
(2007) 08 UK CK 0038

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 606 of 2007

Arun Kumar

APPELLANT

Vs

State of Uttaranchal

RESPONDENT

Date of Decision : 29-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 16, 7

Citation : (2008) NCC 167 : (2008) 8 UC 785

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Lokendra Dobhal, for the Appellant; S.S. Adhikari, A.G.A., for the Respondent

Judgement

Prafulla C. Pant, J.—Heard learned Counsel for the Petitioner and learned A.G.A. for the State.

2. By means of this petition, moved u/s 482 of Code of Criminal Procedure, 1973, the Petitioner Arun Kumar has sought quashing of the proceedings initiated against him in Criminal Case No. 225 of 2007; Food Inspector v. Som Dutt and Ors., relating to offence punishable u/s 7/16 of the Prevention of Food Adulteration Act, 1954, pending in the court of Chief Judicial Magistrate, Uttarkashi.

3. Brief facts of the case are that on 31 -08-1987, a sample of "Arhar" pulse (750 gms.) was purchased from Som Dutt, who was running a retail grocery shop in Purola, Uttarkashi. As per the complaint filed by the Food Inspector, the sample was taken after giving due notice in Form VI to Som Dutt and it was kept and sealed in three clean, dry and empty jars. With Form No. VII, one of the sample was sent to the Public Analyst from where on analysis the purchased item was found adulterated. Since, the accused Som Dutt had taken plea that he had purchased the "Arhar" dal from M/s Jyoti Prasad Bhagat Ram of Dehradun through bill No. 1139 dated 03-06-1987, the Food Inspector filed complaint

(copyAnnexure-1 to the petition) against the accused Som Dutt as well as against M/s Jyoti Prasad Bhagat Ram, after obtaining necessary sanction from the local health authority. It appears that Som Dutt is facing the trial. However, though, no names of the partners of M/s Jyoti Prasad Bhagft Ram were disclosed by the complainant Food Inspector in the complaint, but it appears that the then partners were summoned in the criminal complaint case filed by the Food Inspector. According to the Petitioner (Arun Kumar), he was not a partner in the firm and he became partner only in the year 1990, as such, he cannot be prosecuted for a sample filled in the year 1987.

4. Learned Counsel for the Petitioner drew attention of this Court to the death certificate of Raj Kumar Goel, father of the Petitioner Arun Kumar, who died on 08-09-1990 and a copy of the partnership deed dated 13-09-1990, both of which are annexed as Annexure -2 to the petition. The partnership deed dated 13-09-1990 shows that after death of Raj Kumar Goel, his son Arun Kumar (present Petitioner) was inducted as one of the partners in the firm. It is true that in respect of a sample filled by Food Inspector in the year 1987, Petitioner Arun Kumar was neither retailer, nor partner of the firm of the wholesale dealers, and as such, he could not have been prosecuted in the criminal complaint, which relates to the incident of 1987.

5. In the circumstances, summoning of the Petitioner Arun Kumar and issuing warrant of arrest against him by the trial court in respect of an offence of 1987, is on the face of it illegal and arbitrary, and the order dated 02-08-2007, passed by the trial court rejecting the application of the Petitioner for recall of warrant of arrest, is liable to be quashed.

6. In the above circumstances, and for the reasons as discussed above, the proceedings against the-Petitioner Arun Kumar, who was not accused in the criminal complaint filed by the food Inspector on 12-03-1988 (which is now re-numbered as Criminal Complaint Case No. 225 of 2007) are quashed, as neither the Petitioner was retailer nor a partner of the Firm, when the impugned sample was filled by the Food Inspector. However, the proceedings in respect of the another co-accused Som Dutt shall not be treated to have been interfered with. The Petition u/s 482 of Code of Criminal Procedure stands, accordingly, allowed.