

Rohit Sahu vs The State Of Madhya Pradesh on 29 April, 2022

Author: Gurpal Singh Ahluwalia

Bench: Gurpal Singh Ahluwalia

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THE HIGH COURT OF MADHYA PRADESH

M.Cr.C. No.10982/2021

Rohit Sahu Vs. State of M.P. and another

Gwalior, Dated:29/04/2022

Shri Sanjay Kumar Bahirani, Advocate for applicant.

Shri C.P. Singh, Panel Lawyer for respondent no.1/State.

This application under Section 482 of Cr.P.C. has been filed for quashment of FIR in Crime No.184/2021 registered at Police Station Guna, District Guna for offence under Sections 269, 272 and 273 of IPC.

2. The necessary facts for disposal of the present application in short are that the applicant is running a dairy in the name and style Subham Dudh Dairy Milk Product. On 9/1/2020 the respondent no.2 made a surprise inspection at the dairy product premises and milk stored for sale was found in an unhygienic condition and accordingly, six samples of milk were drawn from separate containers as well as one sample of Subham Pasteurize Homo Genised Tond Milk, one sample of packed Subham Tea Special Milk, Deen Dayal Spray Dried skimmed milk powder and Desi Ghee were also taken and thus, ten samples of milk products were taken as per the provisions of Food Safety and Standards Act, 2006 (in short "FSSA, 2006"). The samples were sent to State Food Laboratory, Bhopal. The samples of Deshi Ghee and milk were tested. As per the report dated 15/1/2021, two samples out of ten had passed, but the remaining eight samples were found to be of substandard quality. The Food Analyst sent the THE HIGH COURT OF MADHYA PRADESH Rohit Sahu Vs. State of M.P. and another sample report to the Designated Officer in three sets and as per sub- rule 6 of Rule 2.4.2 of the Food Safety and Standards Rules, 2011 (in short "Rules, 2011"), the Designated Officer sent one copy of the sample report to Food Safety Officer for service to whom the sample was taken/applicant. Alongwith the sample report, the Designated Officer had also given a notice for reanalysis of samples under Section 46 (4) of FSSA, 2006. Further coming to know about the sample report, the prosecution lodged the FIR for offence under Sections 269, 272 and 273 of IPC, in spite of the fact that the prosecution of the applicant is permissible under the FSSA, 2006.

3. It is submitted that from bare reading of entire FIR, it is clear that no case is made out for the aforesaid offences. It is submitted that it is clear from the report that the samples were found to be of substandard quality. Substandard has been defined under Section 3(zx) of FSSA, 2006, which means that an article of food shall be deemed to be substandard if it does not meet the specified standard, but not so as to render the article of food unsafe. It is submitted that the Adjudicating

Officer can at the most impose a fine under Section 51 of the FSSA, 2006. Thus, it was argued that the Adjudicating Officer has a power to hold an enquiry and punish the person by imposing penalty upto Rs.5,00,000/-, but no prosecution is permissible for the report nor the Trial Court has a jurisdiction to take THE HIGH COURT OF MADHYA PRADESH Rohit Sahu Vs. State of M.P. and another cognizance under Section 26(iii) read with Section 51 of FSSA, 2006. In case where the samples are found to be of substandard quality, then the procedure for initiating action against the defaulter is provided under Section 51 of FSSA, 2006 and the Adjudicating Officer by exercising its power under Section 68 of FSSA, 2006 can impose a fine upto Rs.5,00,000/- and the police authorities have no power to prosecute the applicant under the provisions of IPC. It is further submitted that the applicant is an innocent person and has been falsely implicated in the offence, because prima facie the offence under Sections 269, 272 and 273 of IPC is not made out, as the applicant has not caused any injury to the public nor any complaint was made by anybody against the applicant alleging that he was selling obnoxious food articles to the consumers.

4. Per contra, the application is vehemently opposed by the counsel for the State.

5. Heard learned counsel for the parties.

6. The primary contention of the counsel for the applicant is that the charge-sheet has been filed on 16/3/2021 and the charges have not been framed. It is submitted that although the charge-sheet has been filed for offence under Sections 269, 272 and 273 of IPC, but no offence is made out. It is further submitted that under Section 68 of FSSA, 2006 complaint has been filed before the Adjudicating Officer THE HIGH COURT OF MADHYA PRADESH Rohit Sahu Vs. State of M.P. and another on 15/7/2021, i.e. subsequent to filing of the charge-sheet.

7. Section 42 of the FSSA, 2006 reads as under:-

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.

7.1 From the plain reading of this Section, it is clear that after THE HIGH COURT OF MADHYA PRADESH Rohit Sahu Vs. State of M.P. and another scrutiny of the report of the Food Analyst if the Designated Officer is of the view that the contravention is punishable with imprisonment or fine only and in case of contravention punishable with imprisonment, he shall sent his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning of prosecution. The Commissioner of Food Safety in his turn, if he so deems fit, decide whether the matter be referred to the Court of ordinary jurisdiction in case of offence punishable with imprisonment for a term upto three years and the decision shall be communicated to the Designated Officer and the concerned Food Safety Officer shall launch prosecution.

