

Niranjan Kumar Sah vs The State Of Jharkhand on 3 April, 2023

Author: Sanjay Kumar Dwivedi

Bench: Sanjay Kumar Dwivedi

1

[W.P. (Cr.) No. 59

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (Cr.) No. 597 of 2022

Niranjan Kumar Sah

... Petitioner

-Versus-

1. The State of Jharkhand
2. The Secretary, Ministry of Home, Govt. of Jharkhand, Ranchi
3. The Director General of Police, Govt. of Jharkhand, Ranchi
4. The Superintendent of Police, Godda
5. The Food Commissioner, Jharkhand, Ranchi
6. The Designated Officer (Food Safety Act, 2006)-cum-Sub-Divisional Officer, Mahagama, District- Godda
7. The Food Safety Officer, Godda
8. The Officer-in-charge (Sub-Inspector) of Mahagama Police Station, Mahagama, District- Godda

... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Saurabh Shekhar, Advocate

Mr. Aman Dayal Singh, Advocate

For the State : Mr. Devesh Krishna, S.C. (Mines)-III

Mr. Faisal Allam, A.C. to S.C. (Mines)-III

04/03.04.2023 Heard Mr. Saurabh Shekhar assisted by Mr. Aman Dayal Singh,

learned counsel for the petitioner and Mr. Devesh Krishna assisted by Mr. Faisal Allam, learned counsel for the State.

2. This petition has been filed for quashing the entire criminal case arising out of FIR being Mahagama P.S. Case No.222 of 2022, dated 03.11.2022, registered for the offences under Sections 272, 273, 419 and 420 of the Indian Penal Code along with Section 52/59/63 of the Food Safety and Standard Act, 2006 (herein after to be referred to as the 'Act, 2006), pending in the court of the learned Judicial Magistrate, 1 st Class, Godda. So far as prayer no.(ii) made in this petition with regard to direction to the respondents to release the entire food and edible items (including non-edible Mahuwa oil), Mr. Saurabh Shekhar, learned counsel for the petitioner is not pressing prayer no.(ii) in view of the order passed by the revisional court, whereby, the seized articles have

been directed to be released in favour of the petitioner.

3. The FIR being Mahagama P.S. Case No.222 of 2022 has been lodged under Section 154 Cr.P.C. on 03.11.2022. The incident of offence has been noted as "Running of Factory of Oil Mill Illegally". The date of occurrence is 03.11.2022 and FIR has been registered at 16:00 hours. The place of occurrence has been noted as Mohanpur, Mahagama, in the district of Godda. The complainant in the case is Moeen Akhtar, son of Md. Yasir Ansari, who is appointed as Food Safety Officer. The FIR has been lodged against the petitioner, who is the sole proprietor of M/s. Sah and Sons Industries. The information has been registered by Sub-Inspector, namely, Rajendra Yadav, who is the I.O. of the present case, on the complaint lodged by the above Food Safety Officer. The prosecution case is that the Designated Officer-cum-Sub-Divisional Officer, Mahagama had passed an order dated 03.11.2022 according to which the petitioner has indulged in illegal processing of oil at his factory situated at Mahagama and the godown near St. Michael School at village Khadharamal was being illegally operated. The Food Safety Officer has conducted spot inspection of the allegations mentioned in the order dated 03.11.2022 passed by the Designated Officer, along with other officers like Executive Magistrate, Mahagama, Circle Officer, Mahagama and Sub-Divisional Officer, Mahagama at 16:00 hours on 03.11.2022. The raids were conducted at two places, i.e. the Oil Mill and the Godown, one after next, wherein the officers would find the set-up unit of Oil Mill in the back side rooms of the Oil Factory. Thereafter in the same unit, sacks of the Mahuwa seeds (Kochara) were found in stock. In the front room of the factory sealed and packed oil boxes, Chana Dal, Arhar Dal, Chawal, Besan etc. were found in the sacks. Thereafter, raid was conducted in the nearby godown, where the stock of Mahuwa seeds "Kochara" were found and further oil tanker bearing Registration No. BR-01GB-2845 was found there. In the first floor, the sacks of Chawal, Dal, Chana etc. were found kept. It was also found over there that Mahuwa seeds (Kochara) were stocked. The items found at both the places were seized and inspection-cum-seizure list was prepared. It was found that the petitioner, through its factory was engaged in processing the non-edible oil (including non-edible Mahuwa oil) and different brands of mustard oil tins were used to pack them, which is against the Rules of Food Safety and Standard Authority of India (FSSAI). These types of oil are bad for human consumption and can be fatal to human life. At the time of inspection, the petitioner/owner of the unit did not show up on repeated calls. Further no documents/papers were produced of the seized items. The inspection further disclosed that there was misbranding of food products like Chana, Chana Dal, Besan, Arhar Dal, where no manufacturing date, expiry date, batch number, manufacturing company was disclosed in the sack containing the food items. Huge stock of such items were found. For dealing in these products, appropriate license from Food Safety and Standard Authority of India is necessary, but the proprietor of M/s Sah and Sons Industries could not produce any such documents. It was alleged that the petitioner in conspiracy with his staffs is involved in fraudulent activities. Therefore, it was requested at the behest of the informant Food Safety Officer to register FIR and prosecution under the provisions of the Act, 2006 under Section 52/59/63 and under appropriate provisions of the Indian Penal Code.

