

Sumit Agarwal vs The State Of Jharkhand on 13 February, 2023

Author: Gautam Kumar Choudhary

Bench: Gautam Kumar Choudhary

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. M.P. No. 3161 of 2022

Sumit Agarwal

.... Petitioner

Versus

1. The State of Jharkhand

2. Subir Ranjan

.... Opp. Parties

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Petitioner : Mr. Nilesh Kumar, Advocate

For the State : Mr. Bhola Nath Ojha, A.P.P.

Order No.03 Dated : 13.02.2023

Instant petition has been filed for quashing the entire criminal prosecution including the F.I.R. in connection with Sukhdeonagar (Pandra O.P.) P.S. Case No.284 of 2022 under Sections 188, 269, 270, 272, 328 of the Indian Penal Code and Sections 30(2)(a) and 59(i) of the Food Safety and Standard Act and Section 51(B) of the Disaster Management Act.

2. The present case has been lodged by District Food Safety Officer, Ranchi. As per the prosecution case, as set out in the F.I.R., one truck was seized with huge quantity of Paan Masala and Tobacco. This petitioner is the owner of truck from which the prohibited items was seized.

3. The quashing petition has been filed mainly on the ground that mandatory provision of Section 42 of the Food Safety and Standard Act under which the prosecution can be lodged after inspection of the food by food analyst and after receiving sample from Food Safety Officer. The Designated Officer after scrutiny of the report of the 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 recommendation within 14 days to the Commissioner of Food Safety for sanctioning prosecution. The Commissioner of Food Safety after recording his satisfaction under Sub-section 4 can communicate the decision to the Designated Officer and the concerned Food Safety Officer shall launch prosecution.

4. It is submitted by learned counsel on behalf of petitioner that the procedural formalities have not been observed. It is submitted that notification dated 03.06.2022 has been issued under Sections 30(2)(a) of the Food Safety and Standard Act. It is further submitted that the other offence under Sections 269, 270, 272, 328 of the Indian Penal Code will not be made out on the basis of facts disclose in the F.I.R.

5. With respect to Section 188 of the I.P.C., it is argued that only official complaint can be the basis for launching prosecution and F.I.R. cannot be instituted for violation of the prohibitory order. Reliance has been placed on W.P. (Cr.) No.325 of 2021 and Cr.M.P. No.428 of 2021.

6. Learned A.P.P. opposed the prayer. It is submitted that I.P.C. offences will be made out and the case is still at the stage of investigation. No reply has been given with regard to Section 42 Food Safety and Standards Act, 2006.

7. Section 42 of the Food Safety and Standards Act, 2006 provides that the Food Safety Officer appointed or authorised under Section 37 of the Food Safety and Standards Act, 2006 can draw the sample of food and send the same for analysis to the Food Analyst within a specified period of time. The Designated Officer appointed under Section 36 of the Food Safety and Standards Act, 2006 can make a scrutiny of the report of the Food Analyst and decide whether the prosecution can be launched and he can send his recommendation within a specified period of time to the Commissioner of Food Safety for sanctioning such prosecution. On perusal of Section 42 of the Food Safety and Standards Act, 2006, I find that the Food Safety Officer can launch the prosecution with the recommendation of Commissioner of Food Safety. In the instant case, nothing is on record to indicate that the Investigating Officer was authorized as Food Safety Officer under Section 37(2) of the Food Safety and Standards Act, 2006. The State has not produced the materials in the Counter Affidavit to indicate that the procedure for launching prosecution laid down in Section 42 of the Food Safety and Standards Act, 2006 was followed. In the absence of authorization of the Investigating Officer as Food Safety Officer under Section 37(2) of the Food Safety and Standards Act, 2006 and in the absence of following the procedure for launching prosecution laid down under Section 42 of the Food Safety and Standards Act, 2006, this Court is of the considered view that petitioner is not liable to be prosecuted for the offence under Section 59(i) of the Food Safety and Standards Act, 2006.

8. Further, prosecution under Section 188 of the IPC can be initiated only on a complaint filed by a public servant and not on the basis of a FIR.

9. Other IPC offences are also not made out on the basis of the averments made in the FIR.

10. Section 52 of the Disaster Management Act, 2005 reads as under (1) Whoever, without reasonable cause--

(a) obstructs any officer or employee of the Central Government or the State Government, or a person authorized by the National Authority or State Authority or District Authority in the discharge of his functions under this Act.

11. State in its counter affidavit has failed to answer as to how the provisions of the Disaster Management Act, has been invoked in the present case which deals with seizure of Gutka Pan Masala in contravention of the prohibitory order. There is no assertion in the FIR about the officer or employee who had been obstructed in the discharge of his official duty. From mere seizure of the prohibited item, an inference cannot be drawn that any officer has been obstructed. The ban on

Gutka Pan Masala cannot beat rest to the pandemic situation.

12. Section 269 IPC makes the negligent act which is likely to spread infection of deceased dangerous to life permissible. Section 270 also deals with related matter of malignant act spreading infection of disease. Section 272 of the IPC deals with adulteration of food or drink intended for sale and Section 328 IPC relates to offence of causing hurt by means of possession, with intent to commit an offence. Acts alleged will not remotely make out an offence under the sections. Under the circumstance, prosecution under these provisions is not tenable.

13. From the above, it is apparent that institution of FIR under section 188 of the IPC or under Section 59(i) of the Food Safety and Standards Act, 2006 is not permissible. There has to be an official complaint in case of offences under these provisions. The basic ingredients of IPC offences is not made out on the basis of allegations made. Seizure of the prohibited item is not related to any prohibitory order with respect to the disaster and therefore Disaster Management act shall not apply.

Under the circumstance it shall be an abuse of process of Court to permit the criminal prosecution on the basis of the present FIR, as the allegations made in the first information report, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

The entire criminal prosecution, including the F.I.R. in connection with Sukhdeonagar (Pandra O.P.) P.S. Case No.284 of 2022 pending in the Court of Judicial Magistrate, 1st Class, Ranchi, is quashed.

Criminal Miscellaneous Petition is allowed.

(Gautam Kumar Choudhary, J.) Anit