
(2006) 07 CHH CK 0037
In the Chhattisgarh High Court
Case No : M. Cr.C. No. 4032 of 1995

Jagdish Prasad and Others

APPELLANT

Vs

State of M.P. (Now G.G.)

RESPONDENT

Date of Decision : 07-07-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 10, 14, 14A, 16, 17
Prevention of Food Adulteration Rules, 1955 — Rule 12A, 12C, 32, 9

Citation : (2006) 2 CGLJ 316

Hon'ble Judges : V.K. Shrivastava, J

Bench : Division Bench

Advocate : Sanjay K. Agrawal and Saurabh Sharma, for the Appellant; Ravindra Agrawal, Panel Lawyer, for the Respondent

Judgement

V.K. Shrivastava, J.—Feeling discontented by the criminal prosecution bearing criminal case No. 957/94 arising out of criminal complaint filed by J.P.S. Goud, Food Inspector, Bilaspur on 6/9/1994 before Additional Chief Judicial Magistrate, this petition u/s 482 of the Code of Criminal Procedure has been preferred for quashment of the complaint and the criminal proceeding.

2. J.P.S. Goud, has been appointed as Food Inspector under the provisions of the Prevention of Food Adulteration Act, 1954 (henceforth, "the Act") who is authorized to inspect where any article of food is manufactured, or stored or sold, within his area and to collect sample of any article of food which he has, reason to suspect being manufactured, stored or sold or exhibited for sale in contravention of the provisions of the Act and the Rules framed thereunder i.e., Prevention of Food Adulteration Rules, 1955 (henceforth, "the Rules"). On 25/2/1992 Food Inspector accompanied with his team went to Kargi Road, Kota and inspected the grocery shop of Petitioner Jagdish Prasad in his presence. In his shop ground-nut oil, mastered oil, vanaspati ghee and other articles of food were found, stored and exhibited for sale. In accordance with law and rules he took sample of Postman brand ground nut oil stored in the shop for sale. He

prepared Panchnama and other documents. In accordance with Law and rules he sealed the sample in three bottles under prescribed Labels and also obtained signatures of the vendor on sealed bottles in accordance with rules. Vendor Jagdish Prasad who purchased the article of food i.e., Postman brand ground nut oil from firm Malik Ram Charanjit Singh, Gol Bazar, Bilaspur, produced a copy of the bill bearing No. 524. Therefore, necessary information was sent on the same day to firm Malik Ram Charanjit Singh, Gol Bazar, Bilaspur and thereafter sample was sent to Public Analyst for analyzing the article of food and to give his report. Public Analyst analyzed the sample and opined that the sample does not comply with Rule 32(e) of the Rules as per declaration given in Form VII by the Food Inspector as per standard/provision laid down under the rules.

3. After receipt of the report from the Public Analyst further correspondence with firm Malik Ram Charanjit Singh has been made. On his reply and submission of bill issued by Bhaba and Company, Bilaspur, correspondence with Bhaba and Company has been made. Bhaba and Company supplied "bills revealing the purchase made by him from firm Agrawal Agencies. Firms Malik Ram Charanjit Singh and Agrawal Agencies did not supply the information regarding their partners as desired by the Food Inspector. After observing necessary formalities and obtaining sanction to prosecute, a complaint has been filed against all the Petitioners including Abdul Kadhar Usman (since dead) nominee Bhaba and Company, Bilaspur in the Court of Additional Chief Judicial Magistrate, Bilaspur on 6/9/1994 who took cognizance of the case and accordingly a case bearing criminal case No. 957/1994 has been registered against the Petitioners.

4. Learned Counsel for the Petitioners contended that along with the petition Petitioners have filed a copy of the report of Public Analyst who did not opine that the article of food is below the standard or adulterated, but he gave his opinion that the sample suffers from non-compliance of Rule 32(e) of the Rules and thereby vide his opinion the article of food was misbranded whereas Hon'ble the Apex Court has already declared Rule 32(e) of the Rules ultra vires, a long back in 1971. The Petitioner No. 1 was the vendor who at the outset furnished the information regarding his purchase. After the amendment in Section 14 of the Act, which came into force from 1-4-1976 a deeming provision has been included in place of warranty i.e., bill, cash memo or invoice. Only vendor is required to furnish information u/s 14 of the Act and dealer, distributor and manufacturer are kept immune from its operation. They are not bound to disclose the details of their partnership or component.

