

(2026) 01 JH CK 1922

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No.1515 Of 2023

Deo Jaiswal @ Vikki

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 27-01-2026

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 272, 273, 419, 420
Food Safety and Standards Act, 2006 — Section 31, 37(2), 41, 42, 52, 59, 63
Mines Act, 1952 — Section 79
Mines and Minerals (Development and Regulation) Act, 1957 — Section 22

Citation : (2026) 01 JH CK 1922

Hon'ble Judges : Anil Kumar Choudhary, J

Bench : Single Bench

Advocate : Ashish Kr. Thakur, Kabisha Goenka, Ranjit Kumar, Vandana Bharti

Final Decision : Dismissed

Judgement

Anil Kumar Choudhary, J

1. Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure with the prayer to quash and set aside the entire criminal proceeding along with FIR in connection with Mahagama P.S. Case No.221 of 2022 corresponding to G.R. No.1794 of 2023 including the order dated 15.03.2023 passed by learned Judicial Magistrate-1st Class, Godda whereby and where under the learned Judicial Magistrate-1st Class, Godda has taken cognizance of the offences punishable under Section 419 of the Indian Penal Code and Sections 52, 59 and 63 of the Food Safety and Standards Act, 2006 and ordered for issuance of summons against the petitioners.

3. The allegation against the petitioners is that the petitioners were running an illegal factory and godown for preparing inedible oil from Mahua seeds and were

misbranding the same as mustard oil of reputed brands in violation of the rules of FSSAI. The Food Safety Officer of Godda conducted a raid on the godown and found a truck loaded with branded mustard oil tins in which Molasses (Gud) was stored and the petitioners by impersonating as the purchaser of branded mustard oils were selling the said inedible oil prepared from Mahua seeds as branded mustard oil to the retail sellers in the market under the Mahagama Police Station. The petitioners could not produce any license for manufacturing of oil, police seized the truck along with tins of molasses loaded upon it and on the basis of the information, Food Safety Officer seized the truck loaded with tins containing molasses and kept the same within the premises of Mahagama Police Station for safety.

4. On the basis of the written report submitted by the informant, police registered Mahagama P.S. Case No.221 of 2022 and took up investigation of the case, after completion of investigation, police found the allegations against the petitioners of having committed the offences punishable under Section 419 of the Indian Penal Code and Section 52, 59 and 63 of the Food Safety and Standards Act, 2006 to be true and submitted charge sheet and basing upon the same, the learned Judicial Magistrate-1st Class, Godda has taken cognizance of all the offences in respect of which charge sheet has submitted and passed summoning order.

5. Learned counsel for the petitioners relies upon the judgment of co-ordinate bench of this Court in the case of Niranjan Kumar Sah vs. The State of Jharkhand & Others in W.P.(Cr.) No.597 of 2022 dated 03.04.2023 and submits that the co-ordinate bench of this Court in the facts of that case where during the inspection, the Food Safety Officer found that there was misbranding of food products like Chana, Chana Dal, Besan, Arhar Dal and a huge truck of such items was found and the articles seized in that case were already released to the accused person of that case and drawing attention of the Court to Section 42 of the Food Safety and Standards Act, 2006 it was submitted that that only a competent person can launch a prosecution by a complaint, not by the FIR and relying upon the judgment of the Allahabad High Court in the case of Pepsico India Holdings Pvt. Ltd. vs. Food Inspector and Another reported in 2010 SCC OnLine ALL 1708, wherein it was opined by the Allahabad High Court that in view of the specific provisions in the Food Safety and Standards Act, 2006, the offences relating to adulteration of food that are governed under the Food Safety and Standards Act, 2006 after 29th July, 2010 are to be treated as per the procedures to be followed for drawing and analysis of samples as have been provided for, therefore, before launching any prosecution against the alleged offence of food adulteration, it is necessary for the concerned authorities to follow the mandatory requirements as provided under Section 41 & 42 of the Food Safety and Standards Act, 2006, therefore, the police have no authority or jurisdiction to investigate the matter under Food Safety and Standards Act, 2006. The co-ordinate bench then considered in that case, that nothing was on the record to indicate that the investigation was authorized to the Food Safety

