

Dharampal Satyapal Ltd vs The State Of Maharashtra And 3 Ors on 19 April, 2022

Bench: Chief Justice, Soumitra Saikia

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GAHC010062722022

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/116/2022

DHARAMPAL SATYAPAL LTD.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF COMPANIES
ACT, 1956 AND HAVING THE REGD. OFFICE AT 98, OKHLA INDUSTRIAL
ESTATE, PHASE-3, NEW DELHI ALSO AT M/S DHARAMPAL SATYAPAL LTD.,
BYLANE II, INDUSTRIAL ESTATE, BAMUNIMAIDAN, GUWAHATI, ASSAM-
781021 THROUGH AUTHORIZED SIGNATORY MR. SHANTANU SARMA, S/O.
LT. TARAK CHANDRA SARMA, R/O. DISHA ENCLAVE, FLAT NO.5B2,
ARUNODAY PATH, CHRISTIANBASTI, GUWAHATI, 781005.

VERSUS

THE STATE OF MAHARASHTRA AND 3 ORS.
THROUGH DIRECTOR GENERAL OF POLICE POLICE HEADQUARTERS,
OLD COUNCIL HALL SHAHEED BHAGAT SINGH MARG MUMBAI-400001.

2:SANJAY T SALUNKHE
SENIOR POLICE INSPECTOR CRIME BRANCH
SOLAPUR CITY COMMISSIONER OF POLICE OFFICE IIND FLOOR
GANDHI CHOWK
SOLAPUR
MAHARASHTRA.

3:THE COMMISSIONER OF POLICE

KAMRUP (M) AT GUWAHATI
REP. BY THE PUBLIC PROSECUTOR
STATE OF ASSAM.

4:THE OFFICER IN CHARGE
CHANDMARI POLICE STATION POLICE
KAMRUP (M) AT GUWAHATI
REP. BY THE PUBLIC PROSECUTOR

STATE OF ASSAM

5:CENTRAL FOOD SAFETY OFFICER

FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA
NORTH EASTERN REGION
HOUSEFED COMPLEX
CENTRAL BLOCK
3RD FLOOR
DISPUR
GUWAHATI-781006
ASSAM.

6:COMMISSIONER OF FOOD SAFETY

FOOD AND DRUGS ADMINISTRATION MAHARASHTRA
S.NO. 341
BANDRA KURLA COMPLEX
MADHUSUDAN KALELKAR MARG
BANDRA (EAST)
MUMBAI-400051

Advocate for the Petitioner : DR. A SARAF

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 19.04.2022 Heard Dr. A. Saraf, learned senior counsel appearing for the writ appellant.

The appellant company is incorporated under the provisions of the Companies Act, 1956, which has its manufacturing unit situated in the industrial estate, Guwahati, Assam, where the company manufactures, inter alia, 'Pan Masala'. According to the appellant, 'Pan Masala' is defined under Regulation Page No.# 3/5 2.11.5 of the Food and Safety Standards (Food Products Standards and Food Activities) Regulation, 2022 as follows:

"2.11.5: Pan Masala means the food generally taken as such or in conjunction with pan, it may contain -

Betelnut, lime, coconut, catechu, saffron, cardamom, dry fruits, mulethi, sabnermusa, other aromatic herbs and spices, sugar, glycerine, glucose, permitted

natural colours, menthol and non-prohibited flavours. It shall be free from added coal tar colouring matter and any other ingredient injurious to health.

It shall also conform to the following standards, namely, Total ash Not more than 8.0 per cent by weight (on dry basis) Ash insoluble Not more than 0.5 per cent by weight (on dry basis) In dilute HCl acid."

