

M/S Kewal Dairy vs State Of U.P. And Another on 12 November, 2024

HIGH COURT OF JUDICATURE AT ALLAHABAD

?A.F.R.

Neutral Citation No. - 2024:AHC:177238

Court No. - 79

Case :- APPLICATION U/S 482 No. - 25510 of 2024

Applicant :- M/S Kewal Dairy

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Bipin Kumar, Mohd. Naushad Siddiqui

Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard Mohd. Naushad Siddiqui, learned counsel for the applicant, Sri Pankaj Saxena, learned A.G.A for the State and perused the record.
2. The instant application under Section 482 Cr.P.C. has been filed for quashing the order dated 27.06.2024 passed by Metropolitan Magistrate-1st, Kanpur Nagar as well as entire proceeding of Complaint Case No.18674 of 2019, under Section 51 and 59(i) of Food Safety and Standard Act, 2006, Police Station- Nazirabad, District Kanpur Nagar pending in the court of Metropolitan Magistrate-1st, Kanpur Nagar.
3. Facts giving rise to the present case are that the sample of milk was collected on 24.11.2017 by the Food Safety Officer from the premises of applicant thereafter the sample of milk was sent to the Food Analyst, Regional Food Laboratory Medical College Campus, Meerut for analysis. Thereafter a report from a food analyst was received on 10.12.2017 showing milk was of sub-standard. Subsequently, notice was issued to the applicant, who filed the appeal before the designated officer against the report of the food analyst which was allowed and the sample was again sent for fresh

analysis. Thereafter fresh report was received from the food analyst on 25.04.2018 again showing that the milk was sub-standard and also unsafe. Thereafter Food Safety Officer sent an application to the Commissioner, Food Safety through designated officer on 14.05.2018 to get approval for prosecution under Section 77 of Act, 2006. The Commissioner, Food Safety vide order dated 20.06.2019 granted approval for the prosecution of applicant despite expiry of period of one year from the date of commission of offence, thereafter complaint was filed on 04.07.2019.

4. Contention of learned counsel for the applicant is that the impugned proceeding is barred by limitation and the court below while rejecting his application failed to consider this aspect. It is further submitted that in the present case, the sample was collected on 24.11.2017 but the complaint was filed on 04.07.2019 which is after more than one year. Therefore, in view of Section 468 Cr.P.C. the court is barred from taking cognizance. Alternatively, counsel for the applicant also submitted that even it is accepted that in view of Section 77 of Food Safety and Standard Act, 2006 (hereinafter referred to as the 'Act, 2006'), the Commissioner of Food Safety can extend the period for taking cognizance from one year to three years from the date of commission of an offence but the reason must be recorded but the Commissioner while extending the period of limitation under Section 77 of the Act, 2006 has not recorded reason. Learned counsel for the applicant lastly submitted that the sample was collected from the dairy of the applicant which was sub-standard, therefore, proceeding can be initiated only under Section 51 and not under Section 59(i) of the Act, 2006. It is submitted that being the time barred, the impugned complaint as well as impugned order deserves to be quashed.

5. In support of his contention, learned counsel for the applicant has also relied upon the judgement of this Court in the case of Ashok Kumar Pal vs State of U.P. and other (Application U/S 482 No.1700 of 2024) wherein this Court observed that cognizance can be taken by the court under the Act, 2006, after approval under Section 77 of the Act, 2006, up to the period of three years from the date of taking the sample.

6. Per contra, learned AGA has submitted that after the enforcement of Food Safety and Standard Act, 2006, a special provision regarding taking cognizance under the Act, 2006 has been provided under Section 77 of the Act, 2006 which provides that the court will not take cognizance of the offence under this Act after the expiry of the period of one year from the date of commission of offence but for reasons to be recorded by the Commissioner of Food Safety the aforesaid period can be extended up to three years. In such cases when the specific provision is there, then Section 468 Cr.P.C. will not be applicable because Section 89 of Act, 2006 specifically provides that this Act will override all other Acts.

