

Manoj Kumar vs State Of U.P. And Another on 3 November, 2023

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2023:AHC:211797

Court No. - 91

Case :- APPLICATION U/S 482 No. - 39516 of 2023

Applicant :- Manoj Kumar

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Niraj Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
2. The present Application 482 Cr.P.C. has been filed with a request to quash the impugned complaint and its entire proceedings vide complaint case No.2184 of 2011, under Section 7/16 of Prevention of Food Adulteration Act, 1954 (State Vs. Mr. Manoj Kumar and others), Police Station-Gursarai, District-Jhansi.
3. Learned counsel for the applicant submits that the impugned order of cognizance is wrong and illegal; that the sample of Namkeen, Pulse, Masala, sugar and Gutka etc. are alleged to have been taken from the shop of father of the applicant on 05.01.2011 on the basis of which complaint under Section 7/16 of Prevention of Food Adulteration Act has been filed against the applicant and other co-accused persons. Learned Magistrate has acted wrongly in taking cognizance on the criminal complaint under Section 7/16 of Prevention of Food Adulteration Act, 1954 inspite of the fact that Prevention of Food Adulteration Act, 1954 has been repealed w.e.f. 29.7.2010 vide notification in Extraordinary Gazette of India; that the Food Safety and Standards Act, 2006 has come into force

w.e.f. 29.7.2010 and after repeal of old Act i.e., Prevention of Food Adulteration Act, 1954 and the complaint under Section 7/16 of Prevention of Food Adulteration Act was not maintainable and no cognizance could have been taken by the Magistrate under the old and already repealed Act; that the Magistrate has taken cognizance of the offence against revisionist in absolutely cryptic manner by non-speaking order, without due application of mind to the facts of case and legal position; that the cognizance was taken under the provisions of the old Act which had already been repealed.

4. Learned A.G.A. contended that the sample of Namkeen, Pulse, Masala, sugar and Gutka etc. are alleged to have been taken from the shop of father of the applicant, has been found to be adulterated and he has committed offence, but could not dispute the legal position that Prevention of Food Adulteration Act, 1954 has been repealed and replaced by Food Safety and Standard Act, 2006 w.e.f. 29.7.2010.

5. Upon hearing counsel for the parties and perusal of impugned order of cognizance and considering the fact that Prevention of Food Adulteration Act, 1954 has been repealed w.e.f. 29.7.2010 and in its place the Food Safety and Standard Act, 2006 has come into force from 29.7.2010, I find that the Magistrate has passed the impugned order of cognizance without due application of mind and has acted wrongly in issuing process against the applicant for an offence under non-existing Act. After enforcement of Food Safety and Standard Act, 2006, the procedure under the new Act has to be adopted against the applicant and no cognizance of offence under the old and already repealed Act may be taken. The impugned order is wrong and illegal and may not be allowed to stand.

6. In view of the discussions made above, the instant Application is liable to be allowed and the impugned order of cognizance dated 06.08.2011 is liable to be set aside.

7. The Application is allowed accordingly and the impugned order of cognizance and summoning dated 06.08.2011 is set aside with a liberty to the respondent to proceed against the applicant under the provisions of Food Safety and Standard Act, 2006, as applicable.

Order Date :- 3.11.2023 Ashutosh