In the State of Maharashtra, the Commissioner of Food Safety, who has been appointed under the 2006 Act for the State of Maharashtra, had passed an order on 15.07.2021 under section 30(2)(a) of the 2006 Act prohibiting manufacture, storage, distribution or sale of, inter alia, 'Pan Masala' in the State of Maharashtra. Therefore, 'Pan Masala' is a prohibited item in Maharashtra. To manufacture, sell, store or distribute 'Pan Masala' is also an offence inter alia, section 26(2)(iv) of the 2006 Act, which reads as under:

"26. Responsibilities of the food business operator. -

- | | | | |
|-----|--|-----|-----|
| (1) | *** | *** | *** |
| (2) | No food business operator shall himself or by any person on his behalf | | |

manufacture, store, sell or distribute any article of food -

- | | | | |
|-------|---|-----|-----|
| (i) | *** | *** | *** |
| (ii) | *** | *** | *** |
| (iii) | *** | *** | *** |
| (iv) | Which is for the time being prohibited by the | | |

Food Authority or the Central Government or the State Government in the interest of public health; or

(v) *** ** *

The admitted position is that there is no similar prohibition either on Page No.# 4/5 manufacture, storage, distribution or sale of 'Pan Masala' in the State of Assam.

On 06.12.2021, at 20:10 hours, an FIR was lodged at Solapur Police Station, Maharashtra, where the informant is the Food Safety Officer, Solapur, states that a consignment of prohibited food items, which included 'Rajanigandha Pan Masala', had been seized from one Mohammad Imran, aged about 42 years, resident of Hyderabad, the total value of which is Rs. 1,99,387.00. The FIR was lodged under section 26(2)(i) and 26(2)(iv) of the Food Safety and Standards Act, 2006 and section 188/272/273/328 IPC.

It appears that consequent to filing of the said FIR, investigation was made and it was found that the seized items were manufactured in Guwahati, Assam. The Investigating Officer visited the factory premises of the appellant at Chandmari, Guwahati, on 09.03.2022, having been assisted by the police officers of the concerned police station and, therefore, sealed the entire machinery and goods

lying in the factory premises and the factory was also sealed. Aggrieved by the said act on the part of the respondent nos. 1 and 2, the appellant filed a writ petition, being WP(Crl.) 12/2022. The learned Single Judge, vide interim order dated 22.03.2022 has given limited relief to the writ petitioner/appellant inasmuch as the writ petitioner and its employees have been given access to every part of the multi-storied building where the seized machinery are situated, but the plant and machinery remained sealed. The relevant portion of the order passed by the learned Single Judge is reproduced below.

"Sale of Rajanigandha Pan Masala is prohibited in Maharashtra but not prohibited in Assam. Under Section 102 of the CrPC Police is not empowered to seize immovable property. Therefore, the petitioner is prohibited from using the movable machineries used for manufacturing Rajanigandha Pan Masala within the premises of the petitioner. It is hereby directed that the petitioner and its employees shall have access to every part of the multistoried building where the said seized machineries are situated. Except the seized machineries the Page No.# 5/5 petitioner and its employees will be at liberty to use other properties situated inside the building.

Continuation of this order after appearance of the respondent nos. 1 and 2 shall be considered after hearing both sides."

Aggrieved by the order passed by the learned Single Judge, writ petitioner is before this court in appeal.

This court in its order dated 30.03.2022 had directed that the factory of the appellant company be unlocked, seals removed and be handed over to the manager/occupier of the appellant company, inter alia, on our prima facie opinion that the provisions of the Code of Civil Procedure regarding search and seizure were not followed. Orders were also passed to implead the Central Food Safety Officer, North Eastern Region, Guwahati, Assam, as well as the Commissioner, Food Safety, Maharashtra, as respondent nos. 5 and 6, respectively, and to issue notices to respondent nos. 1, 2 as well as the newly impleaded respondent nos. 5 and 6.

Today Ms. L. Devi, learned counsel has entered appearance on behalf of respondent no. 2 and P. J. Barman, learned counsel has appeared for respondent no. 5. Mr. M. Phukan, learned Public Prosecutor, Assam, has appeared for respondent nos. 3 and 4.

Since the matter is cognizable by the learned Single Judge and is under consideration by the learned Single Judge in the writ petition, we are of the opinion that no useful purpose will be served by keeping the writ appeal pending. Accordingly, we dispose of the writ appeal with the request to the learned Single Judge to dispose of the writ petition as expeditiously as possible.

JUDGE

CHIEF JUSTICE

Comparing Assistant