

Abhishek Mishra vs State Of U.P. Thru. Addl. Chief Secy. ... on 13 December, 2023

Bench: Sangeeta Chandra, Narendra Kumar Johari

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2023:AHC-LK0:82961-DB

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 9420 of 2023

Petitioner :- Abhishek Mishra

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home Civil Sectt. Lko. And Others

Counsel for Petitioner :- Shailendra Singh Rajawat,Purnima Singh,Sunder Singh

Counsel for Respondent :- G.A.

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Narendra Kumar Johari,J.

1. Heard learned counsel for the petitioner and learned AGA for the State-respondents.

2. This writ petition has been filed with the following main prayers :-

"i) Issue a writ, order or direction in the nature of Certiorari thereby quashing the impugned First Information Report dated 18.8.2023 lodged by the opposite party no.4 in Case Crime No. 0286 of 2023 Under Section 3 (1) U.P. Gangsters and Anti Social Activities (Prevention) Act Police Station-Indira Nagar, Lucknow Annexure No.1 to this writ petition so far it relates to the petitioner, in the interest of justice.

(ii) Issue a writ, order or direction in the nature of Mandamus thereby commanding and directing the opposite parties not to arrest the petitioner in pursuance of the impugned First Information Report dated 18.8.2023 lodged by the opposite party no.4 in Case Crime No. 0286 of 2023 Under Section 3 (1) U.P. Gangsters and Anti Social Activities (Prevention) Act Police Station-Indira Nagar, Lucknow contained in Annexure No.1 to this writ petition."

3. Learned counsel for the petitioner states that petitioner is completely innocent and has been falsely implicated in the impugned FIR. It has been submitted that Abhishek Dairy is a proprietorship firm whose sole proprietor is Naveen Mishra, father of the petitioner, who was issued a licence for Milk Chilling Center by the Food Safety and Drug Administration on 07.07.2019 and it is valid upto 31.12.2024. Abhishek Dairy/ Milk Chilling Center has a capacity of 50,000 litres per day. The petitioner is the son of Naveen Mishra and is a student of L.L.B. (first year) in Chaudhary Charan Singh University, Meerut. On 01.12.2023 the father of the petitioner had gone to Dehradun to attend cremation ceremony of one of his relative and the petitioner was at Lucknow when the alleged raid took place on the Milk Chilling Center at Sandila. The petitioner was called by his staff members and by the time he reached the premises, the officers of Food Safety and Drug Administration department in collusion with Jitendra Singh, the Kisan Union Leader (opposite party no.5) had demanded a huge amount of money as extraneous consideration and when the employees of the M/s Abhishek Milk Dairy had refused to part with the money, opposite party no.5 engineered the raid on the premises after expelling all the employees forcibly and adulterated the milk present in the premises and had also engineered the keeping of 400 litres of adulterants and 1000 litres of sorbitol and five sacks of skimmed milk in the premises. At the time when the alleged raid took place there was 27,000 litres of milk in M/s Abhishek Dairy which was all thrown away without any sample being collected. Only one sample was collected and no report was awaited of the said sample from the Public Analyst Laboratory but the FIR was lodged.

4. It has also been argued by learned counsel for the petitioner that once the report of the public analyst/ food testing laboratory would have been available for the five samples, that were taken allegedly of the adulterants and the prepared milk from M/s Abhishek Dairy, only then FIR could have been lodged by the Food Safety and Drug Administration Officials against the petitioner.

5. Learned counsel for the petitioner has placed reliance upon the judgment rendered by Division Bench of this Court in Writ Petition No.8255 (M/B) of 2010; M/s Pepsico India Holdings (Pvt) Limited and another vs. State of U.P. and others rendered on 08.09.2010, a copy of the same has been annexed as Annexure No.9 to the writ petition. The penultimate paragraph of the said judgment as read by learned counsel for the petitioner is quoted herein below:-

