment of Safety and Food Standards Act, 2006 the applicant could not have been prosecuted or proceed against, under the provisions of the erstwhile repealed enactment.

14. Howsoever lucrative the argument of the applicant may seem to be, but at this stage this Court would not go into the said issues raised by the applicant, taking into consideration the earlier order dated 05/09/2018 passed by this Court in Criminal Misc. Case No. 5349 of 2018, where this Court relying on the statement made by the counsel for the applicant dismissed the petition with liberty to the applicant to raise all the points at the time of final hearing of the trial. The applicant instead of duly complying with the statement made before this Court on 05/09/2018, hurriedly moved an application for discharge before the trial court, raising all the points which were raised before this Court, rather than waiting for the final arguments in the trial.

15. Once the application of the applicant has already been dismissed with liberty being granted to him to raise all the issues before the trial court, then permitting the applicant to raise all the issues again before this court would amount to entertaining a second petition on the same subject, in light of the fact that the trial court has not decided his application on merits. Only when this court is of the view that the rejection of application for discharge was bad in law, only then would the occasion arise either for this court to itself examined the merits of the arguments raised by the applicant, or to remand the matter to be decided on merits by the trial court.

16. The situation at the present stage is also no different than which was existing when the earlier petition was filed. It has been duly recorded in the impugned order that the prosecution witnesses have been examined and statement of the accused has also been recorded according to Section 313 Cr.P.C.. The trial Court has rightly recorded that the accused after framing of the charges can either be acquitted, in case, after examining all the evidence adduced by the prosecution and after hearing the prosecution and defence the trial Court considers that there is no evidence that the accused has committed the offence. This Court was conscious of the legal provisions while granting liberty to the applicant in the earlier petition.

17. Having considered the submissions of the counsel for the parties I do not find any infirmity in the findings recorded by the Court below that the application for discharge cannot be allowed at the stage once the charges been framed. This Court in the case of Kisan Seva Sahakari Samiti Ltd vs Bachan Singh (Supra) has interpreted the law according to which once the charges been framed against the accused in a warrants case, the Magistrate can either acquit or convicted the accused and he has no power to drop proceedings thereafter. This court in Kisan Seva Sahakari Samiti Ltd vs Bachan Singh (Supra) in paragraph 8 of the said judgement has held:-

"Section 226, of Cr.P.C. provides that the Public Prosecutor shall open his case before the Sessions Judge and Section 227 empowers the Sessions Judge to discharge an accused, if upon consideration of the record of the case and the documents submitted there with, and after hearing of the submission of the accused and the prosecution in this behalf, he considers that there is not sufficient ground for proceeding against the accused. The charges are framed under Section 228 of Cr.P.C. and once a Sessions Judge frames charges against an accused under Section 228 of Cr.P.C. he has either

to acquit or convict the accused. After framing of the charges the Sessions Judge has no power to drop the proceedings."

18. In light of the above the application is devoid of merits and is dismissed with the observation that the applicant will have liberty to raise all points as raised here in before the Trial Court during the final arguments in the trial.

Order Date :- 08.01.2021 Ravi/A. Verma (Alok Mathur, J.)