

Rajkumar Tinkar vs The State Of Madhya Pradesh on 3 April, 2024

Author: Vijay Kumar Shukla

Bench: Vijay Kumar Shukla

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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA
ON THE 3rd OF APRIL, 2024
MISC. CRIMINAL CASE No. 2159 of 2012

BETWEEN: -
RAJKUMAR TINKAR S/O PHOOLCHAND TINKER, AGED,
ABOUT 35 YEARS, R/O PLOT NO.169-175, AKVN,
INDUSTRIAL AREA, PILLUKHEDI, TEHSIL
NARSINGHGARH, RAJGARH-465667 (MADHYA
PRADESH)

(BY SHRI SATISH CHANDRA BAGADIYA SENIOR ADVOCATE WITH SHRI
ROHIT SABOO - ADVOCATE)

AND
THE STATE OF MADHYA PRADESH GOVT. THROUGH
POLICE STATION JAORA CITY ,DISTT.RATLAM
(MADHYA PRADESH)

(BY SHRI SANTOSH SINGH THAKUR - PUBLIC PROSECUTOR)

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

ORDER

1. This is an Application under Section 482 of the Code of Criminal Procedure, 1973 for quashing the FIR being no.107 dated 20.04.2010 lodged at Jaora Police Station, Dist Ratlam, Madhya Pradesh and for quashing the Final Report/Chargesheet/Challan being no. 20/019 dated 26.01.2011 filed in the Court of Judicial Magistrate, First Class, Jaora, Dist - Ratlam, M.P. and for quashing the order taking cognizance dated 20.04.2011 whereby and where under the JMFC has taken cognizance u/s - 272/273/506/34 of the Indian Penal Code (hereinafter referred to as "IPC") in Criminal Case No. 546/2011 pending before the Judicial Magistrate First Class, Jaora, Dist - Ratlam, M.P.

2. The Applicant is the Quality Assurance Manager of Hindustan Coca- Cola Beverages Private Ltd (hereinafter referred to as "Company"), a company incorporated under the provisions of the

Companies Act 1956 and engaged inter alia in the operation relating to the manufacture, packaging, sale and distribution of Sweetened Carbonated water, Carbonated water, Packaged Drinking Water, Fruit based drinks etc. under various brand names such as Coca-Cola, Thums Up, Limca, Sprite, Fanta, Kinley etc. The applicant has been nominated by the Company under Sec- 17(2) of Prevention of Food and Adulteration Act, 1954 (hereinafter referred to as "PFA Act") and is based at the Plant/Factory of the Company situated at Plot No. 169175 AKVN, Industrial Area, Pillukhedi, Tehsil-Narsingharh, Rajgarh, Bhopal, Madhya Pradesh- 465667.

3. The Applicant states that it seems that one Mr. Harish Bhati filed a complaint in Jaora Police Station Dist. Ratlam, on 20th April, 2010 alleging inter alia as follows:

(a) He runs a tea stall in the name of Aashish Tea Stall, at which he sells tea, cold drinks and other small miscellaneous items.

(b) About 10-12 days back he purchased a crate of "Limca 200 ml" from Kimat Cold Drinks, the supplier for Coca-Cola company in Jaora.

(c) The customer, whose name and address he could not provide, returned one bottle, which was in sealed condition, for there being many dust particles in the liquid contained in the bottle.

(d) The said Mr. Bhati had spoken to the Proprietor of Kimat Cold-

drinks about this and shown the bottle to the proprietor of Kimat Cold drinks, who told the said Mr. Bhati, to send the sealed bottle to the Company and also spoke to the Company.

(e) The said bottle of Limca was being produced with the Application on which after the date 09-03-10 the words BN0968-RS-8-CONTAIN-SNO- FRUIT are printed. Even on the crown of the bottle which is sealed, information is printed in very small letters. The words Limca and FPO 1142 are clearly visible on the crown.

(f) According to the said Mr. Bhati such a drink could be harmful to health, the quality and production management of the company sent the liquid drink item for sale in the market and was distributed by Kimat cold Drinks. Hence appropriate action be taken against them from the point of view of public health.

