

Raheem Charaniya vs The State Of Telangana, on 4 April, 2024

THE HONOURABLE SMT. JUSTICE K. SUJANA

CRIMINAL PETITION No.2441 of 2024

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') to quash the proceedings against the petitioners/accused Nos.1, 3 and 4 in Crime No.123 of 2024, of Begumpet Police Station, Hyderabad, registered for the offences punishable under Sections 272, 273, 336 and 420 of the Indian Penal Code, 1860 (for short 'the IPC').

2. Brief facts of the case are that on 27.02.2024 while the police were in patrolling, they found that some persons are selling adulterated Ginger & Garlic Paste by using chemicals in illegal manner, and the Police registered a case against the petitioners and other accused in Crime No.123 of 2024 of Begumpet Police Station, Hyderabad, for the offences under Sections 272, 273, 336 and 420 of the IPC.

3. Heard Sri S.M. Saifullah, learned counsel appearing on behalf of the petitioners as well as Sri S. Ganesh, learned Assistant Public Prosecutor appearing on behalf of the respondent.

4. Learned counsel for the petitioners submitted that the proceedings initiated by the respondent are unwarranted in the eye of law. Learned counsel further submitted that the Police are not at all SKS,J authorized to investigate into any offence under the Food Safety and Standard Act, 2006 (hereinafter referred as Special Act). Therefore, the respondent has no jurisdiction either to register any complaint or to investigate into the matter or any offence under Section 420 of the IPC after the enactment of special Act. By virtue of Section 97 of the said Act all other corresponding provisions of the other laws stand repealed. Learned counsel further submitted that Section 420 of IPC is a provision of corresponding law which was in force at the time when the provisions of the Special Act came into force. Therefore, Section 420 of the IPC stands repealed by necessary implication. It is also the settled principle that a special law will always prevail over general law. Thus, after the enactment of the special Act it becomes the only law relating to deal with adulteration of food. Hence, Section 420 of IPC becomes redundant in view of the Special Act.

5. Learned counsel for the petitioners further submitted that the respondent No.2/de facto complainant/Investigating Officer officially filed the charge sheet. Under the Special Act there is a separate mechanism for Section 420 of IPC, and as such, it is not applicable to the present case. Therefore, the allegations leveled against the petitioners are vague and did not attract any of the offence. As such, prayed the Court to quash the proceedings.

6. On the other hand, learned Assistant Public Prosecutor submitted that at this stage it cannot be said that the investigation is SKS,J vitiated as the same requires trial. Therefore, prayed the Court to dismiss the petition.

7. Having regard to the rival submissions made by both the learned counsel and having gone through the material available on record, it appears that the allegations against the petitioners are under sections 272, 273, 336 and 420 of the IPC.

8. It is significant to note the Judgment of the Hon'ble Supreme Court in State of Maharashtra and Anr vs. Sayyed Hassan and Sayyed Subhan and Ors 1., wherein it is observed that when there is no specific bar in the special enactment, the trial and conviction of the offender under the provisions of IPC is not bar subject to Section 26 of General Clauses Act. The Enforcement Directorate of the Police is the specialized agency created for the purpose of investigation certain offence as specified in their manual. The Chapter Crime Rule 36 Laws of DEB manual has specified the enactment which does not include the Special Act. Section 94 of the Special Act provides the State Government to make rules. It has not been reported before this Court that whether the State Government have ever framed the rule empowering the Enforcement Directorate to investigate into the offence under the Special Act. The law of land empowers the investigating agency to investigate an offence according to the procedure laid down in the law; deviation thereto must have deprived the valuable right of the accused.

1 (2019) 18 SCC 145 SKS,J

9. In the present case, the police have launched the prosecution according to the provisions of Cr.P.C. for the offence punishable under Sections 272 and 273 of IPC. The Police cannot launch a prosecution or conduct investigation in respect of offence of food related laws. The main contention of the counsel for the petitioners is that after the enactment of Special Act, the provision under Sections 272 and 273 of IPC has impliedly repealed. Thus, the investigation conducted by the Investigating Officer other than the Food Safety Officer is illegal.

10. As per the decision of the Hon'ble Supreme Court in Sayyed Hassan and Sayyed Subhan and also by virtue of the principle under Section 26 of General Clauses Act, investigation by the Police is not illegal and the petitioners shall not put into jeopardy for continuance of the proceedings. As such, to safeguard the protection of the public, the Police can investigate the case of food relating offences when there is no specific bar under the Act. Therefore, the investigation done by the Investigating Officer cannot be said to be vitiated.

11. The another contention of the learned counsel for the petitioners is that the Police who is the complainant, cannot investigate the same and cannot file charge sheet. As per the decision of the Hon'ble Supreme Court in Mukesh Singh vs. State (Narcotic Branch of Delhi) 2, wherein it is observed that where informant officer himself is an investigator, that by itself cannot be said that 2 (2020) 10 SCC 120 SKS,J investigation is vitiated on the ground of bias or a like factor. Therefore, the said contention is also not tenable.

12. However, in the light of the aforesaid discussion, this Court does not find any merit in the criminal petition to quash the proceedings against the petitioners and the same is liable to be dismissed.

13. Accordingly, the Criminal Petition is dismissed.

Miscellaneous applications, if any pending, shall also stand closed.

_____ K. SUJANA, J Date: 04.04.2024 SAI