

(1983) 10 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Criminal M.P. (M) No. 177 of 1983

Lt. Col. Pushpender Singh

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 27-10-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 204, 482
Prevention of Food Adulteration Act, 1954 — Section 16(1), 7

Citation : (1983) 12 ILR HP 543

Hon'ble Judges : H.S. Thakur, Acting C.J.

Bench : Single Bench

Advocate : M.S. Sethi, for the Appellant; M.R. Chaudhry, Assistant A.G., for the Respondent

Judgement

H.S. Thakur, Actg. C.J.

1. The Petitioner has filed this petition u/s 482 of the Code of Criminal Procedure for quashing the proceedings against him in the complaint filed in the Court of Chief Judicial Magistrate, Solan, dated 18th February, 1983 u/s 16(1)(a) of the Prevention of Food Adulteration Act, 1954. The relevant facts in brief may be stated.

2. Shri S.N. Sharma, Food Inspector for the local area of District Solan, filed a complaint against the Petitioner and Shri Dil Bahadur, Gorkha, u/s 16(1)(a) read with Section 7 of the Prevention of Food Adulteration Act. The record shows that the milk was purchased from Dil Bahadur on payment. The sample was sent to the Public Analyst, Punjab at Chandigarh. The milk was found adulterated. The report of Public Analyst is Ex. PE. A Panchnama was prepared and witnessed by Shri Jagan Nath and Shri Sant Ram. The Panchnama is marked as Ex. PD. In the complaint S/Shri S.N. Sharma, Food Inspector, Shri Jagan Nath Halwai, Sanitary Inspector, Municipal Committee, Solan, Shri Sant Ram and Local Health Authority, Solan, were named as witnesses. Before the process was issued for summoning the accused persons, the learned Chief judicial Magistrate, Solan,

recorded the statement of Shri S.N. Sharma, Food Inspector. It is stated by him that on 14th October, 1982 Dil Bahadur was intercepted who had milk for sale with him. After a notice was served on him, the milk was purchased which was found to be adulterated after analysis. It is further stated by this witness that Dil Bahadur had disclosed to him that he was the servant of the Petitioner and was selling milk on his behalf. It is also stated by him that he sent a notice Ex. PB to the Petitioner. After the summons were received by the Petitioner, he approached this Court for quashing the proceedings against him.

3. It is contended by Mr. Sethi, learned Counsel for the Petitioner, that the proceedings against the Petitioner initiated before the learned Chief Judicial Magistrate, Solan, are liable to be quashed as there is no material on record to show that he was in any way connected with the sale of the alleged adulterated milk. It is vehemently contended by him that Dil Bahadur was not the servant of the Petitioner and he had never authorised him to sell any milk on his behalf. It is pointed out that even if the evidence which is on record remains unrebutted, there is no offence made out against the Petitioner. It is contended by Mr. Sethi that he has come to know from reliable sources that Dil Bahadur is absconding and is not traceable. This fact is not disputed by Mr. Chaudhry, learned Assistant Advocate-General, as well.

4. Mr. Sethi has referred to a decision in *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, . In paragraph 8 of the said judgment their Lordships of the Supreme Court have made observations in respect of the powers of a High Court u/s 482 of the Code of Criminal Procedure. It is convenient to reproduce the said paragraph for a ready reference:

"8. Another important consideration which is to be kept in mind is as to when the High Court acting under the provisions of Section 482 should exercise the inherent power insofar as quashing of criminal proceedings are concerned. This matter was gone into in greater detail in *Smt. Nagawa v. Veeranna Shivalingappa Konialgi*, where the scope of Sections 202 and 204 of the present Code was considered and while laying down the guidelines and the grounds on which proceedings could be quashed this Court observed as follows: [5 S.C.C. 741 : S.C.C 511]

Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

1. where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused Or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;
2. where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

3. where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

4. where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."

5. Mr. Sethi has also drawn my attention to a judgment of the Punjab and Haryana High Court in *Siri Ram v. State of Punjab and Shri Baldev Raj*, (Cr. Revision No. 103 of 1966). It is stated by him at the Bar that though the copy of this judgment is not attested but it has in fact been copied from the original record. This was a case in which almost identical question was involved. A complaint was filed by the Food Inspector, Municipal Committee, Ludhiana, against Baldev Raj and Siri Ram alleging that a sample of ghee was taken from the accused and after analysis it was found adulterated. In this case it was stated by the Food Inspector that accused Baldev Raj had told him that he was selling the ghee on behalf of Siri Ram. There was no other evidence to connect Siri Ram with the offence of adulteration of ghee. The learned Sessions Judge opined that the bare statement of the Food Inspector that one of the accused told him that he was selling the ghee as a servant of other, is not strictly admissible and even if it is admissible, no conviction can be made so far as Siri Ram was concerned. The learned Sessions Judge with his opinion referred the matter to the High Court and the Hon'ble Judge while agreeing with the view taken by the learned Sessions Judge quashed the proceedings against Siri Ram and he was also discharged of the offence. The co-accused Baldev Raj was, however, ordered to be proceeded against for the alleged offence.

6. It is contended by Mr. Chaudhry on behalf of the State that the petition u/s 482 of the Code of criminal Procedure is not competent and that the matter be left to the decision of the trial court.

7. I have considered the contentions of the learned Counsel for the parties. In the Municipal Corporation case (*supra*) the powers of the High Court u/s 482 of the Code of Criminal Procedure have been sufficiently elaborated. As such, this Court in appropriate cases can definitely quash the proceedings if the circumstances so warrant. As observed earlier, there is no evidence on record to show that Dil Bahadur, who posed himself to be the servant of the Petitioner, was actually his servant and was selling the milk which was found adulterated on behalf of the Petitioner. According to the list of witnesses given in the complaint, they are not likely to disclose the facts whether the milk was being sold on behalf of the Petitioner or not. To issue a process for the appearance of an innocent person entitles him in a criminal case to approach the High Court for quashing the proceedings against him. The mere issuance of a process for appearance in a

criminal case is sufficient to give a right to an innocent person to take steps for quashing such proceedings.

8. As such, I am of the view that the proceedings initiated against the Petitioner cannot be sustained and are hereby quashed. So far as Dil Bahadur accused is concerned and who is stated to have absconded, the proceedings against him alone will continue. The petition is accordingly disposed of.