4. It is argued that after the offences were registered under Section 272, 273 of IPC, which are non-cognizable offences, therefore, the police could not have investigated the matter without permission of the Magistrate. As per the provisions of Section 155(2) of Cr.P.C. It is also argued that the registration of FIR and cognizance of offences under Section 272 and 273 of IPC despite enactment of Prevention of Food Adulteration Act, 1954 (in short "PFA Act") and also the Food Safety and Standards Act (in short "FSSA") is illegal. It is argued that the provisions of special enactment specially by virtue of Section 89 of FSSA, Section 59 of FSSA will override the provisions of Section 272 & 273 of IPC. Therefore, there will not be any question of simultaneous prosecution

under both the statutes. In support of his submissions, learned Senior Counsel has placed reliance on the judgment passed by the Apex Court in Cr.A. No.472/2012 dated 21/2/2024 in the case of Ramnath vs. State of U.P. and the judgment passed by the Apex Court in Cr.A. no.1798/2024 dated 26/3/2024 in the case of Sushil Kumar Gupta vs. State of West Bengal.

5. Counsel for the State opposes the petition and prays for dismissal of the petition which is filed for quashment of FIR and order of taking cognizance for offences under Section 272, 273 of IPC. However, he fairly submits that as per the record there is no permission from Magistrate for investigation by the Police.

6. After hearing learned counsel for the parties it is apposite to refer the provisions of Section 272 & 273 of IPC and Section 155(2) of Cr.P.C:-

272. Adulteration of food or drink intended for sale.--Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

273. Sale of noxious food or drink.--Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

155. Information as to non-cognizable cases and investigation of such cases.--

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-

cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

7. From aforesaid provisions, it is axiomatic that the offences under Section 272, 273 of IPC are non-cognizable offences and after registration of FIR Police could not have investigated the matter without permission of the Magistrate. Admittedly, no order of permission of Magistrate has been brought to the notice of this Court. Thus, on this count the petition deserves to be allowed and the order dated 20/4/2011 taking cognizance are deserves to be set aside.

8. Apart from that, admittedly the offence has taken place subsequent to enactment of Prevention of Food Adulteration Act, 1954 (in short "PFA Act") and also the Food Safety and Standards Act (in short "FSSA") and, therefore, whether the offences under Section 272 & 273 of IPC could have been registered and cognizance could have been taken. In the case of Ramnath(supra) it has been held that the provisions of Food Safety and Standards Act (in short "FSSA") overrides the provisions of Section 272 & 273 of IPC. The aforesaid law has been followed in the case of Sushil Kumar Gupta(supra) which has been summarised in para 11& 12 as under:-

11. Thus, the dictum as laid in Ram Nath (supra) is that if an accused is charged for the offences under Sections 272 and 273 respectively of the I.P.C., Section 59 of the Act, 2006 would also be attracted. In fact, the offence under Section 59 of the Act, 2006 is more stringent compared to Sections 272 and 273 of the I.P.C. respectively. The final conclusion drawn by this Court in Ram Nath (supra) is that by virtue of Section 89 of the Act, 2006, Section 59 will override the provisions of Sections 272 and 273 respectively of the I.P.C..

This Court ultimately held that there cannot be simultaneous prosecution under both the statutes.

12. The sum and substance of the ratio in Ram Nath (supra) appears to be that after the enactment of the Act, 2006, more particularly, keeping in mind the offence under Section 59 of the Act, 2006, there cannot be prosecution for the offences under Sections 272 and 273 respectively of the I.P.C.

9. In view of the judgment passed by the Apex Court in the cases of Ramnath (supra) and Sushil Kumar Gupta(supra) the FIR and the order of cognizance dated 20/4/2011 for commission of offences under Section 272, 273 of IPC are quashed. However, the liberty is granted to the authorities to initiate appropriate proceedings in accordance with law, if not already initiated under the provisions of Prevention of Food Adulteration Act, 1954 (in short "PFA Act") and also the Food Safety and Standards Act (in short "FSSA").

10. With the aforesaid liberty, the present petition is allowed and disposed off.

(VIJAY KUMAR SHUKLA) JUDGE PK