

(2006) 04 PAT CK 0029

In the Patna High Court

Case No : Criminal Miscellaneous No. 25965 of 2003

Kripa Shankar @ Kripa Shanker Prasad and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 19-04-2006

Acts Referred:

Copyright Act, 1957 — Section 63
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 405, 406, 409, 419, 420
Prevention of Food Adulteration Act, 1954 — Section 12, 14, 14A, 16, 16(1AA)
Trade and Merchandise Marks Act, 1958 — Section 78, 79

Citation : (2006) CriLJ 3535 : (2006) 3 PLJR 279

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Kumar Manish, for the Appellant; Dilip Kumar Sinha, APP, for the Respondent

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned Counsel for the petitioners, and the teamed Counsel appearing on behalf of the opposite party No. 2 as

also the learned Counsel for the State.

2. The petitioners seek quashing of the First Information Report registered as Sheikhpura PS Case No. 151 of 2003 as also the order of

cognizance thereupon dated 3.1.2004 u/s 16 of the Food Adulteration Act, 1954 read with Section 63 of the Copy Right Act, Sections 78 & 79

of the Trade Merchandises Act and Sections 406, 419 & 420 of the Penal Code.

3. The FIR alleges that the informant, an Executive Magistrate purchased two bottles of cold drinks (Sprite) from the shop of one Arun Prasad.

Fungus like material was seen in the bottle which was also emitting a foul smell

Arun Prasad conceded having got the same from the petitioners who are whole sellers. The petitioners are alleged to have acknowledged, sale of the cold drink to Arun Prasad. The petitioners were suspected to be selling fungus infected harmful cold drink by manufacturing the same at local level, thus supplying spurious products in the market. It was also learnt that the petitioners were supplying such spurious produce in rural areas leading to people suffering diarrhoea and illness.

4. Learned Counsel for the petitioners submits that the entire premise of the prosecution was the allegedly spurious and infected nature of the cold drink being sold by the petitioners. Primarily, the allegations therefore were of an adulterated food, product. Out of these allegations followed the charges under Sections 406, 419 and 420 of the Penal Code, Section 63 of the Copy Right Act dealing with infringement of the copy right and Sections 78 & 79 of the Trade Merchandises Act dealing with the violation of trade mark and violation of trade description which were punishable offences.

5. Learned Counsel thus submitted that it was incumbent for the prosecution to be instituted in accordance with Section 20 of the provisions of the Food Adulteration Act which mandated that the prosecution must be instituted either by the Central Government or State Government, alternatively by a person authorised in this behalf by the State Government or Central Government An individual like the informant could do so under the proviso to the Section only if it was accompanied by a copy of the report of the Public Analyst along with the complaint initiating prosecution. Such was not the case presently. It was obvious from the face of the FIR itself that it had not been instituted by the State Government or Central Government or by a person authorised by them in this behalf. The present FIR was not accompanied by a report of the Public Analyst. It was not the case of the informant that the sample had been tested by the Public Analyst and found to be of a nature as alleged quite apart from the issue of such report accompanying the allegation. In support of his submission learned Counsel relied upon a Bench decision of this Court in the case of Yamuna Sah and Ors. v. State of Bihar reported in 1990 (1) BLJ 761, and submitted that in absence of compliance of the mandatory provisions of Section 20 of the Food Adulteration Act both the FIR and the order

of cognizance was vitiated in law. Consequently the entire edifice on which the prosecution was founded invoking the provisions of the Copy Right Act, Trade Merchandises Act or the Penal Code automatically collapses.

6. It was next submitted that the informant was not a layman but an Executive Magistrate conversant with the rudiments of the law. The FIR was based on completely vague allegations without any dates or places and minimum necessary details of the alleged supplies made by the petitioners in other rural areas and the resultant sickness of people. It was lastly submitted that the petitioners were only whole seller stockiest of M/s Hindustan Coco-Cola Beverages Pot. Ltd. manufacturers of the cold drink in question.

7. Learned Counsel for the opposite party No. 2 contended that the allegations is related to manufacture and supply of a spurious food product.

There was also an element of misrepresentation thus invoking the provisions of the Penal Code, the Copy Right Act and the Trade Merchandises Act.

8. Learned Counsel for the opposite party No. 2 however found it difficult to support the prosecution under the Food Adulteration Act in absence

of institution of the prosecution either by a competent person or in absence of report of the Public Analyst in the given nature of the allegation as

required by Section 20 of the Prevention of Food Adulteration Act, 1954. Whether the prosecution under the Penal Code be applicable or not

and likewise the applicability of the provisions of Copy Right Act and Trade Merchandises Act were matters for trial, given the nature of

allegations notwithstanding the inapplicability of the Food Adulteration Act. This would be a matter of fact to be decided by the court below

during trial on the basis of materials that may surface based on evidence that may be led. There was thus no occasion for this Court to interfere

with the prosecution at least under the provisions of the Penal Code, Copy Right Act and the Trade Merchandises Act.