Officer under Section 37(2) of the Food Safety and Standards Act, 2006 and in the absence of following the procedure for launching the prosecution under Section 42 of the Food Safety and Standards Act, 2006, the Co-ordinate Bench came to the conclusion that the petitioner is not liable to be prosecuted under Section 272, 273, 419 & 420 of the Indian Penal Code and under Section 52, 59 & 63 of the Food Safety and Standards Act, 2006. It is next submitted that no Mahua oil has been seized as is evident from the seizure list from the premises of the petitioner, hence, without taking the sample and without sending them to food analyst for analysis, the informant ought not have launched the prosecution. It is next submitted that the co-ordinate bench of this Court in the said case has also relied upon another co-ordinate bench judgment in the case of Hare Kant Jha vs. The State of Jharkhand & Another reported in 2014 SCC OnLine Jhar 1560 wherein in a FIR involving the offences punishable under the Mines Act, the co-ordinate bench considering the provision of Section 79 of the Mines Act which states that no Court shall take cognizance of any offence under that Act unless complaint thereof is made by the competent authority within the prescribed period and held that the FIR is bad in law in that case and applied the said ratio. It is lastly submitted that the prayer as prayed for, in this Cr.M.P., be allowed.

6. Learned Addl.P.P. appearing for the State on the other hand vehemently opposes the prayer of the petitioners made in the instant Cr.M.P and submits that though, the co-ordinate bench relied upon the judgment of Hon'ble Allahabad High Court in the case of Pepsico India Holdings Pvt. Ltd. vs. Food Inspector and Another (supra), but it failed to take note of the fact that even the Allahabad High Court has in no uncertain manner has made the observations in respect of the offence of food adulteration only. It is next submitted that unlike the Section 79 of the Mines Act, 1952, Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 and similar other special statutes, there is no *pari materia* provision of law in the Food Safety and Standards Act, 2006 which bars the Court from taking any cognizance unless a complaint is filed and in the absence of any such specific provision of law in the Food Safety and Standards Act, 2006, certainly such provision of law cannot be read in the Food Safety and Standards Act, 2006 by way of interpretation of some other provision. It is next submitted that the allegation involved in this case is of misbranding by illegally manufacturing oil from Mahua seeds without any license for the same, as is required under Section 31 of the Food Safety and Standards Act, 2006. It is next submitted that police submitted charge sheet for the offence punishable under Section 63 of the Food Safety and Standards Act, 2006 also, which provides for penalty for any person manufacturing, selling, storing and distributing or importing any article of food without license as required and for the purpose of prosecution under Section 63 of the Food Safety and Standards Act, 2006, drawing of sample of any article of food is not necessary, hence, by no stretch of imagination, it can be said that for a prosecution under Section 63 of the Food Safety and Standards Act, 2006, the *sine qua non* is that the Food Safety Officer must draw the sample and send the same to food analyst for analysis. It is next

submitted that Section 37(2) of the Food Safety and Standards Act, 2006, unlike the observations made by the co-ordinate bench in para-9 of the case of *Niranjan Kumar Sah vs. The State of Jharkhand & Others* (supra), provides for an authority to be conferred the Food Safety Officer. It is next submitted that in the FIR itself the informant describes himself to be a Food Safety Officer of Godda, so it is crystal clear that the Commissioner of FSSAI has by notification appointed the informant as Food Safety Officer for the local area of Godda. It is next submitted that nowhere in this Cr.M.P., the petitioners have taken the plea that the informant is not the Food Safety Officer of Godda and he has impersonating as such and in the absence of any such plea of the petitioners and since the police after investigation of the case found the allegations against the petitioners to be true, so at this stage, it is to be treated that the informant is the Food Safety Officer for the local area of Godda duly appointed by the notification of the Commissioner of FSSAI, hence, there is no absence of authority under Section 37(2) of the Food Safety and Standards Act, 2006, therefore, the contention of the petitioners that the ratio of *Niranjan Kumar Sah vs. The State of Jharkhand & Others* (supra) is applicable to the facts of the case is without any merit. It is next submitted that there is direct and specific allegation against the petitioners to be impersonating as the manufacturers of mustard oil even though they were manufacturing oil from Mahua seeds and by such impersonation, the petitioners were selling oil prepared from Mahua seeds as mustard oil to the retail sellers of the market of Mahagama, so the offence punishable under Section 419 of the Indian Penal Code is made out against the petitioners as well. It is further submitted that since it is a settled principle of law that at the time of taking cognizance, if one or the other of the offence is mentioned in the charge sheet is made out against the accused persons of the case, then the Magistrate taking cognizance based on the police report cannot add or subtract sections at the time of taking cognizance as the same will be permissible by the trial Court only at the time of framing of charge and it is submitted by the learned counsel for the petitioners that charge has yet to be framed in this case, so it is premature at this stage to quash the entire criminal proceeding as prayed for by the petitioners. It is lastly submitted that this Cr.M.P., being without any merit, be dismissed.

7. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that there is direct and specific allegations against the petitioners that they were impersonating themselves as the manufacturers of mustard oil and by so impersonation, they were selling the inedible oil prepared from Mahua seeds as Mustard oil, hence, the offence punishable under Section 419 of the Indian Penal Code is prima facie made out against the petitioners if the entire allegations made against them are considered to be true in their entirety.

8. It is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of *State of Gujarat vs. Girish Radhakrishnan Varde* reported in (2014) 3 SCC 659 paragraph-15 of which reads as under:-

"15. The question, therefore, emerges as to whether the complainant/informant/prosecution would be precluded from seeking a remedy if the investigating authorities have failed in their duty by not including all the sections of IPC on which offence can be held to have been made out in spite of the facts disclosed in the FIR. The answer obviously has to be in the negative as the prosecution cannot be allowed to suffer prejudice by ignoring exclusion of the sections which constitute the offence if the investigating authorities for any reason whatsoever have failed to include all the offences into the charge-sheet based on the FIR on which investigation had been conducted. But then a further question arises as to whether this lacunae can be allowed to be filled in by the Magistrate before whom the matter comes up for taking cognizance after submission of the charge-sheet and as already stated, the Magistrate in a case which is based on a police report cannot add or subtract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time of framing of charge under Sections 216, 218 or under Section 228 CrPC as the case may be which means that after submission of the charge-sheet it will be open for the prosecution to contend before the appropriate trial court at the stage of framing of charge to establish that on the given state of facts the appropriate sections which according to the prosecution should be framed can be allowed to be framed. Simultaneously, the accused also has the liberty at this stage to submit whether the charge under a particular provision should be framed or not and this is the appropriate forum in a case based on police report to determine whether the charge can be framed and a particular section can be added or removed depending upon the material collected during investigation as also the facts disclosed in the FIR and the charge-sheet." (Emphasis supplied)

that therein the Hon'ble Supreme Court of India has categorically laid down the law that if the investigating authorities for any reason whatsoever have failed to include all the offences into the charge-sheet based on the F.I.R. on which investigation had been conducted, the Magistrate before whom the matter comes up for taking cognizance after submission of the charge-sheet, cannot fill up the lacunae and the Magistrate in a case which is based on a police report cannot add or subtract sections at the time of taking cognizance; as the same would be permissible by the trial court only at the time of framing the charge.

9. So far as the contention of the petitioners regarding a FIR cannot be lodged in respect of offence punishable under the penal provisions of the Food Safety and Standards Act, 2006 besides other cognizable offence punishable under any other law is concerned, it is pertinent to mention here that unlike provisions in special statutes like Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957, Section 79 of the Mines Act, 1952, and many other special statutes there are specific provisions debarring any Court from taking cognizance of the offences punishable under the penal provisions of such special statutes unless the complaint is filed, but there is no such *pari materia* provision in the Food Safety and Standards Act, 2006; prescribing that no court can take cognizance of the offence, unless a complaint is filed. The legislature in

its wisdom having not incorporated such a provision in the Food Safety and Standards Act, 2006, certainly such a provision cannot be read in the Food Safety and Standards Act, 2006 by interpretation of some other provision. Otherwise, also for prosecution under Section 63 of the Food Safety and Standards Act, 2006 which provides punishment for carrying out business without license; drawing of sample of any food is not a sine qua non, certainly Section 42 of the Food Safety and Standards Act, 2006 provides for procedure for launching prosecution as it relates to drawing sample and sending them to food analyst for analysis is only in respect of offences relating to adulteration of foods or the likes where drawing of sample is required, but not in other offences.

10. Under such circumstances, as the offences punishable under Section 419 of the Indian Penal Code is prima facie made out against the petitioners and which allegations was found to be true by the police during the investigation of the case, so at this stage, this Court is of the considered view that this is not a fit case where the prayer as prayed for by the petitioner in this Cr.M.P. is to be acceded to in exercise of the power under Section 482 of the Cr.P.C.

11. Accordingly, this Cr.M.P., being without any merit, is dismissed.