8. Now the question for consideration is as to whether the words "contravention punishable with imprisonment" are confined to the punishment provided under Sections 59, 60, 61, 62, 63 and 64 of FSSA, 2006 or its is also applicable to the acts which are punishable under the provisions of IPC?

9. The counsel for the applicant could not point out any provision in FSSA, 2006, which bars the applicability of provisions of IPC. Thus, from the plain reading of Section 42 of FSSA, 2006, it is clear that for launching prosecution for offence punishable under Sections 59, 60, 61, 62, 63 and 64 of FSSA, 2006 the procedure prescribed under Section 42 of the FSSA, 2006 shall be followed and not with THE HIGH COURT OF MADHYA PRADESH Rohit Sahu Vs. State of M.P. and another regard to the offence which are otherwise punishable under the provisions of IPC also. The Supreme Court in the case of State of M.P. Vs. Rameshwar and Others reported in (2009) 11 SCC 424 has held as under:-

"48. Mr Tankha's submissions, which were echoed by Mr Jain, that the M.P. Cooperative Societies Act, 1960 was a complete code in itself and the remedy of the prosecuting agency lay not under the criminal process but within the ambit of Sections 74 to 76 thereof, cannot also be accepted in view of the fact that there is no bar under the M.P. Cooperative Societies Act, 1960, to take resort to the provisions of the general criminal law, particularly when charges under the Prevention of Corruption Act, 1988, are involved."

10. It is submitted by the counsel for the applicant that the competent authority has filed a complaint before the Adjudicating Officer on 15/7/2021 on the similar allegations and in case if both the proceedings are allowed to continue, then it would amount to double jeopardy.

11. Considered the submissions made by the counsel for the applicant.

12. Section 68 of FSSA, 2006 reads as under:-

68. Adjudication.-(1) For the purposes of adjudication under this Chapter, an officer not below the rank of Additional District Magistrate of the district where the alleged offence is committed, shall be notified by the State Government as the Adjudicating Officer for adjudication in the manner as may be prescribed by the Central Government.

(2) The Adjudicating Officer shall, after giving THE HIGH COURT OF MADHYA PRADESH Rohit Sahu Vs. State of M.P. and another the person a reasonable opportunity for making representation in the matter, and if, on such inquiry, he is satisfied that the person has committed the contravention of provisions of this Act or the rules or the regulations made thereunder, impose such penalty as he thinks fit in accordance with the provisions relating to that offence.

(3) The Adjudicating Officer shall have the powers of a civil court and--

(a) all proceedings before him shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860);

(b) shall be deemed to be a court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

(4) While adjudicating the quantum of penalty under this Chapter, the Adjudicating Officer shall have due regard to the guidelines specified in section 49.

13. The question for consideration is as to whether penalty is for implementation of the provisions of this Act or by way of punishment?

14. From the plain reading of Sections 59, 60, 61, 62, 63 and 64 of FSSA, 2006, it is clear that the word "fine" has been mentioned and not penalty, whereas penalty has been provided under Sections 50, 51, 52, 53, 54, 55, 56, 57 and 58 of FSSA, 2006. Section 49 of FSSA, 2006 reads as under:-

49. General provisions relating to penalty.-

While adjudging the quantum of penalty under this Chapter, the Adjudicating Officer or the Tribunal, as the case may be, shall have due regard to the following:-

(a) the amount of gain or unfair advantage, wherever quantifiable, made as a result of the contravention,

(b) the Amount of loss caused or likely to cause THE HIGH COURT OF MADHYA PRADESH Rohit Sahu Vs. State of M.P. and another to any person as a result of the contravention,

(c) the repetitive nature of the contravention,

(d) whether the contravention is without his knowledge, and

(e) any other relevant factor.

15. Thus, it is clear that for adjudging the quantum of penalty the Adjudicating Officer of the Tribunal, as the case may be, shall have due regard to the amount of gain or unfair advantage, wherever quantifiable, made as a result of contravention, the repetitive nature of the contravention, whether the contravention is without his knowledge and any other relevant factor.

16. Thus, from the plain reading of Section 49 of FSSA, 2006, it is clear that penalty is provided for implementation of the provisions of FSSA, 2006.

17. The Supreme Court in the case of R.S. Joshi etc. Vs. Ajit Mills Ltd. & another reported in AIR 1977 SC 2279 has held as under:-

19. The same connotation has been imparted by our Court too. A Bench has held :

"According to the dictionary meaning of the word 'forfeiture' the loss or the deprivation of goods has got to be in consequence of a crime, offence or breach of engagement or has to be by way of penalty of the transgression or a punishment for an offence. Unless the loss or deprivation of the goods is by way of a penalty or punishment for a crime, offence or breach of engagement it would not come within the definition of forfeiture."

