

Pawan Jain vs The State Of Madhya Pradesh on 15 November, 2022

Author: Satyendra Kumar Singh

Bench: Satyendra Kumar Singh

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M.Cr.C. No.2346/2020

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SATYENDRA KUMAR SINGH

ON THE 15th OF NOVEMBER, 2022

MISC. CRIMINAL CASE No. 2346 of 2020

BETWEEN: -

PAWAN JAIN S/O LATE MADANLAL JAIN
AGED ABOUT 52 YEARS, OCCUPATION: BUSINESS
69, TEHSIL ROAD SANAWAD
KHARGONE (MADHYA PRADESH)

.....APPLICANT

(BY SHRI VIVEK SINGH WITH SHRI ARPAN JAIN, ADVOCATES)
AND

THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER
THROUGHT P.S. SANAWAD (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI SUDHANSHU VYAS, PUBLIC PROSECUTOR FOR
STATE)

This petition coming on for orders this day, Hon'ble Shri Justice Satyendra Kumar Singh passed the following:

ORDER

Heard.

This petition under Section 482 of Cr.P.C. has been filed for quashment of FIR dated 13.10.2019 bearing Crime No.409/2019 registered at Police Station Sanawad, District Khargone for the offence punishable under Sections 272 and 420 of IPC.

2. Factual matrix giving rise to the instant case for just and proper adjudication of this petition are that on 13.10.2019, SHO Police Station Sanawad, District Khargone Rajendra Prasad Soni received a

secret information that applicant was manufacturing adulterated ghee at his house situated in his field. He alongwith other police officials and panch witnesses reached at his godown like house situated near Junapani Road and found the applicant manufacturing adulterated vegetable ghee. At the same time, Food and Safety Officers Neeraj Shrivastava and Narsingh Solanki also reached the spot and seized 36 tin containing 15 kgs. each manufactured adulterated ghee without label, 68 tin containing 15 kgs. each raw material with label "Natural Fresh Purita Vanaspati", 29 tin without lid in which adulterated ghee was kept for cooling and 18 empty tin without lid. The samples of the substance, found kept in 36 tin and 68 tin, were collected by the police as well as by the Food and Safety Officers separately and the same were sent to the State Food Laboratory, Idgah Hills, Bhopal. Reports were obtained and after completion of investigation, charge-sheet was filed against the applicant.

3. Learned counsel for the applicant submits that as no one has complained against the applicant that he cheated anyone, ingredients of Section 420 of IPC do not attract in this matter, as held by this Court in the case of Dinesh Sahu & another vs. State of Madhya Pradesh in Criminal Revision No.1462/2015 on 03.10.2017. He further referring to the judgement of the High Court of Allahabad in the case of M/s Pepsico India Holdings (Pvt.) Limited and another vs. State of U. P. and others, 2010 SCC OnLine All 1708 submits that there is a specific Act namely, the Food Safety and Standards Act, 2006 therefore, provisions of Section 272 of IPC will not attract. Both the samples collected by the Food and Safety Officers were found within norms, as per the report dated 24.01.2020 of the Food Analyst, State Food Laboratory, Idgah Hills, Bhopal. He further submits that applicant was having a valid license for manufacturing Cooking Medium at the time of incident. During the period of incident, construction work of road was going on near the place where he was authorised to manufacture the Cooking Medium therefore, at that time, the Cooking Medium was prepared at his house situated in the field for which he has already been punished vide order dated 24.02.2021 passed by the Competent Authority/Additional District Magistrate, District Khargone in Case No.54/B-121/Food Safety/20-21. In view of the above, FIR lodged against the applicant is liable to be quashed.

4. Per contra, learned Public Prosecutor for the non-applicant/State has opposed the prayer and submits that the applicant was found manufacturing adulterated ghee at the place where he was not authorised to manufacture the same. The samples collected by the police officials have been found to be adulterated in the report dated 16.12.2019 given by the Food Analyst of same State Food Laboratory, Idgah Hills, Bhopal. The provisions of Section 272 of IPC very well attract in this case therefore, petition is devoid of merit and the same be dismissed.

5. Heard learned counsel for the parties at length and perused the record.

6. It is apparent from the license bearing No.11418890000109 submitted by the applicant that he was authorised to manufacture the Cooking Medium since 25.09.2018 to 24.09.2021 at his premise situated in Tehsil Road Sanawad, District Khargone in the name of M/s PMJ Enterprises.