5. Learned Counsel for the State did not dispute the correctness of the copy of the report of Public Analyst annexed along with the petition and frankly concedes that Rule 32(e) of the Rules has been declared ultra vires by Hon'ble the Apex Court and in nut shell, the total prosecution rests on the report of Public Analyst who did not opine the article of food adulterated or misbranded, therefore, neither Jagdish Prasad is liable to be prosecuted nor other Petitioners who automatically have been absolved from the charges.

6. Under the rules, the standards for ground nut oil has been prescribed. Comparative table of standard prescribed and the standard found on analyzing the sample is given below:

Standard prescribed Standard found on sample

(a) BR. reading at 40°C 54.0 to 57.1 56.6

(b) Saponification value 188 to 196 190.72

(c) Iodine value 85 to 99 90.72

(d) Unsaponifiable matter Not more than 1.0% Not analyzed

(e) Acid Value Not more than 6.0 0.44

(f) Bellier test Not More than 39°C to 41°C 40°C

7. It is manifest that the standard prescribed by the rule is followed in the sample and the article of food is not below the standard. Public Analyst did not opine that the article of food was adulterated. In his report Public Analyst after certifying the above standard opined that the sample does not comply with Rule 32(e) of the Rules. It appears that Section 2 IX(K) of the Act has been made applicable to prosecute the Petitioner, as according to it if article of food is not labeled in accordance with the requirement of the Act or Rules made thereunder is said to be "misbranded".

8. Hon"ble the Apex court while rendering judgment in Dwarka Nath and Another Vs. The Municipal Corporation of Delhi, , has observed at 21 of the judgment which reads as below:

21. There is no definition of the expression "batch number" or "Code number" either in the Act or the Rules. It is also admitted that even assuming that the batch or code number has to be given, there is no further obligation to specify in the label the date of packing and manufacture of the article of food or the period within which the article of food has to be utilized, used or consumed. In the absence of any obligation to give the particulars mentioned by us above, the public or the purchaser will not be able to find out even the freshness of the contents of a container. Therefore, it follows that merely giving an artificial batch number or code number will not be of any use to the public or to the purchaser. In view of all these circumstances we are of the opinion that Rule 32(e) is beyond the rule making power even u/s 23(1)(d) of the Act. The Appellants could not be convicted for any violation of d.(e) of Rule 32 as the said provision, as pointed above, is invalid.

9. Hon"ble the Apex Court has declared Rule 32(e) of the Rules to be invalid and for its violation no one can be convicted. As Hon"ble the Apex Court has already declared the Rule 32(e) of the Rules ultra vires, therefore, in the instant case, the article of food i.e. ground nut oil analyzed by the Public analyst cannot be kept, under the category of misbranded article of food and accordingly no

prosecution for breach of Rule 32(e) of the Rules can be continued to stand.

10. Rule 12-A of the Rules came into force from 24/8/1968 which made it obligatory on manufacturer, distributor or dealer selling an article of food to a vendor to give either separately or in the bill, cash memo or (label) a warranty in Form VI-A. Afterwards, the Act itself was amended and proviso to Section 14 of the Act which reads as below, was enforced from 1/4/1976.

Provided that a bill, cash memorandum or invoice in respect of the sale of any article of food given by a manufacturer or distributor of, or dealer in, such article, to the vendor thereof shall be deemed to be a warranty given by such manufacturer, distributor or dealer under this section.

11. When substantive law itself has been amended, no Rule in contravention of the substantive law shall prevail and, therefore, when there is a deeming clause which substitutes requirement of warranty in Form VI-A, no manufacturer, dealer or distributor who in compliance of Section 14 of the Act, issued bill, cash memo or invoice in respect of sale of any article of food to vendor can be prosecuted for non-issuance of warranty in accordance with Rule 12-A of the Rules in Form VI-A.

