

Satyendra Kesharwani vs State Of U.P. Thru. Prin. Secy. Home. Lko ... on 22 December, 2021

Author: Sangeeta Chandra

Bench: Sangeeta Chandra

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?A.F.R.

Court No. - 11

Case :- U/S 482/378/407 No. - 5605 of 2021

Applicant :- Satyendra Kesharwani

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home. Lko & Another

Counsel for Applicant :- Virendra Kumar Tripathi,Alok Kumar Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Sangeeta Chandra,J.

(Oral) (1) Heard the learned counsel for the parties and perused the record.

(2) This petition has been filed for the following main prayer:-

" Wherefore, It is most respectfully prayed that Hon'ble Court may kindly be pleased to:

(a) To quash the charge sheet filed by I. O. against the petitioner in case Case Crime No. 551 of 2019, Under Sections 420, 272, 273 I.P.C. Police Station : Maharajganj, District: Raibareilly, Which is annexed as Annexure No. 7."

(3) It has been submitted by the learned counsel for the petitioner that the petitioner had earlier filed a Petition No. 415 (M/B) of 2020 challenging the FIR which has been dismissed as infructuous by this Court on 07.12.2021 as Charge sheet has been filed against the petitioner by the opposite party no.2 i.e. Station House Officer, Police Station Maharajganj, District Rae Bareli. In the FIR it was alleged that the Station House Officer has apprehended several persons involved in adulteration of cumin seeds (Jeera) on the basis of information received from informer in Maharajganj Qasba. Several persons including the petitioner was made accused as in the Godown several bags of broom seeds (Phool Jhadoo) were found to have been mixed with cumin seeds.

(4) It has been submitted by the learned counsel for the petitioner that the Investigating Officer did not conduct a proper investigation and submitted Charge-sheet. The learned Trial Court without application of judicial mind has taken cognizance and issued summoning order. It has been submitted that the FIR has been filed under Sections 272, 273 of the IPC whereas the cases of adulteration are now governed by Special Act that is the Food Safety Act. The Investigating Officer recorded the statement of the Incharge Chief Food Safety Officer, Rae Bareli, and his subordinates who were working as Food Safety Officer that they had accompanied the police personnel on the raid conducted on the Godown where 150 bags of broom seeds (Fake cumin seeds) approximately 75 quintals of Jeera mixed with Phool Jhadoo seeds were found. The Phool Jhadoo seeds/Jhadoo seeds were found noxious for human consumption as per the report of the Public Analyst Laboratory, U.P., Lucknow under Sections 3.1 (ZZ) (xi) of Food Safety and Standard Act, 2006. The Charge sheet having been submitted wrongly under various sections of the IPC. The cognizance was initiated and the summoning order issued without application of mind.

(5) Learned counsel for the petitioner has placed reliance upon the Division Bench judgment of this Court in Writ Petition No.8254 (M/B) of 2010 [M/s Pepsico India Holdings (Pvt) Limited and Another Vs. State of U.P. and Others] and connected matters all filed by Pepsico India Holdings, the petitioner therein had questioned the validity of the Government Order dated 11.05.2010 directing the Police to register cases or initiate action under Sections 272/273 IPC and one of the grounds taken was that after coming into force of the Food Safety and Standard Act, 2009 action could be taken only under the Special Act, in case of any offence relating to adulteration /mis-branding of food articles. The Division Bench has considered Section 89 of the Food Safety and Standard Act which gave overriding effect to the Act over other food related laws, and Section 97 of the Act which sought to repeal other food laws in case of the offences specified in the Second schedule of the Act immediately with effect from the date of which the Act came into force. Sub Section (4) thereof stated that notwithstanding anything contained in any other law for the time being in force, no Court shall take cognizance of an offence under the repealed Act or orders after the expiry of a period of three years from the date of the commencement of this Act.

(6) This Court has carefully perused the judgment cited by the learned counsel for the petitioner. It was argued before the Division Bench that after the aforesaid Act came into force the Food Safety Standards Act is the only law relating to and dealing with the offences regarding adulteration of food. The Government Order directing the Divisional Commissioners, District Magistrates, Deputy Inspector Generals of Police, Senior Superintendent of Police and Superintendent of Police to lodge FIR under Sections 272/273 IPC in case of adulteration of any article of food or drink was therefore

issued without jurisdiction, and in violation of the provisions of Food Safety and Standards Act. It was argued before the Court that Section 272 is attracted if any person adulterates an article of food with the intention to sell such an article or knowing that it is likely that the article will be sold as food or drink. However, there was no allegation in the FIR that the petitioner-company or its employees or agents had kept its products with the intention to sell the same, or knowing that the products are likely to be sold as food or drink or that the said products were exposed or offered for sale. The definite stand of the company was the articles seized were kept in the godown where even a board "not for sale" was hanging at the time when the search was conducted.