?In view of the aforesaid crystal clear legal proposition and particular provisions under the FSSA we are in agreement with the arguments advanced by the petitioner's Counsel that for adulteration of food or misbranding, after coming into force of the provisions of FSSA vide notification dated 29th July, 2010, the authorities can take action only under the FSSA as it postulates an over riding effects over all other food related laws including the PFA Act. In view of the specific provisions under the FSSA,

the offences relating to adulteration of food that are governed under the FSSA after July 29,2010 are to be treated as per the procedures to be followed for drawing and analysis of samples as have been provided for. The provisions of penalties and prosecution have also been provided therein. Therefore, before launching any prosecution against an alleged offence of food adulteration, it is necessary for the concerned authorities to follow the mandatory requirements as provided under Sections 41 and 42 of the FSSA and, therefore, the police have no authority or jurisdiction to investigate the matter under FSSA. Section 42 empowers the Food Safety Officer for inspection of food business, drawing samples and sending them to Food Analyst for analysis. The Designated Officer, after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations to the Commissioner of Food Safety for sanctioning prosecution. Therefore, invoking Sections 272 and 273 of the Indian Penal Code in the matter relating to adulteration of food pursuant to the impugned government order is wholly unjustified and non est. Furthermore, it appears that the impugned Government Order has been issued without application of proper mind and examining the matter minutely and thus the State Government travelled beyond the jurisdiction.

In view of the aforesaid discussions, the writ petitions are allowed. The impugned G.O. dated 11.5.2010 issued by the State Government contained in Annexure-1 to the writ petition is hereby quashed. Consequently, the FIR dated 11.8.2010 registered as case crime no. 392 of 2010 under sections 272/273 IPC, PS Cantt. District Varanasi, FIR dated 11.8.2010 in Case Crime No. 144 of 2010 registered at PS Rohaniya, District Varanasi and the FIR registered as case crime no. 244 of 2010, PS Khuldabad, District Allahabad are also hereby quashed. The concerned Magistrates shall immediately pass necessary orders for forthwith release of all the petitioners, who are in jail. ?

6. This Court has gone through the judgment of a Co-ordinate Bench of this Court carefully and finds that question that was being considered by the Division Bench has been cognilated in paragraph 3 of the judgment which read as follows :-

?In all the afore-captioned writ petitions, petitioners have questioned the validity of the Government Order dated 11.5.2010 issued by the State Government directing the police to register cases or initiate action under Sections 272/273 IPC inter alia on the ground that it has resulted in gross violation of fundamental rights of the employee's and agents of the Company as available under Article 14 and 21 of the Constitution of India and have consequently prayed for quashing of the FIR registered against the employees of the Company in different districts of the State of Uttar Pradesh. ?

7. We have also gone through Sections 41 and 42 of the Food Safety and Standards Act, 2006 which refers to power of search, seizure, investigation, prosecution and procedure thereof. It refers to

samples being collected by the Food Security Officer being sent for analysis within 14 days to the designated officer with a copy to Commissioner of Food Safety. The Designated Officer after scrutiny of the report of Food Analyst would decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution. The Commissioner of Food Safety, if he so deems fit, shall decide, within the period prescribed by the Central Government, as per the gravity of offence, whether the matter be referred to the a court of ordinary jurisdiction in case of offences punishable with imprisonment for a term up to three years; or a Special Court in case of offences punishable with imprisonment for a term exceeding three years and it shall communicate his decision to the Designated Officer and the concerned Food Safety Officer, who shall launch prosecution before the Courts of ordinary jurisdiction or Special Court, as the case may be.

8. We have noticed that under the Food Safety and Standards Act, 2006 offences have been mentioned specifically in the said Act for which penalties have been prescribed under Chapter IX. These are the offences for which prescribes sanction as aforesaid under Section 42 has to be taken from the Commissioner of Food Safety and Security however, impugned FIR has been lodged under Sections 272, 273 IPC and Section 26 of the Food Safety and Standards Act, 2006.

