

Rajesh Ahuja vs The State Of Madhya Pradesh on 20 February, 2024

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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE RAJ MOHAN SINGH
ON THE 20th OF FEBRUARY, 2024
MISC. CRIMINAL CASE No. 9779 of 2020

BETWEEN: -
RAJESH AHUJA S/O JHAMANDAS AHUJA, AGED ABOUT
38 YEARS, OCCUPATION: BUSINESS, R/O PRIYANSHI
AGENCY 16 KHOLI RAMKRISHNA GANJ, KHANDWA
TAHSIL AND DIST KHANDWA (MADHYA PRADESH)

(BY SHRI SANDEEP MAHAWAR - ADVOCATEE)

AND
THE STATE OF MADHYA PRADESH THROUGH FOOD
SECURITY OFFICER, KHANDWA DIST KHANDWA, DIST
KHANDWA (MADHYA PRADESH)

(BY SHRI AMAN PANDEY - PANEL LAWYER)

This application coming on for admission this day, the court is of the following:

ORDER

The petitioner has preferred this petition under Section 482 of Cr.P.C., seeking quashing of the order dated 11.02.2020 passed in Criminal Revision No.104/2019 by the Sessions Judge, Khandwa and the order dated 14.10.2016 passed by Additional Chief Judicial Magistrate, Khandwa in Criminal Case No.1161/2015, dismissing the application under Section 77 of the Food Safety and Standard Act, 2006 (hereafter referred to as 'Act' of 2006).

2. Perusal of the record would indicate that the respondent No.1 filed a complaint against the petitioner under Section 26(1)(2)(i)(ii), and Section 27(1) (2)(c) read with Section 51 and 59 (i) of the Act before the trial Court, alleging that on 16.11.2011 at about 4:00 p.m. the complainant went to 16 Kholi, Ramkrishnaganj, Khandwa at M/s Priyanshi Agency, which is being run by the petitioner. The complainant introduced himself to be seller i.e. the petitioner and asked him to inspect the firm. Thereafter the complainant inspected the firm in the presence of witness namely Bharat Gidwani. The seller was selling Lijjat Vanspati 100 ml pouch, Madhuri Refined Soyabean Oil 5 liters and 15 liters pack, Kesar Coconut Oil etc., for human use and consumption. Inside the shop, there were 120 packet Lijjat Vegetable Oil pouches in one box and about 25 boxes were kept for sale for human use and consumption. On suspicion of adulteration, in Lijjat Vegetable Oil, the complainant purchased

12 packets of Lijjat Vegetable Oil 100 ml @ Rs. 12/- per packet and paid an amount of Rs.140 in cash vide receipt. Thereafter, the complainant asked the petitioner to show the sale license. The sale license was duly handed over to the complainant. After completing necessary formalities as per the provisions of Food Adulteration Act and rules framed thereunder, the sample was sent to the Public Analyst, State Food Test Laboratory, Bhopal for testing. The sample was found to be adulterated as per report of analyst dated 01.12.2011. The petitioner opted for testing of second sample under Section 46(4) of the Act of 2006 and the sample was sent to Mysore. The report to this effect was received on 13.04.2012. Complaint was filed on 15.04.2013 and cognizance has been taken by the Magistrate. The petitioner on the basis of aforesaid admitted facts, filed an application under Section 77 of the aforesaid Act of 2006 before the trial Court and the same was rejected vide order dated 14.10.2016 passed in Criminal Case No.1161/2015. The petitioner remained unsuccessful in Criminal Revision No.104/2019, which was dismissed by the Court of Sessions vide impugned order dated 11.02.2020. That is how, the present petition came to be filed.

3. In order to appreciate the controversy in question, Section 77 of the Act of 2006 is required to be appreciated. For ready reference Section 77 of the aforesaid Act is reproduced herein as under:-

"77. Time limit for prosecution.-Notwithstanding anything contained in this Act, no court shall take cognizance of an offence under this Act after the expiry of the period of one year from the date of commission of an offence:

Provided that the Commissioner of Food Safety may, for reasons to be recorded in writing, approve prosecution within an extended period of upto three years."

4. Perusal of the aforesaid provision would indicate that no Court shall take cognizance of an offence under this Act after the expiry of period of one year from the date of commission of an offence. As per the proviso, the Commissioner of Food Safety may for the reasons to be recorded in writing, approve prosecution within an extended period upto three years.

5. Learned counsel for the petitioner has relied upon the order dated 23.01.2017 passed in M.Cr.C. No.10677/2016 (Dayachand Vs. State of Madhya Pradesh), wherein the date of commission of an offence has been held to be the date on which the occurrence has taken place. The date of commission of offence is not to be counted from the date of report of Food Analyst or from the date of sanction of prosecution. The object of prescribing the limitation has been clarified by the Hon'ble Apex Court in the case of State of Punjab Vs. Sarwan Singh, AIR, 1981 SC 1054, wherein it was held that in putting a bar of limitation on prosecution was to prevent the parties from filing cases after a long period, as a result of which material evidence may disappear and also to prevent abuse of the process of the Court by filing vexatious and belated prosecution long after the date of the offence.

6. Admittedly, the sample was taken on 16.11.2011. The first report of Analyst was received on 01.12.2011. The complaint could have been filed within one year from the date of taking sample i.e. 16.11.2011. Even by the stretch of bonafide explanation, the factum of adulteration came to be noticed by the prosecution on 01.12.2011. No complaint was filed by the prosecution even with the aid of proviso to Section 77 within a period of one year from the date of report of Analyst i.e.

01.12.2011. The prosecution waited even thereafter till 15.03.2013 and filed the complaint accordingly. Even second report of the analysis done by Central Laboratory under Section 46(4) of the Act was received on 13.04.2012, still no complaint was filed thereafter for more than eight months. The object which this statute seeks to serve is clearly in consonance with the concept of fairness of trial as enshrined under Article 21 of the Constitution of India.

7. It is therefore, of the utmost importance that any prosecution, whether by the State or by private complaint must abide by the law or take the risk of prosecution failing on the ground of limitation.

8. In view of the aforesaid facts, no exception can be carved out. The extension granted by the Commissioner of Food Safety, M.P. vide order dated 24.01.2013 is found to be without any reasons. The only reason shown in the aforesaid order is that the report of second sampling was received from the Central Laboratory, Mysore on 13.04.2012, therefore the approval was granted for launching prosecution against the petitioner.

9. In my considered opinion, the aforesaid order is nothing but a farce. The prosecution was not prevented from launching prosecution from the date of sampling, particularly when factum of the material being adulterous came to be noticed on first Analyst report on 01.12.2011. Opting for second sampling was an act of the petitioner/accused and the respondent was not supposed to wait for the report of second sampling. The offence being technical has to be appreciated in the light of ratio in the case of State of Punjab Vs. Sarwan Singh (supra) and also in the light of order dated 23.01.2017 passed by the coordinate Bench of this Court in M.Cr.C. No.10677/2016.

10. In view of the aforesaid factual and legal position of the case, the present petition is accepted. The impugned order dated 11.02.2020 passed by the Court of Sessions Judge, Khandwa and order dated 14.10.2016 passed by the Additional Chief Judicial Magistrate, Khandwa are hereby quashed along with all subsequent proceedings, if any, undertaken in pursuance thereof.

(RAJ MOHAN SINGH) JUDGE b