

(2019) 01 MP CK 0054

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 4866 Of 2018

Divanchand Valecha

APPELLANT

Vs

Indore Municipal Corporation

RESPONDENT

Date of Decision : 31-01-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Food Safety And Standard Act, 2006 — Section 3(zz)(xi), 26(1), 26(2)(I), 26(2)(v),
27(2)(c), 27(2)(e), 27(2)(f), 46(4), 58, 59

Citation : (2019) 01 MP CK 0054

Hon'ble Judges : S. K. Awasthi, J

Bench : Single Bench

Advocate : Dharmendra Chelawat, Manoj Munsi

Final Decision : Disposed Off

Judgement

(1) The applicant has preferred this petition under Section 482 of Cr.P.C. for quashment of criminal case No.2277/2014 pending before the Special Judicial Magistrate Indore under Section 58 and 59 of the Food Safety and Standard Act, 2006 (in short ' Act")

(2) Brief facts of the case are that the applicant holds a retail & wholesale Kirana shop which is registered under the M.P. Shops and Establishment Act, 1958 in the name of "Darvesh Traders" and also have license under the Food Safety and standard Act 2006. The applicant's retail and wholesale shop is situated at 18, 19/2, Ramanand Nagar, Indore and 103, Sector F, Rajnagar, Inodre. The applicant sells the dry fruits from his Kirana shop and use Godown for the processing of the cleaning of the dry fruits and dry fruit slice. On 28.10.2013 at about 07:30 pm Food Safety Officer District Indore (in short "FSO") carried out inspection of a food establishment and collected the sample of the Almond and same was forwarded to the State Food Testing Laboratory for its analysis. According to the report issued by the Food Analyst, the sample was found to be sub-standard and unsafe. Then a notice under Section 46(4) of the Act was sent

to the applicant alongwith copy of the report of food analyst. After taking sanction for the prosecution, Food Safety Officer, Indore presented a complaint before Special Judicial Magistrate, Indore alleging violation of Section 26(1), 26(2) (I), 26 (2) (v), 27 (2) (c), 27 (2) (e), 27 (2) (f) of the food Safety and standards Act, 2006 punishable under Section 58 & 59 of the Act. The applicant issued notice by concerned Magistrate. Being aggrieved by the aforesaid complaint, applicant preferred this petition under Section 482 of Cr.P.C. for quashment of the complaint

(3) Learned counsel for the applicant has submitted that FSO Rajesh Jailswal and other three FSO all together inspected the godown at the same time and collected the sample from godown but three complaints are deliberately filed by these FSO against the applicant under the same offence just for sake of harassing the applicant unnecessarily. From the perusal of the entire complaint, it is quite evident that no where it is pointed out that what act was done by the applicant violating the provision of section under which he is prosecuted. The food Safety and Standard Act, 2006 is a special Act and the compliance of the various provisions of Act is mandatory in nature and are strictly to be followed. But in the present case this element is prima facie disappeared and therefore, the applicant cannot be made liable under the Act. The respondent has not followed the settled provisions of the law as required under the Food Safety and Standard Rules, 2011. No notice was sent to the business operator under Section 2.4.2 (6) of Food Safety and Standard Rules, 2011 which is mandatory. Applicant has not given any opportunity for hearing before filing the complaint. As per sub proviso of Rule 2.4.2 (6) of the Act in case the sample cannot be analyzed within fourteen days of its receipt, the Food Analyst shall inform the designated Officer and the commissioner of Food Safety giving reasons and specifying the time to be taken for analysis, however, this provision is also not complied with. The report of food analyst shows that the food article are unsafe under Section 3 (zz) (xi) of the Act, however, report does not disclose how the food article are unsafe for health. There is nothing of the report of Food analyst that food article was unsafe for consumption. It, is further submitted that the provision of Act is applicable for the food articles which are consumable not for raw material kept in godown, hence complaint is baseless and against the norms of the Act , therefore, complaint filed before the special Judicial Magistrate may be ordered to quash.

(4). Learned Public prosecutor has supported the impugned action by submitting that the sample which had taken from the godown of the applicant is found to be unsafe and after complied with the provision of the Act, the complaint has been filed against the applicant, therefore, no question is arisen for quashment of the complaint at this stage.

(5). I have heard learned counsel for the parties and perused the record.

(6). From perusal of the record, it is noticed that applicant is sought to be prosecuted under the provisions of Act on the ground that sample of Almond was

found to be unsafe. The applicant agitated before this Court that the mandatory provision of the Act has not been complied with by the respondent, therefore, complaint is not maintainable, however, without raising any objection before the concerned court regarding the maintainability of complaint or breach of the mandatory provision of the Act, the applicant directly filed this petition under Section 482 of Cr.P.C. for quashment of the proceedings of complaint, therefore, it will be appropriate that first the applicant raised these objection before the concerned court.

(7). In view whereof, this petition filed under Section 482 is disposed of by granting liberty to the applicant to raise all above objections before the trial court regarding non compliance of mandatory provision of the Act and maintainability of the complaint.

Certified copy of as per rules.