

Nitin Kumar And Another vs Food Safety Appellate Tribunal And 2 ... on 30 January, 2023

Author: Ajit Kumar

Bench: Ajit Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 37

Case :- MATTERS UNDER ARTICLE 227 No. - 918 of 2023

Petitioner :- Nitin Kumar And Another

Respondent :- Food Safety Appellate Tribunal And 2 Others

Counsel for Petitioner :- Arvind Kumar Sahu

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

Heard learned counsel for the parties.

Sri Sanjay Kumar Singh, learned Additional Chief Standing Counsel submits that State is a necessary party in the suit.

Accordingly, learned counsel for the petitioners is permitted to implead State as respondent forthwith, copy of which has already been supplied to Sri Sanjay Kumar Singh, learned Additional Chief Standing Counsel and he has also placed instructions received by him, which is taken on record.

By means of this petition filed under Article 227 of the Constitution of India, the petitioners have assailed the order passed by the appellate authority whereby only 50 per cent of the penalty has

come to be stayed on a temporary stay application filed being Paper No.6-C against the order passed by the Adjudicatory Authority exercising power under Section 26 of the Food Safety and Standards Act, 2006 read with relevant regulations on the charge of misbranded product.

It is submitted by learned counsel for the petitioners that driver of the petitioner no.2 who has been levelled with the charge of selling misbranded product and hence penalty has been imposed upon him, cannot fall within definition of distributor so as to charge him of the offence of sale of selling misbranded product.

The other argument advanced is that the price of total product namely, 'Neoberry Jumbo Fun' that has been ceased is only Rs.1070/- whereas the penalty imposed is of Rs.50,000/- and Rs.25,000/- upon petitioner no.2 and Rs.75,000/- and Rs.50,000/- upon petitioner no.2 under Section 52 and 58 respectively under the Act, 2006 and therefore, both the petitioners were entitled for stay upon the penalty during pendency of the appeal.

Per contra, it is argued by learned Additional Chief Standing Counsel that in so far as the driver is concerned since the carriage vehicle used to be driven by him, he will be jointly and severely liable under the Act and moreover it would be a matter of decision in appeal and so at this stage, this question may not be gone into.

Meeting the other argument learned Additional Chief Standing Counsel submits that the number of products ceased would not matter as the petitioners were dealing in the product for the distribution for sale to the retailers in the market for a long period of time and they might have sold thousands of products or even more. The penalty under the Act, he argues, is not dependant upon the number of products ceased but for the statutory charge framed under the Act and any person is found guilty of the same is to face penalty.

Having heard learned counsel for the parties and perused the record, I find force in the argument that this Court may not interfere in the matter at this stage and so also I decline to interfere in the order in so far as petitioner no.2 is concerned. However, the petitioner no.1 being the driver, prima facie, he would be a servant to be commanded by the master and so certainly would not be dealing in the product at all. Hence, the court could have taken pragmatic view in considering the stay application of the driver.

In view of the above, the penalty imposed upon the driver by the Adjudicatory Authority under its order dated 2.7.2019 shall remain stayed during pendency of the appeal.

In so far as the penalty imposed upon the distributor namely, petitioner no.2 is concerned, he is held liable to pay the penalty during pendency of appeal to the extent the appellate court has directed. The penalty would ultimately abide by the final outcome of the appeal.

At this stage, learned counsel for the petitioner submits that the time framed to deposit penalty under the order impugned before this Court has expired and, therefore, some further time may be granted.

Learned Additional Chief Standing Counsel does not object to the above request.

In view of the above, the petitioner no.1 is permitted to make necessary deposits within four weeks from today.

This petition stands partly allowed and to the extent of the driver namely the petitioner no.1 only the order impugned passed by the District Judge dated 2.1.2023 stands modified.

Order Date :- 30.1.2023 Deepika