

# Suraj Freight Carrier Pvt. Ltd. Through ... vs The State Of Jharkhand on 22 August, 2023

**Author: Sanjay Kumar Dwivedi**

**Bench: Sanjay Kumar Dwivedi**

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IN THE HIGH COURT OF JHARKHAND AT RANCHI  
W.P.(Cr) No. 394 of 2022

Suraj Freight Carrier Pvt. Ltd. through its director namely, Bijendra Kumar Karhana  
..... Petitioner  
Versus

The State of Jharkhand

..... Respondent

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CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

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For the Petitioner : Mr. Nilesh Kumar, Advocate  
Ms. Sonal Sodhani, Advocate  
For the State : Mr. Ashish Kumar, Advocate  
.....

06/Dated: 22/08/2023

Heard Mr. Nilesh Kumar, learned counsel for the petitioner and Mr. Ashish Kumar, learned counsel for the State.

2. This petition has been filed for quashing the entire criminal proceeding in connection with Ramgarh P.S. Case No. 185 of 2021 lodged under sections 420, 467, 468, 471, 188, 269, 270, 273, 120B of the Indian Penal Code and under Section 27(3) (d), 27 (3) (e) of Food Safety and Standards Act and 5/6 of COTPA Act, 2003 pending in the Court of learned Chief Judicial Magistrate, Ramgarh.

3. The F.I.R. has been lodged alleging therein on 29.06.2020, during inspection near Patel Chowk one secret information was received by the police officers that one truck is coming from Hazaribagh to Ramgarh, in which some illegal gutka, Pan Masala, Tobacco and Jarda is loaded and is going to Jamshedpur. Thereafter, police officers started checking the vehicles near old NH 33 road. At around 2.30 P.M. near Subhash Chowk one 14 wheeler Truck No. NL 01AA 0782 came. It was stopped and then driver tried to flee away but apprehended by the police. On inquiry the driver disclosed his name as Saurav Yadav and stated that there are transport goods loaded in the truck. On search, articles were recovered as 30 cartons of pan masala, 6 cartons of Jarda, which were

wrapped in different plastics of white colour. After weighing the articles which weighed as Pan masala (Gutka) 30x31=930Kg. and Tobacco (Jarda) 6X25=150Kg and on inquiry about the receipt and bill from the driver, he produced e- way bills and bills which shows that the articles were transported through Suraj Freight Carriers Pvt. Ltd. The produced bills by the driver showed the consignment of 30+6= 36 bags of foot wears which were dispatched from Delhi and were to be unloaded in Jamshedpur. The tax invoice had the name of Rajat Enterprises and was billed to Bharat Stores. The driver stated that on 25.06.2020, he loaded the consignments as said by Suraj Freight Carrier Pvt. Ltd. And further stated that few consignments were unloaded near Nehru Road and rest were to be taken to Kolkata via Jamshedpur-Jugsalai. Thereafter, materials were seized and seizure list was prepared in front of independent witnesses and as the articles were illegal and banned in the State, the present first information report has been lodged.

4. Mr. Nilesh Kumar, learned counsel for the petitioner submits that the petitioner is a private limited company registered under the Indian Companies Act. He submits that the said vehicle was transporting the articles which were not banned in view of circular of State of Jharkhand. He submits that the petitioner has no relationship with seized article. He submits that seizure and search has been made on 29.06.21 without following the procedure specified in the Statute for the offence of Food Safety and Standard Act. He submits that procedure is prescribed under Section 42 of the Food Safety and Standards Act and that is well settled in absence of said procedure, the prosecution is not tenable. He further submits that the case has also been registered under section 188 of the I.P.C. and so far as section 188 of I.P.C. is concerned, that is meant for violation of any order of the competent authority that can be maintained in view of section 195 of Cr.P.C. by way of filing any complaint by the authority concerned in view of that section 188 of I.P.C. is not made out.

5. Mr. Ashish Kumar, learned counsel for the State submits that the petitioner has violated the said notification of 2012 of the State of Jharkhand and carrying Gutka which was banned and the bills were not in accordance with law and in view of that case is made out and this Court may not interfere.

6. In view of the above submissions, the only question which required to be looked into by this Court is that whether in absence of following the procedure under Section 42 of the Act, 2006 the prosecution can stand against the petitioner or not. The provision of Section 42 of the Act, 2006 which lays down the procedure for launching prosecution for any offence under the said Act is quoted herein below:

"42. Procedure for launching prosecution.- (1) The Food Safety Officer shall be responsible for inspection of food business, drawing samples and sending them to Food Analyst for analysis.

(2) The Food Analyst after receiving the sample from the Food Safety Officer shall analyse the sample and send the analysis report mentioning method of sampling and analysis within fourteen days to Designated Officer with a copy to Commissioner of Food Safety.

(3) 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 within fourteen days to the Commissioner of Food Safety for sanctioning prosecution.

(4) The Commissioner of Food Safety shall, if he so deems fit, decide, within the period prescribed by the Central Government, as per the gravity of offence, whether the matter be referred to,-

(a) a court of ordinary jurisdiction in case of offences punishable with imprisonment for a term up to three years; or

(b) a Special Court in case of offences punishable with imprisonment for a term exceeding three years where such Special Court is established and in case no Special Court is established, such cases shall be tried by a court of ordinary jurisdiction. (5) The Commissioner of Food Safety shall communicate his decision to the Designated Officer and the concerned Food Safety Officer who shall launch prosecution before courts of ordinary jurisdiction or Special Court, as the case may be; and such communication shall also be sent to the purchaser if the sample was taken under Section 40."

7. On perusal of the above provision of Section 42 of the Act, 2006, it is crystal clear that the Food Safety Officer appointed or authorised under Section 37 of the Act, 2006 can draw the sample of food and send the same for analysis to the Food Analyst within a specified period of time. The Designated Officer appointed under Section 36 of the Act, 2006 can make a scrutiny of the report of the Food Analyst and decide whether the prosecution can be launched and he can send his recommendation within a specified period of time to the Commissioner of Food Safety for sanctioning such prosecution and after sanctioning by the competent authority, the case can be lodged. There is no doubt that the Food Safety Officer can lodge the case with the recommendation of the Commissioner of Food Safety. In the case in hand, nothing is on the record to indicate that the investigation was authorized to the Food Safety Officer under Section 37(2) of the Act, 2006. The State has not produced material in the counter affidavit which indicate that Section 42 of the Act, 2006 was followed in the present case while launching the prosecution. In absence of authorisation of the Investigating Officer as Food Safety Officer under Section 37(2) of the Act, 2006 and in absence of following the procedure for launching the prosecution under Section 42 of the Act, 2006, the Court comes to a conclusion that the petitioner is not liable to be prosecuted under Section 59 of the Act, 2006.

8. Section 188 of the I.P.C. speaks of filing of the case in violation of any order of the competent authority. It is well settled that in view of 195 of Cr.P.C. only the complaint can be maintained on behalf of the said authority as has been held by this Court in the case of "Hemant Soren V. State of Jharkhand" (Cr.M.P. No. 1861 of 2022) which was decided on 11.11.2022 as well as in the case of "Dr. Nishikant Dubey V. State of Jharkhand & Ors. (W.P. (Cr.) No. 448/2022 which was decided on

13.03.2023.

9. In view of the aforesaid facts, so far as the petitioner is concerned, the FIR and the entire criminal prosecution in connection with Ramgarh P.S. Case No. 185 of 2021, is, hereby, quashed.

10. Accordingly, this petition stands allowed and disposed of.

11. Interim order is vacated..

(Sanjay Kumar Dwivedi, J.) Satyarthi/