9. This Court has considered the rival submissions on behalf of the parties. Section 20 of the Prevention of Food Adulteration Act 1954 provides

as under:

20. Cognizance and trial of offences - (1) No prosecution for an offence under

this Act, not being an offence u/s 14 or Section 14A shall be instituted except by, or with the written consent of the Central Government or the State Government or a person authorised in this behalf, by general or special order, by the Central Government or the State government.

Provided that a prosecution for an offence under this Act; may be instituted by a purchaser or recognised consumer association referred to in

Section 12, if he or it produces in court a copy of the report of the public analyst along with the complaint.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under Sub-section (1AA) of

Section 16 shall be cognizable and non-bailable.

10. It is apparent from the statutory provisions that there is a mandate prohibiting prosecution for an offence under the Act (not being an offence

under Sections 14 and 14A) except by the State Government or the Central Government, alternatively by a person authorised in this behalf by the

State Government or the Central Government. Alternatively an individual prosecution can also be instituted provided the same is accompanied by

a report of the public analyst along with the allegation.

11. In the present case, it is not in dispute that the prosecution has not been instituted by the State Government or the Central Government,

alternatively by a person authorised by them in this regard. Likewise it is also not in dispute that the prosecution has been initiated without the

report of the public analyst or even any allegation that the Analyst had reported the produce of a nature as alleged. Learned Counsel thus rightly

relies upon a Bench decision of this Court in the case of Yamuna Sah and Ors (Supra) that for non-compliance of the mandatory statutory

provisions of Section 20 of the Prevention of Food Adulteration Act, 1954, the very initiation of the prosecution was bad as also the order of

cognizance. It is note worthy that Section 20 uses the word ""shall"" with regard to institution of the prosecution. This Court, therefore, finds that the

institution of the prosecution as also the order of cognizance against the petitioner under the provisions of the Prevention of Food Adulteration Act

is vitiated in law and cannot be sustained.

12. The pre-requisite for the applicability of Section 406 of the Penal Code would be fulfilment of the condition u/s 405. There must be an

entrustment with property or any dominion over property by a person to another prescribing the mode in which the property would be dealt with.

The person so entrusted with the property must use or dispose the property in a manner contrary to the nature of the entrustment. In the nature of

the present allegation, there has been no entrustment of the bottles of cold drinks with the petitioners, muchless user, conversion or disposal of the

same in a manner contrary to the entrustment. Likewise, this Court finds it difficult to uphold the applicability of Section 409 of the Penal Code in

the facts of the present case. There are no allegation so as to invoke the applicability of cheating by personation. Section 420 deals with cheating

which must be preceded. with dishonest inducement to deliver any property as a consequence of such cheating. Even if the payment made by the

informant for the cold drink in question be deemed to be delivery of property, it is essential to show that the informant has been cheated by

delivery of a spurious cold drink. The matter then reverts back to the issue of the drink being spurious or not. The basic premises for prosecution

on basis of the drink being spurious, would be the report of the Public Analyst which is wanting in the present case. Section 63 of the Copy Right

Act deals with infringement of copy right or other rights. Quite obviously, if the report of the public analyst had confirmed the spurious nature of the

produce nothing further was required to be look into at this stage in exercise of powers u/s 482 Cr.P.C. In absence of the same, there is no

material before this Court to even prima facie conclude the spurious nature of the product. For the same reason this Court finds it difficult to sustain

the prosecution of the petitioners under Sections 78 & 79 of the Trade and Merchandises Act which deals with application of false trade mark and

false description. It is reiterated that the report of the public analyst u/s 20 of the Prevention of Food Adulteration Act by itself would have been

sufficient justification for this Court to decline interference in the. prosecution against the petitioners under the aforesaid provisions.

13. This Court also notices that the complaint has been filed not by a lay man who could be said not to be conversant with the rudiments of law.

The complaint has been filed by an Executive Magistrate, He chooses to file the complaint contrary to the requirement of law that it must be

accompanied by a report of the Public Analyst. (sic)et it is alleged that the. food product is spurious. The complaint . further alleges spurious

manufacture of the cold drink by a wholeseller without any further details with regard to the same. Likewise the complaint is completely vague and

evasive with regard to rural areas where the allegedly spurious drink is being supplied or name and place in the form of example even of persons

who are alleged to have fallen sick by consumption of such spurious drink allegedly supplied by the petitioners.

14. This Court in the facts of the case arrives at the satisfaction that the very initiation of the prosecution against the petitioner is contrary to law in

absence of compliance with the mandatory provisions of Section 20 of the Prevention of Food Adulteration Act. Collapse of the very edifice of the

prosecution automatically leads to the collapse of the allegations under the other provisions of law stemming from the original allegation.

15. In the result, this application is allowed. Entire prosecution of the petitioners in Shekhpura PS Case No. 151 of 2003 pending before the

ACJM Shekhpura and the order of cognizance dated 3.1.2004 are accordingly quashed.