

Shambhu Dayal vs State Of U.P. And Another on 2 July, 2021

Author: Sanjay Kumar Singh

Bench: Sanjay Kumar Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 72

Case :- APPLICATION U/S 482 No. - 2330 of 2021

Applicant :- Shambhu Dayal

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

Counsel for Applicant :- Hemlata Srivastava, Sandeep Kumar Shrivastava

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh, J.

Due to Pandemic (COVID-19), the case is taken up through video conferencing.

Heard learned counsel for the applicants, learned A.G.A. for the State and peruse the record.

This application under Section 482 Cr.P.C. has been filed by the applicant to quash the Summoning Order dated 10.09.2018 passed by Ist Additional Sessions Judge, Banda in Spl. Case No. 03 of 2018 (State Vs. Shambhu Dayal) for the offence under Sections 26, 58, 59 of the Food Safety and Standards Act, 2006, P.S. Muskara, District- Hamirpur, pending in the court of Ist Additional Sessions Judge Banda.

As per the prosecution case in brief, on 23.03.2017 an inspection was done by the Food Safety Officer concerned at the premises of applicant and 67 Bags of "Khesari" containing 50 kg each were recovered. Thereafter, 1.5 Kg Khesari was purchased for the purpose of sample and same was sent

for examination. The examination report dated 07.04.2017 was received to the Officer concerned on 28.10.2017, in which it has mentioned that on the basis test performed sample is of Khesari gram (Sabut). Sale of Khesari gram is prohibited and is harmful for human consumption. Hence sample is unsafe. The Commissioner, Food Safety concerned granted sanction for prosecution vide order dated 08.08.2018. Thereafter Food Safety Officer filed complaint dated 29.8.2018 against the applicant, on which applicant has been summoned vide order dated 10.09.2018 under Section 26, 58, 59 of Food Safety and Standards Act, 2006.

It is argued by learned counsel for the applicant that he has explained the laches in filing the instant application, which is mentioned in supplementary affidavit, wherein it is stated that first time summoning order dated 10.09.2018 was served upon the applicant on 29.09.2020. Copy of service of notice has been brought on record as Annexure SA-2 to the supplementary affidavit. Therefore, from the date of service of summon, there is no delay in filing the instant application. He next submitted that as per the provisions of Section 77 of the Food Safety and Standards Act, 2006 (Supra), there is bar in taking cognizance in the matter after expiry of period of one year from the date of commission of offence. Provided that the Commissioner, Food Safety may for the reason to be recorded in writing approve prosecution within an extended period of up to three years. It is also submitted that in the sanction order dated 08.08.2018, it is mentioned that sanction is being accorded after expiry of one year considering the public interest.

The submission of learned counsel for the applicant that no reason of delay has been recorded in the order dated 08.08.2018, therefore, sanction order dated 08.08.2018 is also defective and is not in accordance with law. It is also argued that it is a case of prosecution that 67 bags of Khesari was recovered from the possession of the applicant, whereas sample was taken from one bag only and no sample was taken from other bags which causes prejudice to the applicant.

On the basis of said argument, it is submitted that proceeding against the applicant is in violation of mandatory provision of the Food Safety and Standards Act, 2006 (Supra), and its Regulations 2011 which is not sustainable.

Matter requires consideration.

Learned A.G.A. accepted notice on behalf of the opposite parties, who may file counter affidavit within a period of six weeks. Two weeks' further time is granted to counsel for the applicant to file rejoinder affidavit, if any.

List this case on 31.08.2021, before the appropriate Bench.

Till the next date of listing, no coercive action shall be taken against the applicant in pursuant to summoning order dated 10.09.2018 of this case.

Order Date :- 2.7.2021 Sachin