4. Mr. Saurabh Shekhar, learned counsel for the petitioner submits that the petitioner is sole proprietor of M/s Sah and Sons Industries, which is a firm, appropriately registered, and has been running business of whole- seller, manufacturer and processor of edible products, specifically Fats

and Oils and Fat Emulsions and further the firm is also engaged in the business of production and selling of soap oil etc. He further submits that the petitioner has been doing business in the field since long, and in this relation appropriate municipal license has been certified issued under Section 455(i) of Jharkhand Municipal Act, 2011 bearing License No. MAH16110522210165. He further submits that some of the invoices of the oil produced from Mahuwa Kochara Seeds i.e. transported to different companies across the country, through oil tanker to suppliers and sellers. The use of Mahuwa oil is mainly for manufacturing of soap, which its prime use. He also submits that the processing unit of the petitioner's firm also deals with processing of Chana Dal, Arhar Dal, Besan, Mustard oil etc. The petitioner does not deal in retail sale and has only conducted the whole sale and processing of the above mentioned items. He submits that on 03.11.2022, the Food Safety Officer, Godda vide its letter dated 03.11.2022 has reported to the Designated Officer cum Sub-Divisional Officer, Mahagama that the petitioner is running oil factory and godown in illegal manner. He submits that it was found in the godown and the factory that the Mahuwa oil was being packed in the tins of mustard oil i.e. against the rules of FSSAI. Thereafter, the Designated Officer cum Sub-Divisional Officer, Mahagama vide order dated 03.11.2022 passed an order holding that the petitioner is involved in the process of misbranding of edible products (including non-edible Mahuwa oil) without mentioning the manufacturing date, expiry date, batch number and company name. He further submits that the Food Safety Officer along with the Circle Officer and the Police Station In-charge of Mahagama Police Station, conducted a raid on the oil factory and the godown of the petitioner and have levelled charges and allegations as disclosed in the FIR. He submits that so far as seized articles are concerned, that has already been released in favour of the petitioner pursuant to the order passed by the revisional court. He further submits that under the Act, 2006, only the complaint can be lodged, whereas, in the case in hand, the FIR has been lodged by the Sub-Inspector of Mahagama Police Station. He draws attention of the Court to Section 42 of the Act, 2006 and submits that in view of the said provision, only competent person can launch the case that too before competent court as a complaint case not the FIR. He further draws attention of the Court to Section 36 of the Act, 2006 and submits that in this provision, the power of Designated Officer has been disclosed. He further refers Section 37 of the Act, 2006 which relates to power of Food Safety Officer. He further elaborates his argument by way of submitting that when a Special Act is there, Indian Penal Code sections are not attracted. He submits that identical was the situation before Allahabad High Court in Pepsico India Holdings Pvt. Ltd. v. Food Inspector and another; (2010 SCC OnLine ALL 1708).

