

Ramprakash Gupta @ Pappu Jhinna vs State Of U.P. And 2 Others on 18 November, 2022

Bench: Anjani Kumar Mishra, Rajiv Gupta

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Reserved on 29.09.2022

Delivered on 18.11.2022

Court No. - 46

Case :- CRIMINAL MISC. WRIT PETITION No. - 13487 of 2022

Petitioner :- Ramprakash Gupta @ Pappu Jhinna

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Pavan Kumar Mishra

Counsel for Respondent :- G.A.

Hon'ble Anjani Kumar Mishra,J.

Hon'ble Rajiv Gupta,J.

Heard learned counsel for the petitioner and learned AGA for the State-respondents.

The writ petition seeks quashing of the first information report dated 31.05.2022 giving rise to Case Crime No.76 of 2022, under Section 3/2 of the U.P. Gangster Act, Police Station Rath, District Hamirpur.

The contention of learned counsel for the petitioner is that the petitioner has a license for manufacturing Tobacco and other food items including Gutka and Supari. The provisions of the Gangster Act has been invoked against him on the basis of two cases, namely, Case Crime No.163 of 2021 under Sections 420, 467, 468, 471, 272, 273 and Section 59 Food Safety and Standards Act,

Police Station Jalalpur, District Hamirpur and Case Crime No.456 of 2021 under Sections 420, 467, 468, 471, 272, 273 IPC and 59 Food Safety and Standards Act, Police Station Rath, District Hamirpur, wherein charge sheet has also been filed against him.

It is contended that these cases are false and fabricated and pertain to recovery of spurious Gutka. There is nothing to connect this spurious gutka recovered with the petitioner and the same is not alleged to have been not been manufactured at the petitioner facility.

The contention of learned counsel for the petitioner is that in view of law laid down in M/s Pepsi Co India Holding Pvt. Ltd. Vs. State of U.P. and others , an offence under Section 272 and 273 IPC read with provisions of the Food Safety and Standards Act cannot be invoked by the police and that the prosecution, if any, is permissible only under the provisions of the Food Safety and Standards Act.

The prosecution is authorized by the Food Safety Officer and upon his complaint in the Court by competent jurisdiction. Since, both the cases invoked in Section 59 of the Food Safety and Standards Act, the prosecution under the said cases.

For the same reason, the provisions of Gangster Act cannot be invoked against the petitioner. The impugned first information report is therefore, liable to be quashed.

Lastly, it has been contended that the allegation against the petitioner do not fall within the ambit of Section 2(b) of the U.P. Gangster and Antisocial Activities (Prevention) Act 1986 and therefore, also such inviolation is liable to be quashed.

The petitioner has annexed along with the writ petition, the license awarded to him for manufacturing of Sugandh supari and pan masala.

However, two criminal cases against the petitioner also invoked provisions of Section 420 IPC, namely, attaching Sections 467, 468 & 471 IPC. All of which, fall within Chapter XVII of the IPC. There is no embargo to the lodging of an FIR or investigation of these offences by the police in view of law laid down in Pepsi Co India (supra).

Even if the submissions, which only survives for consideration, under the circumstances is if the submission of learned counsel for the petitioner is that two cases against him would not render the petitioner liable to be prosecution under the provisions of the U.P. Gangster Act as the offences alleged against him do not fall within the purview of Section 2b of the Act.

Section 2b reads as follows -

"Gang" means a group of persons, who acting either signally or collectively, by violence, or threat or show of violence, or intimidation, or coercion, or otherwise with the object of the disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage of himself or any other person, indulge in anti-social activities, Manufacturing and selling spurious edible is necessarily for pecuniary or

material advantage and therefore, the two cases against the petitioner will necessarily fall within the ambit of Section 2b of the Act.

Even otherwise, clause (i) of Section 2b provides that the provisions of U.P. Gangster Act can be invoked against the person, who is being charged of offences under Chapter XVII of the Indian Penal Code. Sections 420, 467, 468 etc. invoked against the petitioner in the two cases against him fall within Chapter XVII of the Code as has been noticed above. Under the circumstances, the submission made by counsel for the petitioner is without merit and cannot be accepted.

Even otherwise, the first information report of Case Crime No.163 of 2021 under Sections 420, 467, 468, 471, 272, 273 and Section 59 Food Safety and Standards Act, Police Station Jalalpur, District Hamirpur and Case Crime No.456 of 2021 under Sections 420, 467, 468, 471, 272, 273 IPC and 59 Food Safety and Standards Act, Police Station Rath, District Hamirpur, which are the basis of invocation of the provision of Section 2/3 of the Gangster Act against the petitioner are not under challenge in this writ petition.

However, since, there are two criminal cases against the petitioner which fall within the ambit of Section 2b and 2b(i) of the Act, the first information report cannot be quashed. Moreover, the writ court while dealing with a writ petition seeking quashing of a first information report is not required to examine the correctness or otherwise of the allegations in the first information report.

For the same reason, the writ petition fails and is dismissed.

Order Date :- 18.11.2022 RKM