

Kattamuri Srinivasa Rao vs The State Of Andhra Pradesh on 11 August, 2022

Author: K.Sreenivasa Reddy

Bench: K.Sreenivasa Reddy

THE HON'BLE SRI JUSTICE K.SREENIVASA REDDY

CRIMINAL REVISION CASE NO.505 of 2022

ORDER:

-

This Criminal Revision Case is filed against the order dated 06.05.2022 passed in CrI.M.P.No.51 of 2021 in C.C.No.231 of 2018 on the file of the Judicial Magistrate of First Class, Parchur and consequently discharge the petitioner in the said Calender Case.

2. F.I.R.No.18 of 2018 of Parchur Police Station was registered against the petitioner/A2 and two others for the offences under Sections 273 and 420 IPC. The allegation is that the police raided the tea stall of the accused and found that the accused has been mixing noxious tea powder and cheating the public. Therefore the complaint was lodged and a case was registered for the offences under Sections 273 and 420 IPC. In the charge sheet ultimately filed, apart from Sections 272 and 420 IPC, Section 59 of the Food Safety and Standards Act, 2006 (in short "FSS Act"), was also included.

3. Learned counsel for the petitioner-Accused No.2 essentially questions the proceedings in the C.C. on the following three grounds:

a) That the 2nd respondent-Sub-Inspector of Police is not competent to register the FIR for the offence under Section 59 of the FSS Act, 2006 or to investigate the same and to lay the charge sheet;

b) The offence under Section 273 IPC is non-

cognizable and therefore the order of the Magistrate is necessary to conduct investigation; and

c) The complainant and the investigating officer is the 2nd respondent only. He also filed the charge sheet.

4. Learned counsel relied upon a judgment of a Division Bench of the Allahabad High Court reported in M/s Pepsico India Holdings (Pvt) Ltd. & Anr.v State of U.P. & Ors.1 to contend that once the provisions of FSS Act come into play, the registration of crime with respect to "food" stuffs can only be done under the FSS Act, 2006. Learned counsel for the petitioner argues that the FSS Act,

2006 is a special enactment created specially by the Parliament and that it eclipses the other provisions of the Indian Penal Code and other special sections. The next submission is that Section 273 of IPC is of non-cognizable offence and therefore the order of the jurisdictional Magistrate is necessary. Not, but not the least, he says that the same officer is the complainant and the investigating officer.

5. Learned Public Prosecutor, on the other hand, stated that many of the issues that were raised by the learned counsel for petitioner, are matters which need to be decided during the course of the trial and that at this stage quashing the proceedings is not called for. He submits that the 2011 (2) Crimes 250 proceedings under the IPC and the FSS Act can be taken simultaneously. Therefore, he states that no prejudice is caused if the prosecution is continued.

6. This Court, after hearing both the counsel, is of the opinion that the learned counsel for the petitioner has made out a point for interference. 2nd respondent is the complainant and also the investigating officer. This, as per the settled law on the subject, vitiates the fair trial.

7. The offence under Section 273 IPC is a non- cognizable offence and the jurisdictional Magistrate's permission is necessary for registering the FIR and conducting the investigation etc. The FSS Act authorises the Food Safety Inspectors and Officers alone to launch the prosecution. Section 89 of the FSS Act says that the said Act will override the provisions of all other Acts. The judgment of the Allahabad High Court clearly supports the submissions made that the general Act, namely the Indian Penal Code, will have to yield to the FSS Act, which is a special enactment. For all these reasons, this Court holds that the counsel for the petitioner has made out a point for interference. For all the three grounds urged, this Court is holding in favour of the petitioner and is quashing the petition.

8. Accordingly, this Criminal Revision Case is allowed and the proceedings in C.C.No.231 of 2018 on the file of the Judicial Magistrate of First Class, Parchur are quashed in so far as petitioner/A2 is concerned.

Miscellaneous petitions, if any pending, in the Criminal Petition, shall stand closed.

----- JUSTICE K. SREENIVASA REDDY Date:
11.08.2022 KLPD THE HON'BLE SRI JUSTICE K.SREENIVASA REDDY CRIMINAL REVISION
CASE NO.505 of 2022 Date:11.08.2022 KLPD