(7) The Court observed that the IPC is a general Penal Code for India. Section 2 IPC deals with the punishment of offences committed within India and provides that every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within India. Section 5 thereof specifically excludes its application in a case where there is a Special Act. Since the Prevention of Food Adulteration Act, the pre-cursor of the Food Safety & Standards Act was a Special Act it overrides Sections 272 & 273 IPC. The Division Bench referred to a judgment of the Guwahati High Court also relating to Food Adulteration matters and also to a judgment of the Supreme Court in *Jeewan Kumar Raut and Another Vs. Central Bureau of Investigation* reported in [2009 (7) UJ SC 3135], where the Supreme was considering the provisions of Transplantation of Human Organs Act, 1994, and held that if a Special statute lays down procedures, the ones laid down under the general statutes shall not be followed.

(8) The Division Bench came to the conclusion that after coming into force of the provision of the Food Safety and Standards Act by a Notification dated 29.07.2010 the Authorities can take action only in the Food Safety and Standard Act, as it has over riding effect over all other laws relating to food and its sale, therefore, if an article is seized it has to be treated as per the procedure to be followed for drawing a sample as given in the said Act, and it is necessary for the Authorities to follow mandatory requirements as provided under Section 41-42 of the said Act, and police have no Authority to investigate the matter.

Under Section 42 of the Food Safety and Standards Act, The Food Safety Officer shall be responsible 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 within fourteen days to the Commissioner of Food Safety for sanctioning prosecution. The Court therefore, held that invoking Sections 272-273 IPC in matters relating to adulteration of food pursuant to the impugned Government Order was wholly and justified and by issuing such order, the State Government had transgressed its jurisdiction. It therefore, set aside the impugned Government order dated 11.05.2010 and consequently, the FIR registered in the case in pursuance of such Government Order and the criminal proceedings initiated against the Company.

(9) It has been submitted by the learned counsel for the petitioner that the law settled by the Division Bench, clearly applies in his case as the investigation, drawing of samples, sending them for

Analyst etc. was not done as per the procedure prescribed under the Food Safety and Standards Act.

(10) Shri S.P. Tiwari, learned A.G.A. on the other hand, has pointed out that the statement taken by the Investigating Officer clearly reveals that the Food Safety Officers had accompanied the Inspection Team, and therefore the procedure that was followed for inspection of the godown of the petitioner was under the Food Safety and Standards Act. The sample was sent to the Government Public Analyst Laboratory, Lucknow and Dr. Rajesh Kumar duly appointed as Food Analyst under the provisions of Food Safety and Standards Act, 2006 for U.P. received the samples from the Food Safety Officer Laboratory. The condition of the seal on the samples and outer covering of such sample was found intact and unbroken. Dr. Rajesh Kumar, the Analyst found the sample of Phool Jhadoo seeds unfit for human consumption under Regulations 2.9.8 (1) of the Food Safety and Standards (Food Products and Food) Regulation 2011. The method of testing of the sample was as per the prescribed standards in the Regulations of 2011 and it was analyzed as per the Food Safety and Standards Manual of 2016. It was found on the basis of test performed as per the Manual, that the extraneous material exceeds the prescribed limit 3.0 in the sample and the sample was found as sub standard by the Food Analyst and noxious for human consumption. The opinion given was that the sample of Phul Jhadoo seeds was not a food item, and it was noxious for human consumption, and the sample was declared 'noxious' as per the Section 3.1 (zz) 11 of the Food Safety and Standards Act, 2006.

(11) It has been submitted by the learned A.G.A. that only because the Food Safety and Standards Act would apply in such matter, the offence of cheating as described under Section 420 of the I.P.C. cannot be said to have become redundant. It was open for the Authorities to take action only under the Food Safety and Standards Act or take action also under the IPC as Section 272 and 273 relates to additions of noxious substance in a food item Phul Jhadoo seeds were found to be noxious enough for human consumption and therefore action could have been taken under Sections 272-273 also.

(12) After considering the arguments of the learned counsel for the petitioner and the learned A.G.A. and going through the judgment of the Division Bench in Pepsico (Supra), this Court is of the opinion that it is still open for the Investigating Officer to file supplementary charge sheet under various provisions of Food Safety and Standards Act. The Charge sheet may have been submitted under the provisions of IPC and cognizance may have been taken but that does not exclude the application of the Food Safety and Standards Act in the case of the petitioner.

(13) This Court is not convinced with the arguments made by the learned counsel or the petitioner that only because the Food Safety and Standard Act, 2006 was applicable and wrong section has been applied in the Charge sheet upon the petitioner, the offence committed by the accused would not stand washed away.

(14) There being no good ground to show interference at this stage in the Charge-sheet or the summoning order because the ends of justice would not be served in case this Court shows interference in such a gross misconduct of the accused, this petition stands dismissed.

Order Date :- 22.12.2021 PAL