

(2022) 07 JH CK 0008

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 428 Of 2021

Chhakan Lal Saw

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 08-07-2022

Acts Referred:

Indian Penal Code, 1860 — Section 273, 406, 420
Prevention Of Food Adulteration Act, 1954 — Section 16
Food Safety And Standard Act, 2006 — Section 36, 37, 37(2), 40, 42, 50, 52, 58, 59, 97

Citation : (2022) 07 JH CK 0008

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Nilesh Kumar, Prabhu Dayal Agrawal

Final Decision : Allowed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Nilesh Kumar, learned counsel for the petitioner and Mr. Prabhu Dayal Agrawal, learned counsel for the State.

2. This petition has been filed for quashing the entire criminal proceedings pending as against the petitioner including the order dated 01.10.2020 by which cognizance has been taken against the petitioner for the offence under Sections 273, 406, 420 of the Indian Penal Code, Section 16 of Prevention of Food Adulteration Act and Sections 50, 52, 58 and 59 of the Food Safety and Standard Act, 2006 (herein after to be read as "the Act, 2006) in connection with Chowka P.S. Case No.20/2020, pending in the court of the learned S.D.J.M., Seraikella.

3. On the written report of the Food Safety Officer, Seraikella Kharsawan, the case was lodged wherein it was alleged that on 04.05.2020 the grocery shop of this petitioner was inspected and from the shop of this petitioner, one packet of Lal Ghora special sattu manufactured by Sai Flour Mill, Jamshedpur has been

seized, but in the said packet there was neither batch number nor the date of manufacture. On query, it was disclosed that about 15 days back one person sold those Sattu to the petitioner for sale of the packet of 250 Grams each and other articles have been disposed/sold, as such, in absence of any batch number and manufacturing date the informant has made allegation that the petitioner related with the allegation of misbranding and requested to institute a case against this petitioner.

4. At the outset, Mr. Nilesh Kumar, learned counsel for the petitioner submits that the procedure for lodging the case under Section 42 of the Act, 2006 has not been followed. He further submits that the cognizance order appears to be non-application of mind as the cognizance has been taken under the provision of Prevention of Food Adulteration Act, which has already been repealed in light of Section 97 of the Act, 2006.

5. Mr. Prabhu Dayal Agrawal, learned counsel for the State submits that the cognizance has been rightly taken against the petitioner. He further submits that there is no illegality in the impugned order.

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 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 authorised to the Food Safety Officer under Section 37(2) of the Act, 2006. The State has not produced material in the case by way of filing counter affidavit which indicate that Section 42 of the Act, 2006 was followed in the present case while lodging 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 Sections 50, 52, 58 and 59 of the Act, 2006. Moreover, the learned court has taken cognizance under the provision of Prevention of Food Adulteration Act, which has already been repealed in view of Section 97 of the Act, 2006. It appears that there is non-application of mind while taking the cognizance against the petitioner by the learned court below.

8. In view of the aforesaid facts, the entire criminal proceedings pending as against the petitioner including the order dated 01.10.2020 in connection with Chowka P.S. Case No.20/2020, pending in the court of the learned S.D.J.M., Seraikella is, hereby, quashed.

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

10. Interim order dated 15.06.2021 stands vacated.