7. After considering the submissions of learned counsel for the parties and on a perusal of the record, the question arises, what is the date of commission of offence to decide whether cognizance on complaint is barred by limitation. In support of his contention counsel for the applicant relied upon the earlier decision of this Court in the case of Ashok Kumar Pal (supra) in which it is held that date of commission of offence in the Act, 2006 would be the date on which the sample of food was collected, though that observation was not part of the ratio of that judgement but simply an observation. Para 15 of the judgement of Ashok Kumar Pal's case (supra) is quoted as under;

"15. From the perusal of Section-77 of the Act, 2006, it is explicit that the court can take cognizance up to three years from the date of commission of the offence. A commission of an offence under the Act, 2006 can be considered on the date when the sample was collected. In the present case, the sample was collected on 02.11.2010 and the proceeding was initiated under the Act, 1954, despite repealing the same. Therefore, that proceeding was not saved u/s 97 of the Act, 2006. Therefore, even if the fresh complaint is filed under the Act, 2006 then the concerned court cannot take cognizance in view of the bar of Section-77 of the Act, 2006. Therefore, the contention of learned counsel for the applicant is correct that now the prosecution is barred u/s 77 of the Act, 2006 as the sample of the milk was collected on 02.11.2010, therefore, cognizance cannot be taken in a fresh complaint filed under the Act, 2006."

8. Hon'ble Apex Court in the case of State of Rajasthan vs Sanjay Kumar and others; (1998) 5 SCC 82, considering Section 469 of Cr.P.C. for the purpose of the Drugs and Cosmetic Act, 1940 observed that the date of commission of offence would be the date on which the report of Government Analyst was received. Paras 8 and 9 of State of Rajasthan vs Sanjay Kumar's case (supra) is quoted as under;

"8. Now we shall see which clause of sub-section (1) of Section 469 is attracted to the facts of the case. For this purpose it will be necessary to revert to the facts of this case. The essence of the offences charged is manufacture of adulterated, sub-standard, misbranded, spurious drugs within the meaning of the relevant provisions of the Act and/or storage, distribution and sale of such drugs in contravention of the provisions of the Act. On the date of collection of samples from Respondent 16, on 29-2-1988, it could not have been said that any offence was committed as selling of drugs per se is no offence and the quality of the drugs was not known to the Drugs Inspector, the complainant on that date. It is only when the report of the Government Analyst was received, that it came to light that the provisions of the Act are violated and offence is committed. So on the facts of this case it cannot be said that clause (a) of Section 469(1) is attracted. That the drugs which were offered for sale were sub-standard/adulterated within the meaning of the Act, came to the knowledge of the Drugs Inspector only on 2-7-1988 when the report of the Government Analyst was received by him; and therefore, clause (b) of Section 469(1) will be attracted.

9. Under cognate legislations of different States, similar questions arose before the High Courts. In R.S. Arora v. State [1987 Cri LJ 1215 : (1987) 1 FAC 283 (Del)] the question which fell for consideration of the Delhi High Court was whether for prosecution under Sections 7, 19 and 16(1) of the Seeds Act, 1966, the period of limitation of six months would start from the date of collection of samples under clause (a) or from the date of Seed Analyst's report for purposes of clause (b) of Section 469(1) CrPC. The learned Single Judge of the Delhi High Court took the view that the limitation commences from the date of submission of the report by the Seed Analyst to the Inspector, so Section 469(1)(b) would apply. The same view was taken by the Bombay High Court in Omprakash Gulabchandji Partani v. Ashok [1992 Cri LJ 2704 (Bom)] .

9. Ratio of State of Rajasthan vs Sanjay Kumar (supra) is also applicable in the Act, 2006 because, at the time of collection of a sample of food, no offence can be said to be committed as there is no prohibition to sell food which is not prohibited. It is only when Food Analyst Report received about unfit/unsafe food, offence can be said to be committed. In case of sell of unsafe or sub-standard milk, the date of commission of offence would be the date when the report of Food Analyst is received about its quality.

