

Nilesh Chhavanika vs State Through Food Safety Officer ... on 29 March, 2023

Author: Anup Jairam Bhambhani

Bench: Anup Jairam Bhambhani

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.M.C. 2237/2023 &CRL.M.A. 8461/2023

NILESH CHHAVANIKA

Through: Mr. Anwesh Madhukar and
Pranjal Shekhar, Advocates

versus

STATE THROUGH FOOD SAFETY OFFICER THROUGH
AKSHAY BHALLA & ANR.

Through: Mr. Shoaib Haider, APP
Mr. C.M. Krishna, DG Le
GNCTD.
Mr. Akshay Bhalla, Food
Officer, GNCTD.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI
ORDER

% 29.03.2023 CRL.M.A. 8462/2023 & CRL.M.A. 8463/2023 (Exemptions) Exemptions granted, subject to just exceptions. Let requisite compliances be made within 01 week. The applications stand disposed of.

CRL.M.C. 2237/2023 &CRL.M.A. 8461/2023 By way of the present petition under section 482 of the Code of Criminal Procedure 1973, the petitioner seeks quashing of summoning order dated 15.07.2022 made by the learned Metropolitan Magistrate in criminal case No. 375/2022 filed under sections 3/23/26/27/52/58/59/63 of the Food Safety and Standard Act, 2006.

2. Mr. Anwesh Madhukar, learned counsel appearing for the petitioner submits, that the complaint as well as the summoning order proceed on the premise that the petitioner's product contains ingredients that are in violation of Notification No. F. 211(17)/DOFS/HQ/2017/1293- 1313 dated 15.07.2020 issued by the Department of Food Safety, Government of National Capital Territory of Delhi. The product in question is flavoured/scented tobacco known as "Flavoured Hookah Molasses" which has allegedly been found unsafe upon inspection, leading to the filing of complaint and the summoning of the petitioner.

3. Mr. Madhukar however points-out, that the notification in question has been quashed vide

judgment dated 27.09.2022 made in a batch of petitions titled Sugandhi Snuff King Pvt. Ltd. & Anr. vs. Commissioner (Food Safety) Government of NCT of Delhi by a Co- ordinate Bench of this court, in essence and substance holding, that a tobacco product is not covered by the Food Safety and Standard Act, 2006 at all but by the Cigarettes and Other Tobacco Products Act 2003 (COTPA), which (latter) is a special legislation covering the subject matter of tobacco products.

4. Upon a prima-facie view of the matter, issue notice.

5. Mr. Shoaib Haider, learned APP appears for the State on advance copy; accepts notice; and seeks time to file status report.

6. Let status report be filed within 06 weeks; response thereto, if any, be filed within 04 weeks thereafter.

7. Re-notify on 21st August 2023.

8. Mr. Haider submits that the State has preferred a Letters Patent Appeal against the afore-cited judgment dated 27.09.2022, which is pending consideration before the Division Bench.

9. Upon being queried however, Mr. Haider confirms that the Division Bench has not stayed the operation of judgment dated 27.09.2022.

10. Mr. Madhukar submits that the petitioner is required to appear before the learned Magistrate pursuant to the summoning order; but since he is ordinarily a resident of Ranchi, Jharkhand, he may be exempted from personal appearance before that court.

11. Considering, that as of now, the notification upon which the summoning order is premised, has been struck-down by a Co-ordinate Bench of this court, it is directed that though the petitioner must enter appearance before the learned Magistrate through counsel, he shall be exempted from personal appearance before that court, till the next date of hearing in the present matter.

ANUP JAIRAM BHAMBHANI, J MARCH 29, 2023/ak