

Ajit Kumar Sanghvi vs The State Of Madhya Pradesh on 5 January, 2023

Author: Subodh Abhyankar

Bench: Subodh Abhyankar

IN THE HIGH COURT OF MADHYA PRADESH

AT I N D O R E

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 5th OF JANUARY, 2023

MISC. CRIMINAL CASE No. 36796 of 2021

BETWEEN: -

AJIT KUMAR SANGHVI S/O SHRI SHANTILAL
SANGHVI, AGED ABOUT 62 YEARS, OCCUPATION:
BUSIENSS SAI CHOURAHA MEGHNAGAR (MADHYA
PRADESH)

.....P

(BY SHRI ABHINAV DHANODKAR, ADVOCATE)

AND

THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THROUGH P.S. MEGHNAGAR (MADHYA
PRADESH)

.....RESP

(BY SHRI S. S. THAKUR, G.A.)

This petition coming on for admission and stay this day
passed the following:

ORDER

1] This petition has been filed by the petitioner under Section 482 of Cr.P.C. for quashment of FIR No.0042 dated 29.01.2021 registered at Police Station Meghnagar, District Jhabua - (M.P.) for offence punishable under Section 420 of IPC lodged at the instance of Pankaj Kumar Anchal who is the Food Safety Officer, Jhabua, whereby it is alleged that the petitioner was involved in misbranding under the provisions of Food Safety and Standards Act, 2006 (hereinafter referred to as 'the Act of 2006') and has committed an offence under Section 420 of IPC.

2] In brief, the facts of the case are that as on 18.12.2020, the said Food Safety Officer visited the factory of the petitioner who is running his business in the name and style of M/s Ajit Kumar

Shantilal Sanghvi situated at 175, Sai Chouraha, Thandla Road, Meghnagar, District Jhabua

- (M.P.) and in this inspection, it was found that in the said premises, Sev(Namkeen) which was being manufactured by the petitioner was being packed in transparent polythene bags which did not have any description of the product, which according to the Food Safety Officer was in violation of the provisions of the Act of 2006. Subsequently, the FIR in the present case was lodged on 29.01.2021, i.e., after one month and 10 days, the charge-sheet in the present case has already been filed and along with the charge-sheet, the report dated 16/03/2021 of Food Analyst is also placed on record, in which the product of the petitioner seized by the Food Safety Officer has been found to be within the prescribed norms.

3] Counsel for the petitioner has also submitted that even otherwise, no prosecution could have been launched by the Food Safety Officer as there is a specific provision under Section 42 of the Act of 2006 which provides for procedure for launching prosecution, whereas the FIR was lodged without following the aforesaid procedure and in the charge-sheet also there is no reference that the said procedure was adopted by the Food Safety Officer. It is also submitted that the allegation that the petitioner was involved in the case and is liable to be punished under Section 420 of IPC, is also in violation of the Act of 2006 as even according to the case of the prosecution, it is a case of misbranding and as per Section 52 of the Act of 2006, the maximum penalty for misbranding of foods may extend to Rs.3,00,000/-. Thus, it is submitted that the aforesaid proceedings in which the only charge against the petitioner is under Section 420 of IPC, are liable to be quashed. It is also submitted that no case under Section 420 of IPC is made out as the petitioner has not sold the item under any mis-description or by misleading the public at large in any manner.

4] Counsel for the respondent/State, on the other hand, has opposed the prayer and it is submitted that no case for interference is made out as the petitioner was involved in manufacturing and selling of Sev (Namkeen) without giving proper description of the product.

5] Heard learned counsel for the parties and perused the record and also relevant provisions of the Food Safety and Standards Act, 2006.

6] From the FIR, it is apparent that the case of the prosecution relates to Section 420 only but it alleges misbranding of Sev by the petitioner as is provided under the Act of 2006. It is also found that even assuming that it is the case of misbranding, the respondents ought to have resorted the procedure as provided under Section 42 of Food Safety and Standards Act, 2006 which reads as under:-

"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."

(emphasis supplied) 7] So far as the penalty which can be opposed in the case of misbranding is concerned, it is provided under Section 52 of Food Safety and Standards Act, 2006, which reads as under:

"52. Penalty for misbranded food.-

(1) Any person who whether by himself or by any other person on his behalf manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is misbranded, shall be liable to a penalty which may extend to three lakh rupees.

(2) The Adjudicating Officer may issue a direction to the person found guilty of an offence under this section, for taking corrective action to rectify the mistake or such article of food shall be destroyed."

(emphasis supplied) 8] On perusal of both the charge sheet vis-a-vis the aforesaid sections, this court finds that no such procedure as prescribed under Section 42 of the Act of 2006 has been adopted by the Food Safety Officer and directly a case under Section 420 of IPC has been lodged despite mentioning in the FIR that it is a case of misbranding in which the maximum punishment is

the penalty of Rs.3,00,000/- only, thus the FIR itself is vitiated. On the other hand there is no allegation that the petitioner was found to be selling his Sev by misleading any person or public at large. It is also found that even as per the Chemical Analyst Report dated 16/03/2021, the product of the petitioner is found to be within the norms and there is no adulteration.

9] In such facts and circumstances of the case, this Court is of the considered opinion that no purpose would be served to allow the Trial Court to continue to try the petitioner in a case which in itself cannot be sustained on the basis of the documents filed in the charge-sheet and continuation of the trial would only be further waste of valuable time of the trial court. In the result, the FIR dated 29.01.2022 and the subsequent charge-sheet are hereby quashed.

10] Accordingly, this petition stands allowed and the FIR dated 29/01/2022 is hereby quashed.

(SUBODH ABHYANKAR) JUDGE krjoshi