12. Section 14-A of the Act made it obligatory on the part of vendor of an article of food to disclose the name, address and other particulars of the person from whom he purchased the article of food on demand by Food Inspector. Section 14-A of the Act does not impose such obligation on manufacturer, distributor, or dealer. Section 10 of the Act and Rule 12-A of the rules refer vendor, manufacturer, dealer and distributor Rule 12-C of the Rules also cast a duty on vendor to disclose the name and address of the director or manager, as the case may be, nominated in Form VIII to a purchaser who informs such vendor of his intention of purchasing any such article from him for analyzing the same by Public Analyst. From reading all these provisions together, it is conspicuous that manufacturer, dealer, distributor and vendor carry different meanings and their liability is also not one and the same, in accordance with law and rules. u/s 14-A of the Act on demand of Food Inspector except vendor no one is obliged to disclose the name and address of the person from whom the article of food found in his possession has been purchased by him. Here in the instant case, according to complaint itself Petitioner No. 1 who is the vendor, at the threshold, gave name and address of the person from whom he purchased the article of food by supplying him a copy of purchase invoice.

13. From the complaint itself, it is conspicuous that Petitioner No. 1 Jagdish Prasad gave a copy of the bill unveiling purchase of the article of food from firm Malik Ram Charanjit Singh, Gol Bazar, Bilaspur. Firm Malik Ram Charanjit Singh supplied the bill No. 1267 dated 18/1/1992 to disclose that they purchased the oil from Bhaba and Company. Bhaba and Company informed that oil was purchased from firm Agrawal Agencies. Purchase invoice in favour of vendor fulfils the requirement of warranty.

14. The sample of article of food taken by Food inspector was neither adulterated

nor misbranded. Therefore, vendor-Petitioner No. 1 was not liable to be prosecuted for committing offence punishable u/s 16 of the Act and other Petitioners who are distributor and dealer are also not liable to be prosecuted either for selling adulterated or misbranded ground nut oil or for violation of any Rules. Even otherwise, vendor did not suppress any information and dealer and distributor though not required to disclose from whom they purchased the article of food, have disclosed it and also issued purchase invoice; therefore, in accordance with deeming provision, they did not commit any breach of the Rule regarding non-issuance of warranty.

15. Powers and duties given to Food Inspectors have been described in Section 10 of the Act and Rule 9 of the Rules. From bare reading of both the provisions, it is conspicuous that Food Inspector has no authority to call a company or firm to disclose the names of all the Directors or the partners. Section 17 of the Act envisages the provisions relating to offence by company which clearly exposes that if any Company or Firm wishes to absolve other Directors, partners or officials, it may in accordance with Section 17(2) of the Act by order in writing authorize any of his director or manager to prevent the commission of any offence under the Act and may give notice to the Local Health Authority accordingly that it has nominated such director or manager as the person responsible. Section 17 does not authorize Food Inspector to call for details regarding Director or partner of the Company but on the contrary, it is clear that if Company fails to observe following Section 17(2) of the Act, the Company and every person who at the time the offence was committed was in charge and was responsible to the Company are liable to be prosecuted. Therefore, neither Food Inspector has right to obtain information regarding partners of the Petitioners No. 2 and 5 nor they were bound to furnish such information, therefore, if it is accepted to be true that they fail to give particulars of their partners, they cannot be held liable for any punishment for such lapses. I am afraid to accept the analogy that though no offence has been committed by any of the Petitioners regarding storage and sale of adulterated or misbranded articles of food or breach of any rules even then for non-supply of particulars regarding partners, they are liable to be prosecuted.

16. In the result, the prosecution against the Petitioners being frivolous does not require to be continued any more. Accordingly, the complaint filed by J.P.S. Goud, Food Inspector, Bilaspur in the Court of Additional Chief Judicial Magistrate, Bilaspur on 6.9.1994 and the criminal proceedings bearing criminal case No. 957/94 arising out of it are quashed.