

Rajesh Gupta vs State Of U.P. And Another on 11 April, 2022

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Court No. - 16

Case :- CRIMINAL REVISION No. - 223 of 2012

Revisionist :- Rajesh Gupta

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

Counsel for Revisionist :- Vijay Kumar, Ajay Kumar Tripathi

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Brij Raj Singh, J.

Heard Sri Vijay Kumar, learned counsel for the revisionist, Sri Diwakar Singh, learned A.G.A. for the State and perused the record.

The present revision has been preferred with a prayer to set aside/quash the impugned order dated 07.07.2012 passed by the Additional Sessions Judge, Court No.6, Hardoi in S.T. No.121 of 2012 arising out of Case Crime No.105 of 2011, under Sections 272, 273 I.P.C., Police Station Madhoganj, District Hardoi.

The F.I.R. was lodged on 03.03.2011 against the revisionist by Chief Food Inspector. As per the allegation of F.I.R., the Chief Food Inspector inspected the go-down on 09.08.2010. In the said go-down, bag of "Mankamal Deshi Gutakha" was found. According to the F.I.R., date of packing and date of batch was not mentioned and there was suspicion of adulteration. The F.I.R. was lodged under Sections 272 and 273 I.P.C. The case was inspected and the charge sheet was filed under Sections 272 and 273 I.P.C.

Earlier, the revisionist had also filed Application U/S 482/378/407 No.1597 of 2011, challenging the summoning order dated 07.03.2011, which was passed by the A.C.J.M., I, Hardoi in Complaint Case

No.578/2011, under Section 7/16 of P.F. Act, P.S. Madhoganj, District Hardoi. The said complaint was quashed by the Co-ordinate Bench of this Court on 02.02.2018 and the Court observed that once the Food Safety and Standard Act, 2006 (hereinafter referred to as the "Act, 2006") has come into force, there is no justification to proceed against the revisionist under P.F.A. Act, which is already repealed. The operative portion of the order dated 02.02.2018 passed in Application U/S 482/378/407 No.1597 of 2011 is quoted below:-

"9. In view of the aforesaid discussions, crystal clear legal proposition and particular provisions under FSSA, I am in agreement with the arguments advanced by the applicant'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.

10. In view of the aforesaid discussions, the present application is allowed. The summoning order dated 07.03.2011 passed in Complaint Case No.578/2011, under Section 7/16 of P.F. Act, P.S. Madhoganj, District Hardoi is quashed.

11. Accordingly, the present application is finally allowed."

While lodging the F.I.R. on 03.03.2011 against the revisionist the complaint was also filed under Section 7/16 of P.F. Act, Police Station Modhoganj, District Hardoi, which was set aside vide order dated 02.02.2018. Further, the present case is arising out of the F.I.R. dated 03.03.2011 and the legality of the case is to be decided on the basis of the criminal case lodged for the same cause of action. Since the charge sheet was filed in pursuance of the F.I.R., therefore, the present case is considered on the material available on record.

The revisionist appeared before the Court below and filed discharge application which was heard and decided by the impugned order and in the impugned order dated 07.07.2012, the court below has discharged the revisionist under Section 272 I.P.C., however, he has summoned the revisionist under Section 273 I.P.C. Being aggrieved against the said order dated 07.07.2012, the revision has been filed before this Court.

Learned counsel for the revisionist has taken ground that the F.I.R. and the criminal case instituted by the State cannot survive in the eyes of law because for such offences there stands enacted laws/provisions by the Act, 2006. He has further submitted that there is also similar provisions

under which a person can be tried for such offences under the provisions promulgated by the Central Government known as the Cigarette and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (hereinafter referred to as the "Act, 2003"). He has further submitted that as per prohibition of Section 5 of the Indian Penal Code, the revisionist cannot be tried for the offence under Section 273 I.P.C. The relevant provision of Section 5 of the Indian Penal Code is quoted below:-

"Certain laws not to be affected by this Act - Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India or the provisions of any special or local law."

In the present case of complaint, it can be said that once parliament has enacted the Act, 2006 with intention to try an accused when there is no justification to continue the trial by invoking the provision of Section 273 I.P.C. by allowing the trial in the said provision.

The legal position is settled that once Special Act is promulgated by the Central Government or by the State to try a case, it should be tried in the manner provided under the Act. In the present case, it is already mentioned here-in-above that a case under Section 482 Cr.P.C. has been allowed and the Court observed that State could have proceeded under the Act, 2006, thus, proceeding in criminal trial in pursuance of F.I.R. for offence under Section 273 I.P.C. is not sustainable.

Learned counsel for the revisionist has relied upon the judgment passed in Writ Petition No.8254 (MB) of 2010 (M/s Pepsico India Holdings (Private) Limited and another Vs. State of U.P. and others) on 08.09.2010. The Division Bench has held that once there is specific provision/special enactment, by which a case should be tried, there is no justification to invoke the provisions of I.P.C. The relevant portion of the judgment is quoted below:-

"At this juncture it would be relevant to mention that the Indian Penal Code is a general Penal Code for India. Section 2 IPC deals with the punishment of offences committed within India and provides that every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within India. Section 5 IPC says that nothing in the Code shall affect any provisions of any Special or local law and it reads as under:-

"5. Certain laws not to be affected by this Act - Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India or the provisions of any special or local law."

Thus, from perusal of provisions of Section 5 IPC, one thing is crystal clear that nothing in the Penal Code shall affect any provisions of any Special Act and when for any act or omission in a particular subject, a special set of rules have been framed, in that situation, the provisions of the IPC have to be

ignored or overlooked. In the cases at hand FIRs have been registered under sections 272 and 273 IPC pursuant to the impugned Government Order although adulteration of Food Stuff is covered by a Special Act i.e. The Food Safety and Standards Act, 2006.

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 Indian Penal Code 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. "

Thus, in view of the aforesaid legal and factual aspect, I am also of the view that the revisionist cannot be tried under Section 273 I.P.C., however, the revisionist can be tried only under the relevant Act promulgated by the Central Government.

In view of the aforesaid legal proposition the order dated 07.07.2012 passed by the Additional Sessions Judge, Court No.6, Hardoi in S.T. No.121 of 2012, arising out of Case Crime No.105 of 2011, under Sections 272, 273 I.P.C., Police Station Madhoganj, District Hardoi is set aside and the revisionist is discharged from the charge under Section 273 I.P.C. However, the State may proceed against the revisionist under the relevant laws.

Accordingly, the revision is allowed.

Order Date :- 11.4.2022 Atul