

Santosh Sahgal vs State Of Uttar Pradesh Through ... on 7 June, 2022

HIGH COURT OF JUDICATURE AT ALLAHABAD

?A.F.R.

Court No. - 73

Case :- APPLICATION U/S 482 No. - 9060 of 2022

Applicant :- Santosh Sahgal

Opposite Party :- State Of Uttar Pradesh Through Principal Secretary Institutional Finan

Counsel for Applicant :- Utkarsh Malviya

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Sadhna Rani (Thakur),J.

Learned counsel for the applicant is present. He has filed the amendment application with affidavit. The same be kept on the record.

As per facts of the case, an F.I.R. was registered against the unknown persons that they were manufacturing fake pan masala and selling the same in half of the rate of the original, which is resulting into the loss of the State exchequer, hence an action be taken against them. During investigation, the police apprehended three persons one from outside the unit and the rest two from inside the unit manufacturing the said fake pan masala with various branded empty pouches and raw material manufacturing pan masala etc. The present accused is said to have apprehended from out side the manufacturing place, sitting in a car and from car also some incriminatory material is said to have been found. Vide order dated 27.10.2021 the coordinate bench of this Court enlarged the accused on bail in the same case under Sections 420,467, 468, 471 I.P.C. and Section 63 of Copy Right Act, 1957. Later on, Sections 272 and 419 I.P.C. are also said to have been added. The trial court took cognizance against all the accused persons including the present one in the added sections 419 and 272 I.P.C. also. It appears from the record that since the charge sheet was filed in the court the present accused remained absent and after summons, then bailable warrants and at last, non bailable warrants against the present accused vide order dated 19.04.2022 were issued. The co-accused Amit Dixit is said to have been bailed out in the added Sections 419 and 272 I.P.C.

also vide order dated 04.03.2022 of this court.

By means of this application under Section 482 Cr.P.C. learned counsel for the applicant seeks to invoke the inherent jurisdiction of this Court by staying the further proceedings in Case No. 117543 of 2021 pending before the Chief Metropolitan Magistrate, Kanpur Nagar in relation to Case Crime No. 799 of 2021 registered at Police Station Chakeri, District Kanpur Nagar under Sections 420, 419, 467, 468, 471, 272 I.P.C. and Section 63 of Copy Right Act, 1957 and the prayer is also made not to arrest the applicant during trial. In support of this application an affidavit has been filed wherein the prayer of quashing the entire proceedings in relation to additional sections 272 and 419 I.P.C. in the same case is also made.

Thus, it is clear that in his entire application and affidavit the applicant has not made any prayer to quash the proceedings under Sections 420, 467, 468, 471 I.P.C. and Section 63 of Copy Right Act, 1957.

So far as Section 272 I.P.C. is concerned, it is argued by the learned counsel for the applicant that after coming into force of the Food Safety and Standard Act, Sections 272 and 273 I.P.C. with regard to adulteration cases have become redundant. So the charge sheet, cognizance order of all the proceedings under these sections against the applicant are not maintainable.

Learned counsel for the applicant has drawn the attention of the court towards Sections 5 of Cr.P.C., which is apposite to mention here:-

"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."

Learned counsel for the applicant has also drawn the attention of the court towards the judgement of the Apex Court in M/s Pepsico India Holdings (Pvt.) Limited and another Vs. State of U.P. and others, 2010 SCC OnLine All 1708 wherein it is observed that nothing in the penal code shall affect the 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 I.P.C. have to be ignored or over looked.

On the basis of this observation it is argued that in the present case the charge sheet has been filed under Section 272 I.P.C. pursuant to the impugned government order, although adulteration of food stuff is covered by Special Act i.e. The Food Safety and Standards Act, 2006.

The attention of the court is also drawn towards Mahesh Kumar Agarwal Vs. State of U.P. and another reported in 2013 SCC OnLine All 13094 wherein it was found that as per judgement in M/s Pepsico India Holdings (supra) the impugned G.O. dated 11.05.2010 issued by the State Government has been quashed so the first information report registered under Section 272/273 I.P.C. was also quashed.

I have through the Apex Court observation in M/s Pepsico India Holdings (supra) wherein it has been clearly observed that the PFA was enacted for the prevention of adulteration of food being a special Act it eclipsed sections 272 and 273 of I.P.C. In other words, the said Act made sections 272 and 273 I.P.C. redundant as punishment provided under the PFA Act was much more stringent than what was provided under Sections 272 and 273 I.P.C. The Apex Court, however, observed in the judgement that -

"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 good 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.

In view of the aforesaid discussions, the writ petitions are allowed. The impugned G.O. dated 11.5.2010 issued by the State Government contained in Annexure-1 to the writ petition is hereby quashed."

In the case in hand there is dispute regarding adulteration of pan masala, which is an edible item. It is clear that the charge sheet under Section 272 I.P.C. has been filed against the above legal proposition. In the case of adulteration regarding edible items it is the designated officer who is entitled to investigate such matters under Food Safety and Standards Act, 2006. Sections 41 and 42 of this Act provide power of search, investigation, prosecution and procedure thereof and the procedure of launching any prosecution also.

Thus, in the light of above judgements the charge sheet filed under Section 272 I.P.C. against the applicant and consequently the cognizance order and the whole proceedings under Section 272 I.P.C. are liable to be quashed.

So far as Section 419 I.P.C. is concerned which is regarding punishment for cheating by personation is reproduced as under:-

"419. Punishment for cheating by personation.?Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

Cheating by personation is defined under Section 416 of I.P.C.. It is apposite to reproduce this section also:-

"416. Cheating by personation.?A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.?The offence is committed whether the individual personated is a real or imaginary person. Illustration"

As per this section a person can be said to cheat some one by pretending himself to be some other person or by knowingly substituting one person for another or representing that he or any other person is a person other than he or such other person really is.

As this a simple case of preparing fake pan masala and using fake wrappers to be genuine branded wrappers, there is no allegation of cheating by personation in the first information report. Thus, in my opinion the case under Section 419 I.P.C. can also be said to be not made out against the applicant.

Thus, the charge sheet, cognizance order and the whole proceedings with regard to Sections 272 and 419 I.P.C. in the present case are liable to be quashed. Consequently, the charge sheet dated 29.08.2021 in Case Crime No. 799 of 2021 above and the cognizance order dated 26.11.2021 and the entire proceedings with respect to Sections 272 and 419 I.P.C. against the applicant - Santosh Sahgal are quashed.

So far as the other sections are concerned, though, the arguments were made regarding quashing of the proceedings under sections 420, 467, 468, 471 I.P.C. and Section 63 of Copy Right Act, 1957 also but as no prayer regarding quashing of charge sheet, cognizance order or entire proceedings regarding these sections is made by the applicant so there is no need to discuss the allegations regarding these sections.

So far as the prayer regarding quashing of Non Bailable Warrants dated 19.04.2022 and 10.04.2022 against the applicant are concerned, the jurisdiction of recalling or cancelling the warrant rests with the trial court. In this regard, the prayer of the applicant is rejected, otherwise also in the rest Sections i.e. 420, 467, 468, 471 I.P.C. and Section 63 Copy Right Act, 1957 the applicant has been bailed out by this Court vide order dated 27.10.2021.

As the present application under Section 482 Cr.P.C. is being disposed of, so the question of staying further proceedings of the trial court in Case No. 117543 of 2021 above during pendency of the present criminal application does not arise.

The application under Section 482 Cr.P.C. is, thus, partly allowed.

Order Date :- 7.6.2022 gp