
(2005) 01 AHC CK 0110
In the Allahabad High Court
Case No : Criminal Revision No. 1173 of 1986

Amrit Banaspati Co.Ltd.Ghaziabad

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 03-01-2005

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 20A

Citation : (2005) 01 AHC CK 0110

Hon'ble Judges : Amar Saran, J

Final Decision : Disposed Of

Judgement

Amar Saran, J.—Heard learned Counsel for the revisionist and the learned AGA and perused the record.

2. The instant revision has been preferred against the judgment of the JM, Ghaziabad, dated 2061986 in Case No. 437 of 1985, whereby the objection of the applicant has been overruled and the prosecution has been permitted to withdraw certain papers and documents as the complaint in another case No. 438/85 had got filed in this case (Case No. 437 of 1985) and viceversa and to bring the correct complaint and other relevant papers on record, as they had got mistakenly interchanged in the two cases which related to the same accused. Secondly, that the order of impleadment of the applicant who was the manufacturer of the Vanaspati was illegal and against the provisions of Section 20A of the Prevention of Food Adulteration Act.

3. So far as the submission about the Magistrate not being empowered to permit the Food Inspector to withdraw some of the wrong papers relating to the other case which were initially filed and to file proper papers was concerned, I find no merit in this contention. The ends of justice can never be defeated on such specious hypertechnical irrregularities which may have occurred due to a bona fide mistake as the accused/vendor Newal Chandra was being prosecuted in two cases, 437 of 1985 (the present case) and 438 of 1985, (the other case). Instead of there being a detracton from justice, I think that the interests of

justice were served if on finding that this irregularity had occurred the Magistrate allowed the Food Inspector to withdraw the incorrect papers which related to the other case and to file the correct papers pertaining to the present case.

4. The other contention raised by the learned Counsel for the applicant that the order taking cognizance passed by the JM, I, Economic Offences, Ghaziabad, in Case No. 437 of 1985 was illegal as it was not in accordance with Section 20A of the Prevention of Food Adulteration Act 1954 (hereafter the PFA Act) as interpreted by the Apex Court in *Omprakash Shivprakash v. K.I. Kuriakose & Ors.*, 2000(1) JIC 585(SC) : (1999) 8 SCC 633, is also not acceptable. It may be noted that in the present case cognizance was taken by the Magistrate on the basis of a complaint filed by the Food Inspector wherein it was mentioned that when the Food Inspector took the sample from the shop of M/s. Nawalchand Mohan Lal Jain, he found the sealed tins of Vanaspati Sunahri Teer ghee which were manufactured by the applicant firm and thereafter he filed a complainant before the Court concerned after taking sanction from the Local Health Authority (LHA). In my view the decision of the Apex Court in *Omprakash Shivprakash v. K.I. Kuriakose & Ors.*, (1990) 8 SCC 633, is distinguishable because that was a case where a sample of toor dal has been taken in possession by the Food Inspector and without obtaining a sanction under Section 20 of the prevention of Food Adulteration Act, for prosecution of the appellant, he had sought to be impleaded purportedly in exercise of powers under Section 20A of the PFA Act. It was also not a case where the name of the manufacturer was found embossed on the container containing the alleged adulterated material at the very inception as has been found in the present case. In *Omprakash's* case the appellant firm was not made an accused in the original complaint, nor was any sanction obtained for his prosecution, but he was impleaded by the Court in exercise of powers under Section 20A of the PFA Act when the accused vendor after entering appearance had produced bills showing that he had purchased the "toor dal" from the appellant's firm presumably for raising a defence plea under Section 19A of the PFA Act. In that situation, the Apex Court observed that prior to the initiation of the enquiry or trial impleadment was not possible under Section 20A of the Prevention of Food Adulteration Act in respect of any other accused who may also appear to be involved in the commission of the offence.

5. In the present case, I find that the applicant was made an accused at the initial stage in the complaint which had been filed after obtaining a proper sanction from the appropriate authority, after the Food Inspector had noted that the sealed tins of Vanaspati ghee was of the applicant's firm, and it was found not to be of the prescribed standard as per the public analyst's report. This case was not, therefore, a case of impleadment under Section 20A of the Prevention of Food Adulteration Act, but the cognizance had been taken on the basis of a complaint after proper sanction from the concerned LHA had been obtained at the initial stage.

6. In this view of the matter I find no ground for quashing the criminal

proceedings against the applicant at this stage and the stay order granted earlier shall stand vacated.

7. Learned Counsel for the applicant however submits that the applicant was the Quality Control Manager and has even secured bail in this case, and the proceedings against the applicant have remained stayed for a very long time, since 21786 and that in these circumstances the applicant may be permitted to appear through Counsel to raise his objections at the stage of framing charges. In the circumstances of this case I think it would be reasonable to grant this prayer. Accordingly it is directed that if the averment of the applicant having secured bail is correct and if he appears before the Courts below within one month in pursuance of this order, he may be permitted to appear through Counsel up to the stage of framing of charges to raise his objections to the framing of charges subject of the condition that he gives an undertaking to the satisfaction of the trial Court that (a) his Counsel will remain present on his behalf and represent him on each date, (b) he will not raise any objection as to his not being the actual person who is facing trial, (c) he does not object to any evidence being recorded in his absence, and, lastly, (d) he undertakes to be present before the Court whenever called to do so at any stage. These conditions are in accordance with the directions of the Supreme Court in *M/s. Bhaskar Industries Limited v. Bhiwani Denim Apparels Limited*, (2001) Cr. L.J. 4250.

8. The officer is directed to send back the record of this case and to communicate this order to the lower Court within two weeks, which is expected to expeditiously dispose of the case. With these observations this revision is disposed of.

Revision disposed of.