10. Thus applying the above Principle of Law in the present case, date of commission of offence would be 10.12.2017. Thereafter application for seeking approval was submitted by the Food Safety Officer on 14.05.2018 and approval under Section 77 of the Act, 2006 was granted on 20.06.2019. Therefore period between 14.05.2018 to 20.06.2019 would be excluded because of Section 470(3) Cr.P.C., as Section 470(3) Cr.P.C. provides exclusion of time taken by Sanctioning Authority in computation of limitation. Therefore complaint filed on 04.07.2019 was well within one year.

11. As per the law laid down in Sarah Mathew vs Institute of Cardio Vascular Diseases and others; (2014) 2 SCC 62, the date of cognizance would be the date when the complaint is filed. Para 51 of Sarah Mathew's case (supra) is quoted as under;

"51. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that Bharat Kale which is followed in Japani Sahoo lays down correct law. Krishna Pillai will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant dated for the purpose of computing the period of limitation under Section 468 Cr.P.C."

12. In view of the above facts and legal position, in the present case cognizance is not barred under Section 77 of the Act, 2006 or under Section 468 Cr.P.C.

13. Even if it is accepted for the sake of argument, the complaint was filed after one year from the date of commission of offence, even then the Commissioner had granted approval for prosecution within 3 years from the date of offence in exercise of power under Section 77 of the Act, 2006. Section 77 of the Act, 2006 is being quoted as under;

"Section-77. Time limit for prosecutions.- Notwithstanding anything contained in this Act, no court shall take cognizance of an offence under this Act after the expiry of the period of one year from the date of commission of an offence:

Provided that the Commissioner of Food Safety may, for reasons to be recorded in writing, approve prosecution within an extended period of up to three years.

14. From the perusal of order of the Commissioner of Food Safety, it appears that reason was recorded while granting approval within the extended period of 3 years for initiating prosecution,

therefore, the contention of counsel for the applicant that no reason was recorded by the Commissioner of Food Safety while granting approval for prosecution after the expiry of the period of one year under Section 77 of the Act, 2006 is incorrect.

15. So far as the contention of counsel for the applicant that the offence is punishable for one year and because of Section 468 Cr.P.C., the cognizance cannot be taken after one year is concerned, is incorrect because as per Section 77 of the Act, 2006 prosecution even after one year can be approved by the Commissioner, Food Safety and the same has already been approved by the Commissioner by order dated 20.06.2019. The specific provision of extension of limitation provided under Section 77 of the Act, 2006 will prevail over Section 468 Cr.P.C. because of Section 89 of the Act, 2006. Section 89 of Act, 2006 is quoted as follows;

"89. Overriding effect of this Act over all other food related laws. ?The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

16. The Apex Court in the case of Ram Nath vs. State of Uttar Pradesh and others; (2024) 3 SCC 502 also considered this issue and held that provision of Act, 2006 will prevail over the provision of any other Act. Para 26, 27 and 28 of Ram Nath's case (supra) are quoted as below;

"26. Thus, there are very exhaustive substantive and procedural provisions in FSSA for dealing with offences concerning unsafe food.

27. In this context, we must consider the effect of Section 89 FSSA. Section 89 reads thus:

"89. Overriding effect of this Act over all other food related laws. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect of virtue of any law other than this Act."

The title of the Section indeed indicates that the intention is to give an overriding effect to FSSA over all "food-related laws". However, in the main section, there is no such restriction confined to "food-related laws", and it is provided that provisions of FSSA shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. So, the section indicates that an overriding effect is given to the provisions of FSSA over any other law.

28. The settled law is that if the main section is unambiguous, the aid of the title of the section or its marginal note cannot be taken to interpret the same. Only if it is ambiguous, the title of the section or the marginal note can be looked into to understand the intention of the legislature."

17. From the above observation in the judgement of Ram Nath's case (supra), it is clear that the overriding effect of the FSS Act is not confined to only food-related laws but also other Laws

including Cr.P.C.

18. So far as the contention of counsel for the applicant that being sub-standard sample, the applicant can be prosecuted under Section 51 not under Section 59, this issue can be raised at the time of framing of charge and same cannot be a ground for quashing the proceeding.

19. In view of the above, this Court does not find any illegality in the impugned order as well as impugned proceeding. Accordingly, the present application is dismissed.

Order Date :- 12.11.2024 A.Kr.