5. Relevant paragraph of the said judgment is quoted herein below"

"In view of the aforesaid crystal clear legal proposition and particular provisions under the FSSA we are in agreement with the arguments advanced by the petitioner's Counsel that for adulteration of food or misbranding, after coming into force of the provisions of FSSA vide notification dated 29th July, 2010, the authorities can take action only under the FSSA as it postulates an over riding effects over all other food related laws including the PFA Act. In view of the specific provisions under the FSSA, the offences relating to adulteration of food that are governed under the FSSA after July 29,2010 are to be treated as per the procedures to be followed for drawing and analysis of samples as have been provided for. The provisions of penalties and

prosecution have also been provided therein. Therefore, before launching any prosecution against an alleged offence of food adulteration, it is necessary for the concerned authorities to follow the mandatory requirements as provided under Sections 41 and 42 of the FSSA and, therefore, the police have no authority or jurisdiction to investigate the matter under FSSA. Section 42 empowers the Food Safety Officer for inspection of food business, drawing samples and sending them to Food Analyst for analysis. The Designated Officer, after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations to the Commissioner of Food Safety for sanctioning prosecution. Therefore, invoking Sections 272 and 273 of the Penal Code, 1860 in the matter relating to adulteration of food pursuant to the impugned government order is wholly unjustified and non est. Furthermore, it appears that the impugned Government Order has been issued without application of proper mind and examining the matter minutely and thus the State Government travelled beyond the jurisdiction."

6. Mr. Saurabh Shekhar, learned counsel for the petitioner further refers Section 5 of Cr.P.C. and submits that if the Special Act is there, the provision of IPC is not attracted. On these grounds, he submits that the entire criminal proceeding is bad in law.

7. On the other hand, Mr. Devesh Krishna, learned counsel for the State submits that pursuant to the direction issued by the Sub-Divisional Officer, Mahagama, the said FIR has been registered. He further submits that not only the provisions of the Act, 2006, but the provisions of Indian Penal Code are also attracted and in view of the IPC, the police is competent to lodge the FIR. He further submits that in view of Section 63 of the Act, 2006, if license is not there, prosecution can proceed. He also submits that in view of Section 36(3)(g) of the Act, 2006, the Designated Officer can direct for investigation of the complaint. On these grounds, he submits that this petition is fit to be dismissed.

8. In view of the above submissions of the learned counsel for the parties, the Court has gone through the materials on the record and finds that admittedly FIR has been registered on the complaint of the Food Safety Officer under Sections 272, 273, 419 and 420 of IPC and under Section 52/59/63 of the Act, 2006. In view of the arguments advanced on behalf of the parties, the Court is required to answer as to whether in absence of following the procedure under Section 42 of the Act, 2006, the prosecution can stand against the petitioner or not. The provision of Section 42 of the Act, 2006 which lays down the procedure for launching prosecution for any offence under said Act is quoted herein below:

"42. Procedure for launching prosecution.- (1) The Food Safety Officer shall be responsible for inspection of food business, drawing samples and sending them to Food Analyst for analysis.

(2) The Food Analyst after receiving the sample from the Food Safety Officer shall analyse the sample and send the analysis report mentioning method of sampling and analysis within fourteen days to Designated Officer with a copy to Commissioner of Food Safety.

(3) The Designated Officer after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution. (4) The Commissioner of Food Safety shall, if he so deems fit, decide, within the period prescribed by the Central Government, as per the gravity of offence, whether the matter be referred to,-

(a) a court of ordinary jurisdiction in case of offences punishable with imprisonment for a term up to three years; or

(b) a Special Court in case of offences punishable with imprisonment for a term exceeding three years where such Special Court is established and in case no Special Court is established, such cases shall be tried by a court of ordinary jurisdiction.

(5) The Commissioner of Food Safety shall communicate his decision to the Designated Officer and the concerned Food Safety Officer who shall launch prosecution before courts of ordinary jurisdiction or Special Court, as the case may be; and such communication shall also be sent to the purchaser if the sample was taken under Section 40."

9. On seeing the provision of Section 42 of the Act, 2006, it is crystal clear that the Food Safety Officer appointed or authorised under Section 37 of the Act, 2006 can draw the sample of food and send the same for analysis to the Food Analyst within a specified period of time. The Designated Officer appointed under Section 36 of the Act, 2006 can make a scrutiny of the report of the Food Analyst and decide whether the prosecution can be launched and he can send his recommendation within a specified period of time to the Commissioner of Food Safety for sanctioning such prosecution and after sanctioning by the competent authority, the case can be lodged. In view of the above, it is crystal clear that the Food Safety Officer can lodge the case with the recommendation of the Commissioner of Food Safety. In the case in hand, nothing is on the record to indicate that the investigation was authorised to the Food Safety Officer under Section 37(2) of the Act, 2006 and in absence of following the procedure for launching the prosecution under Section 42 of the Act, 2006, the Court comes to a conclusion that the petitioner is not liable to be prosecuted under Sections 272, 273, 419 and 420 of IPC and under Section 52/59/63 of the Act, 2006.

