

(1985) 11 AHC CK 0053

In the Allahabad High Court

Case No : Criminal Misc. Application No. 6903 of 1981

Jain Shudh Vanaspati Limited

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 18-11-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245(2), 482
Prevention of Food Adulteration Act, 1954 — Section 2(1), 22A, 23

Citation : (1986) 10 ACR 172

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

Bench : Single Bench

Advocate : Amar Saran and C.S. Saran, for the Appellant;

Final Decision : Allowed

Judgement

V.K. Khanna, J.—The present application u/s 482 Code of Criminal Procedure has been filed by M/s. Jain Shudh Vanaspati Limited which deals in imported palm oil and sells the same to retailers. A sample of the palm oil was taken by the Food Inspector, Mobile Food Squad from the shop of deceased Hari Om of Rampur. The aforesaid sample was sent to the Analyst who found the same not to be conforming to the standard prescribed by the Central Government in exercise of its powers u/s 22A of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the "Act"). The applicant and deceased Hari Om both were summoned through warrants in pursuance of a complaint filed after obtaining the necessary sanction.

2. After the applicant was summoned an application u/s 245(2) Code of Criminal Procedure was filed before the Court concerned for dropping of the proceedings mainly on the ground that on the relevant date on which the sample was drawn there was no standard prescribed under the Act and the Rules framed thereunder. The aforesaid prayer made by the applicant for dropping of the proceedings was refused by the Chief judicial Magistrate by his order dated 9-3-1981. Feeling aggrieved the applicant preferred a revision which too has

been dismissed by the Second Additional Sessions Judge, Rampur by his order dated 22-10-1981.

3. Learned Counsel for the Petitioner in this application has urged only one point. It has been argued that on the date on which the sample of palm oil was taken by the Food Inspector there was no standard prescribed and thus the applicant could not be said to have committed any offence under the ct. Along with the affidavit annexure 3 has been filed which shows that the Central Government in exercise of the powers conferred by Section 22A of the Act had sent intimation to various authorities for following the standards prescribed. It has been argued that the Central Government is not invested with any power to prescribe standard by issuing executive directions u/s 22A of the Act. Reliance has been placed on a decision of the Madhya Pradesh High Court in the case of A.L. Phanse Food Inspector, Municipal Corporation Indore v. Prem and Anr. 1983 (1) FAC 214 and a decision of the Delhi High Court in the case of Sri R.N. Gujral, Assistant Municipal Prosecutor and Anr. v. Mahavir Trading Co. and Ors. 1982 (2) FAC 10. A case of this High Court Satya Prakash Vs. State, has also been cited.

4. Learned Counsel appearing for the State has not been able to show me any specific item in Appendix "B" to the Rules framed under the Act which prescribed standard for palm oil on the date on which the sample was taken by the Food Inspector. It has, however, been urged that item A. 17.15 i.e. standard for refined vegetable oil existed on the date on which the sample was drawn and the standard prescribed under this item would apply to the case of the Petitioner. I am unable to accept the aforesaid argument raised by the learned Counsel for the State inasmuch as item A. 17.15 which prescribes standard for refined vegetable oil presupposes that there is a standard prescribed for a particular oil. The applicant is being prosecuted for oil which does not conform to the standard prescribed in the letter contained in Annexure 3 to the petition. The question which thus falls for determination is as to whether what has been prescribed by letter contained in annexure 3 issued in pursuance of the powers of the Central Government u/s 22A can be said to have statutory force resulting in committing of an offence.

5. Section 22A of the Act only gives power to the Central Government to give directions regarding the carrying into execution of all or any of the provisions of this Act and there is a duty cast on the State Government to comply with such directions. From a bare reading of Section 22A therefore, it becomes clear that there should be a provision of the Act which may include a validly framed rule under the Act regarding which the Central Government can issue directions to the State Governments for its compliance. If one looks to Section 23 of the Act, which confers on the Central Government the power to make rules, it would become clear that the power for defining the standards of quality for and fixing the limits of variability permissible in respect of any article of food has been specifically conferred on the Central Government under this provision. This power which has to be exercised by the Central Government is different in nature than

the power which has been conferred u/s 22A. A perusal of this section would show that this power has to be exercised by the Central Government normally after consultation with the committee. Sub-section (2) of the aforesaid section requires the Central Government to lay before each House of Parliament while it is in session for a total period of 30 days and the Houses can make modification in the rule or can even decide that the rule will have no effect. As has been observed above, there can not be an iota of doubt that Annexure "3" has not been issued by the Central Government in exercise of powers u/s 23 of the Act, as firstly, the letter itself makes it clear that the instructions are being issued u/s 22A of the Act and secondly, the procedure for making the rule as laid down in Section 23 of the Act has not been followed. In the three cases which have been cited before me it has also been laid down that the Central Government has no power to fix standards u/s 22A of the Act. It is, therefore, clear that there was no statutory standard prescribed for palm oil on the date on which the sample was drawn. Learned Counsel appearing for the State has not been able to show me as to under which Sub-section of Section 2(i-a) the sample of the palm oil can be categorised as adulterated. From what has been placed in this application there can not be any doubt that the prosecution was bringing the case within the ambit of Section 2(i-a)(m) of the Act i.e. the quality or purity of the palm oil fell below the prescribed standard. It may also be noticed that in Section 2(i-a) "prescribed" has been defined as meaning prescribed by rules under this Act. As has been observed above, no rules have been framed under this Act in this behalf and by no stretch of imagination the applicant could be said to have violated any provision of the Act. The proceedings which have been initiated against the applicant, in my opinion, thus are without jurisdiction and liable to be quashed.

6. In the result, the petition succeeds and is allowed. The proceedings against the applicant in case No. 339 of 1980 pending before the Court of the Chief Judicial Magistrate, Rampur are quashed. However, looking to the facts and circumstances of the case the parties shall bear their own costs.

Application allowed.