Admittedly, the place of incident from where the vegetable ghee said to be adulterated was found from his godown like house situated in his field is different from the aforesaid place mentioned in

his license.

7. It is apparent from perusal of the record that at the time of incident, samples of the vegetable ghee said to be adulterated were taken by the police as well as Food and Safety officers simultaneously and both were sent for chemical examination to the same State Food Laboratory, Idgah Hills, Bhopal. The samples collected by the police were received in the said laboratory on 21.10.2019, while samples collected by the Food and Safety officers were sent on 17.10.2019. Vide report No.82 dated 16.12.2019, the samples collected by the police were found sub-standard and adulterated, while vide report No.4637 dated 24.01.2020, samples collected by the Food and Safety officers were found within norms.

8. In view of the aforesaid, without evidence, at this stage, it cannot be said that the samples collected by the police officers were within norms and were not adulterated. It also cannot be said at this stage that the ingredients of Section 272 of IPC do not attract in the matter. In this regard, the judgement delivered by the Apex Court in the case of The State of Maharashtra and another vs. Sayyed Hassan Sayyed Subhan and others (Criminal Appeal No.1195/2018 dated 20.09.2018) can be relied upon, wherein while dealing with the matter relating to the Food Safety and Standards Act, 2006, it was observed that where an act or an omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both enactments but shall not be liable to be punished twice for the same offence. Relevant paragraphs of the said judgement are as follows :-

7. There is no bar to a trial or conviction of an offender under two different enactments, but the bar is only to the punishment of the offender twice for the offence. Where an act or an omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both enactments but shall not be liable to be punished twice for the same offence. 1. The same set of facts, in conceivable cases, can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under the IPC and at the same time, an offence under any other law. 2 The High Court ought to have taken note of Section 26 of the General Clauses Act, 1897 which reads as follows:

"Provisions as to offences punishable under two or more enactments - Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of 1 T.S. Baliah v. T.S.Rengachari - (1969) 3 SCR 65 2 State of Bihar v. Murad Ali Khan - (1988) 4 SCC 655 those enactments, but shall not be liable to be punished twice for the same offence."

8. In Hat Singh's³ case this Court discussed the doctrine of double jeopardy and Section 26 of the General Clauses Act to observe that prosecution under two different Acts is permissible if the ingredients of the provisions are satisfied on the same facts. While considering a dispute about the prosecution of the Respondent therein for offences under the Mines and Minerals (Development and Regulation) Act 1957 and Indian Penal Code, this Court in State (NCT of Delhi) v. Sanjay⁴ held

that there is no bar in prosecuting persons under the Penal Code where the offences committed by persons are penal and cognizable offences. A perusal of the provisions of the FSS Act would make it clear that there is no bar for prosecution under the IPC merely because the provisions in the FSS Act prescribe penalties. We, therefore, set aside the finding of the High Court on the first point.

9. In view of the aforesaid discussions, although submissions made by counsel for the applicant with regard to the offence punishable under Section 420 of IPC has force but with regard to other offences as well as arguments advanced in light of the judgement delivered by the High Court of Allahabad in the case of M/s Pepsico India Holdings (Pvt.) Limited (supra) are not acceptable. At this stage, it cannot be said that there is no evidence against the applicant.

10. Hence, this petition filed under Section 482 of Cr.P.C. for quashment of FIR is devoid of merit and is hereby dismissed.

(SATYENDRA KUMAR SINGH) JUDGE gp GEETA DN: c=IN, o=HIGH COURT OF MADHYA PRADESH BENCH INDORE, ou=HIGH COURT OF MADHYA PRADESH BENCH INDORE, postalCode = 452001, st = Madhya Pradesh, 2.5.4.20=1dc3d93a178bbacdoe9485f9f6e99335499bddb32501850a4984b5b63f6d7a38, PRAMOD pseudonym = 12F09B7BC77D4D3D96B764E8FA34B6FE3874D434, serialNumber = 41554F8E701AEEB833278B4FDD900CBED72CCF299EA61E33BBE6175289BA0390, cn=GEETA PRAMOD Date: 2022.11.18 17:34:51 +05'30'