10. So far as the IPC sections are concerned, it is well settled that if special provision is there, IPC sections are not attracted. Similar was the situation in *Pepsico India Holdings Pvt. Ltd. (supra)* and on that point, the case of the petitioner is fully covered. The seized articles have already been released in favour of the petitioner pursuant to the order passed by the revisional court.

11. Section 5 of Cr.P.C. speaks as under:

"5. Saving.--Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

12. It is well settled that when there is a Special Act, the provisions of the IPC will not be applicable. A reference may be made to the judgment passed in Sharat Babu Digumarti v. Government (NCT of Delhi); [(2017) 2 SCC 18]. Paragraph nos.31, 32 and 37 of the said judgments are quoted herein below:

"31. Having noted the provisions, it has to be recapitulated that Section 67 clearly stipulates punishment for publishing, transmitting obscene materials in electronic form. The said provision read with Sections 67-A and 67-B is a complete code relating to the offences that are covered under the IT Act. Section 79, as has been interpreted, is an exemption provision conferring protection to the individuals. However, the said protection has been expanded in the dictum of Shreya Singhal and we concur with the same.

32. Section 81 of the IT Act also specifically provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. All provisions will have their play and significance, if the alleged offence pertains to offence of electronic record. It has to be borne in mind that IT Act is a special enactment. It has special provisions. Section 292 IPC makes offence sale of obscene books, etc. but once the offence has a nexus or connection with the electronic record the protection and effect of Section 79 cannot be ignored and negated. We are inclined to think so as it is a special provision for a specific purpose and the Act has to be given effect to so as to make the protection effective and true to the legislative intent. This is the mandate behind Section 81 of the IT Act. The additional protection granted by the IT Act would apply.

37. The aforesaid passage clearly shows that if legislative intendment is discernible that a latter enactment shall prevail, the same is to be interpreted in accord with the said intention. We have already referred to the scheme of the IT Act and how obscenity pertaining to electronic record falls under the scheme of the Act. We have also referred to Sections 79 and 81 of the IT Act. Once the special provisions having the overriding effect do cover a criminal act and the offender, he gets out of the net of IPC and in this case, Section 292. It is apt to note here that electronic forms of transmission are covered by the IT Act, which is a special law. It is settled position in law that a special law shall prevail over the general and prior laws. When the Act in various provisions deals with obscenity in electronic form, it covers the offence under Section 292 IPC."

13. It has been further held by this Court in Hare Kant Jha v. The State of Jharkhand & another; (2014 SCC OnLine Jhar 1560) in paragraph 8, which is quoted herein below:

"8. Having heard counsels for both the sides and upon going through the FIR, I find that there is allegation in the FIR that the accident had taken place in the mines as unauthorized persons were committing theft of coal in the mines. Accordingly even if allegations in the FIR are accepted in entirety, the offence, if any, made out against the petitioner relates to contravention of the provisions of the Mines Act, specially Sections 23, 70, 72, 72-C of the Mines Act, which relate to the accident in the mines, causing loss of life. Section 79 of the Mines Act clearly lays down that no Court shall take cognizance of any offence under this Act, unless complaint thereof is made by the competent authority within the prescribed period. Section 75 of the Act clearly lays down the persons, who are authorized to make the complaint for the offence under the Act."

14. In the case of adulteration regarding edible items, it is the Designated Officer who is entitled to investigate such matters under the Act, 2006. Sections 41 and 42 of the Act, 2006 provide power of search, investigation, prosecution and procedure thereof and the procedure of launching any prosecution also. Admittedly, FIR is registered in the case in hand and complaint case is not there. The Act suggests only complaint can be lodged.

15. In view of the above facts, reasons and analysis, the entire criminal case arising out of FIR being Mahagama P.S. Case No.222 of 2022, dated 03.11.2022, pending in the court of the learned Judicial Magistrate, 1st Class, Godda is quashed.

16. Accordingly, this petition is allowed and disposed of.

17. Interim order, if any granted by this Court, stands vacated.

(Sanjay Kumar Dwivedi, J.) Ajay/