9. This Court has perused Section 26 of the Food Safety and Standards Act, 2006 which is relating to responsibilities of food business operators and it states that every food business operator shall ensure that the articles of food satisfy the requirements of this Act and the rules and regulations made thereunder at all stages of production, processing, import, distribution and sale within the businesses under his control and no food business operator shall himself or by any person on his behalf manufacture, store, sell or distribute any article of food which is unsafe; or which is misbranded or sub-standard or contains extraneous matter; or for which a licence is required, except in accordance with the conditions of the licence; or 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 in contravention of any other provision of this Act or of any rule or regulation made thereunder. Certain other procedures are mentioned under sub-section 4 and 5 of Section 26 of the Food Safety and Standards Act, 2006. However, offences and penalties are specified under Chapter IX of the Food Safety and Standards Act, 2006 and procedure for launching prosecution has been given under Chapter VII of the Food Safety and Standards Act, 2006.

10. Learned counsel for the petitioner has next pointed out towards newspaper clippings that have been filed as Annexure no.10 to the writ petition to state that in Hardoi news was circulated that 17000 litres of adulterated milk/ synthetic milk was caught at the behest of Bhartiya Kisan Union Leader Jitendra Singh and his friends and that this news was planted by the Bhartiya Kisan Union Leader out of malafides.

11. This Court has gone through the FIR, which describes how members of Food Safety and Drug Administration department, that is, one Ram Kishor who is the Chief Food Safety Officer in Charge, Hardoi along with Anirudh Singh Gangwar, Khushiram and Ajeet Singh, who are the Food Safety Officers, Hardoi had raided the premises of M/s Abhishek Dairy at around 1.20 a.m. on 02.12.2023.

They had discovered some 17000 litres of prepared milk and 5 drums containing around 1000 litres sorbitol, 2 drums of adulterant and five sacks of 100 kgs of skimmed milk powder in the premises. Two samples were drawn of the prepared milk, one sample was drawn of the adulterant, one sample was drawn of sorbitol and one sample was drawn of skimmed milk powder. Since on the mere smelling and tasting of the prepared milk it was found to be adulterated, it was destroyed in the presence of the members of the raiding team and local police officials.

12. We have also gone through the online edition of Amar Ujala newspaper wherein it has been mentioned that in the Sandila industrial area a factory manufacturing synthetic milk was discovered by leaders of Bhartiya Kisan Union. On their information the Food Safety and Drug Administration officials team reached the spot and found 17000 litres of synthetic milk, two drums of refined oil, 5 drums of sorbitol chemical and took five samples and then destroyed the synthetic milk. In the news item it has been mentioned that on Friday night, Bhartiya Kisan Union Leader had trailed the vehicle which reached the M/s Abhishek Dairy premises and when the Bhartiya Kisan Union Leaders went inside the dairy premises they discovered several thousands litres of synthetic milk being prepared. As soon as the Bhartiya Kisan Union Leaders reached the spot all the employees ran away. The Bhartiya Kisan Union Leader later contacted the administration and after three hours a team of officials of Food Safety and Drug Administration reached from the District Headquarters to M/s Abhishek Dairy. This team constituted Assistant Commissioner (Food) Shri Satish Kumar, Food Safety Officers Shri Anirudh Gangwar, Ram Kishor, Khushiram, Ajeet Singh and Subhash Maurya along with Chuaki Incharge of mill area Azeem Khan. The Assistant Commissioner told the journalists who had written the news item that M/s Abhishek Dairy was being run by Naveen Mishra resident of Jankipuram, Lucknow and that it made recoveries of 1000 litre of some sorbitol chemical, 400 litres of refined oil, 500 gms of white powder/ skimmed milk powder and prepared milk of which sample was taken and then the milk was destroyed. One sample each of all other adulterants were also taken which were sent to public analyst laboratory. After report is received from the public analyst laboratory action will be taken in accordance with the rules.

13. One other news item at page 85 of paper book is from news website www.jagran.com which also refers to 17,000 litres of synthetic milk being recovered from M/s Abhishek Dairy by the team of officials of Food Security and Drug Administration and that the dairy supplies milk to one other dairy at Dhaulpur, Rajasthan. It also refers to some 35 bags of milk powder of 25 kgs each having been recovered from one separate premise/ house besides the recovery as mentioned from M/s Abhishek Dairy.

14. The F.I.R. discloses commission of cognizable offence under I.P.C. and, therefore, this Court finds no good ground to show interference as prayed in this petition.

15. The Writ Petition is, accordingly, dismissed.

Order Date :- 13.12.2023 Arnima