This word "forfeiture" must bear the same meaning of a penalty for breach of a prohibitory THE HIGH COURT OF MADHYA PRADESH Rohit Sahu Vs. State of M.P. and another direction. The fact that there is arithmetical identity, assuming it to be so, between the figures of the illegal collections made by the dealers and the amounts forfeited to the State cannot create a conceptual confusion that what is provided is not punishment but a transference of funds. If this view be correct, and we hold so, the legislature, by inflicting the forfeiture, does not go outside the crease when it hits out against the dealer and deprives him, by the penalty of the law, of the amount illegally gathered from the customers. The Criminal Procedure Code, Customs & Excise Laws and several other penal statutes in India have used diction which accepts forfeiture as a kind of penalty. When discussing the rulings of this Court we will explore whether this true nature of "forfeiture" is contradicted by anything we can find in Sections 37(1), 46 or 63. Even here we may reject the notion

that a penalty or a punishment cannot be cast in the form of an absolute or no-fault liability but must be preceded by mens rea. The classical view that "no mens rea, no crime" has long ago been eroded and several laws in India and abroad, especially regarding economic crimes and departmental penalties, have created severe punishments even where the offences have been defined to exclude mens rea. Therefore, the contention that Section 37(1) fastens a heavy liability regardless of fault has no force in depriving the forfeiture of the character of penalty.

58. The controversy therefore centres mainly on the question whether the provision as to the forfeiture in the impugned section is a penalty or whether it is merely a device to collect the amount unauthorisedly realised by the dealer. The plea of a device or colourable legislation would be irrelevant if the Legislature is competent to enact a particular law. The question is one of competence of a particular Legislature to enact a particular law. If the Legislature is competent to pass a particular law the motive which impelled it to act is not relevant. After the decision in Abdul Quader case where it was pointed out that it was competent for the Legislature to provide penalties for the contravention of the provisions of the Act for its better enforcement, the provision in an enactment levying such a penalty cannot be challenged.

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61. Mr. Kaji next submitted that forfeiture if it is to be penalty would be confined to acts where there is a guilty mind. In other words he submitted that the penalty would be confined only to wilful acts of omission and commission in contravention of the provisions of the enactment. This plea cannot be accepted as penal consequences can be visited on acts which are committed with or without a guilty mind. For proper enforcement of various provisions of law it is common knowledge that absolute liability is imposed and acts without mens rea are made punishable.

18. This Court in the case of M/s Som Distilleries Pvt. Ltd. vs. Excise Commissioner & Ors. by order dated 30/11/2018 passed in Writ Petition No.60/2016 has held as under:-

As it is evident from Rule 12 of Spirit Rules, 1995, that the penalty is imposed for contravention or breach of any of the Rule and not by way of punishment for committing any offence, therefore, mens rea or actual loss to the other party of the contract are not necessary. Where a provision, which is in public interest, has been made, then for its better enforcement, if the penalty is provided, then it is within the legislative competence and mens rea is not necessary. Mere contravention or Breach of any of the Rule is sufficient to invite the imposition of Penalty. As already held that the petitioner himself has admitted that there was a lapse on the part of the petitioner, in maintaining the minimum stock of spirit in the storage spirit. Thus, where contravention or breach of any rule has been established, then the authorities are well within their right to impose the penalty for such contravention or breach.

19. The order passed by the Writ Court has been affirmed by the Writ Appellate Court by order dated 28/3/2019 passed in Writ Appeal No.362/2019.

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20. Thus, penalty cannot be equated with fine. Penalty is provided for effective implementation of different provisions, whereas fine / imprisonment is provided for the offence committed by the wrong doer. Therefore, it cannot be said that the proceedings for imposition of penalty as well as proceedings for prosecution of the applicant is not permissible simultaneously. By no stretch of imagination it can be held that the applicant would be victim of double jeopardy.

21. It is next contended by the counsel for the applicant that the charge-sheet has been filed for offence under Sections 269, 272 and 273 of IPC. It is submitted that no charge-sheet has been filed for offence under Section 420 of IPC.

22. Heard learned counsel for the applicant.

23. Selling substandard product by itself would mean that the wrong doer is cheating the innocent customers. The counsel for the applicant could not point out any material from record to show that the applicant had displayed either on the packed products or for the loose products that the milk products of substandard quality are being sold. Thus, it is clear that no prior information was given to the innocent customers with regard to the quality of the milk products. It is a matter of common knowledge that no innocent customer would ask for a product which is of substandard quality. He always want a product which fulfills all the parameters as provided under FSSA, THE HIGH COURT OF MADHYA PRADESH Rohit Sahu Vs. State of M.P. and another 2006. Selling substandard food material by itself prima facie amounts to cheating. According to the applicant, the charges have not been framed. Even if the police has not filed the charge-sheet for a particular offence, still the Court while framing charges can frame charges for which charge-sheet was not filed. Even otherwise, in exercise of power under Section 216 of Cr.P.C., charges can be altered.

24. Under these circumstances, this Court is of the considered opinion that no case is made out for interfering with the FIR or charge-sheet. Accordingly, the application fails and is hereby dismissed.

(G.S. Ahluwalia) Judge Arun* ARUN KUMAR MISHRA 2022.05.04 17:40:50 +05'30'