
(1998) 11 BOM CK 0115

In the Bombay High Court

Case No : Criminal Application No. 1413 of 1996

Mahesh Ramchandra Jadhav and another	APPELLANT
Vs	
State of Maharashtra	RESPONDENT

Date of Decision : 24-11-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195
Penal Code, 1860 (IPC) — Section 270, 271, 272, 273, 337
Prevention of Food Adulteration Act, 1954 — Section 16, 2(i)(n), 20, 25, 7

Citation : (1999) 1 ALLMR 535 : (1999) 5 BomCR 113 : (1999) 1 BOMLR 634 :
(1999) CriLJ 2310 : (2000) 1 MhLj 648

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Advocate : V.V. Vashi, for the Appellant; D.S. Mhaispurkar, Assistant Public Prosecutor, for the Respondent

Judgement

D.G. Deshpande, J.—Heard Mr. Vashi for the petitioners and APP for the State. The petition is for quashing the charge-sheet filed against the petitioners under sections 270-273, 337 read with 34 of the Indian Penal Code.

2. Petitioner No. 1 is the owner of Medical shop known as Rabodi Medicals and retail salesman of milk powder known as Nestle Lactogen. Petitioner No. 2 is the wholesaler and distributor of products Nestle India Ltd.

3. This charge-sheet against the petitioners was filed on the basis of complaint of one Janardan Balkrishnan that on 2-8-1994 he purchased a tin of Lactogen Milk Powder for his daughter from the shop of petitioner No. 1 and when the milk was given to the daughter it was found that it contained glass pieces which injured and harmed her.

4. Mr. Vashi for the petitioners in the background of the aforesaid facts which he further elaborated on the basis of charge-sheet contended that the charge-sheet was liable to be quashed on two grounds firstly, according to him, if at all any offence is committed, then it was an offence under Prevention of Food

Adulteration Act, 1954 and since the said Act provides special procedure for prosecution of the offenders, the police could not have charge-sheeted the accused under the provisions of Indian Penal Code. Secondly he contended that even from the medical report of the doctor who examined the daughter of the first informer Janardhan the baby was found normal, not showing signs of any malena and Gastritis or any serious illness, and therefore, there was no basis for prosecuting the accused under the aforesaid sections of the Indian Penal Code.

5. On the other hand, it was contended by learned APP that the Chief Judicial Magistrate, Thane had already framed the charge against the accused/petitioners, and therefore, now at this stage, the petition to quash the charge-sheet was not maintainable. Secondly, he contended that even if it is accepted for the sake of arguments that the alleged offence fell under the scope and purview of the Prevention of Food Adulteration Act, there was no legal bar on the prosecuting agency in prosecuting the accused under the provisions of Indian Penal Code. So far as Medical examination of the daughter of the complainant is concerned, the learned APP submitted that if the powder was found to be adulterated with broken glass pieces then whether any damage of injury was caused to the child because of its consumption was of no significance. He, therefore, strongly opposed this petition.

6. A crucial question is, whether there is any legal bar in prosecuting the accused under the provisions of Indian Penal Code as contended by Mr. Vashi who relied upon a judgment of Supreme Court reported in Durgacharan Naik and Others Vs. State of Orissa, and judgment of this Court reported in State Vs. Parshottam Kanaiyalal and Another, .

7. The Bombay High Court's Judgment referred to above and relied upon by Mr. Vashi is of no help to the petitioners. It was a case of adulteration of milk wherein Food Inspector of Baroda Municipality has purchased milk from the shop of the accused as sample and after complying with all the requirements and obtaining sanction filed charge-sheet against the accused u/s 16 read with section 7 of the Prevention of Food Adulteration Act. The trial Court convicted the accused and the conviction was challenged before the Sessions Judge. It was held that Food Inspector was not competent to institute a prosecution u/s 20 of the said Act and held that proceedings were without jurisdiction, and therefore, conviction was set aside and accused were discharged. The State filed appeal, but the same was converted by the High Court into revision. The question involved in that case is whether there is a sanction according to Food Inspector in his individual name and if it was not so whether he had any authority to institute the prosecution. On the basis of the facts that were disclosed, High Court came to the conclusion that there was nothing on record to show that written consent was given by Baroda Municipality in the name of Food Inspector. It is in this background, an argument was advanced on behalf of the State that even if there was no specific authority in the name of Food Inspector, the prosecution was entitled to rely upon normal rule of criminal law that a criminal

courts can be set in motion by any subject in the country, and therefore, while dealing with this argument, it was held by this Court that this proposition may be true in respect of other offences which were recorded under common law. So far as offences under Special Act are concerned, the prosecution must confirm the provisions of the Special Act and no exception can be made.

8. In this ruling it is not considered whether the proceedings under the provisions of Indian Penal Code are maintainable when Special Act like Prevention of Food Adulteration Act is in force. Therefore, this judgment is of no help to the petitioners.

9. Mr. Vashi relied upon the another judgment of the Supreme Court referred to above to show that by changing the garb or label of an offence which is essentially an offence covered by the provisions of section 195 of the Criminal Procedure Code for such an offence cannot be taken cognizance of by misdescribing it or by putting a wrong label on it.

10. The facts of this case are complex facts. However, I am reproducing paragraph No. 8 of the said judgment which was relied upon by Mr. Vashi.

""We have expressed the view that section 195, Criminal Procedure Code does not bar the trial of an accused person for a distinct offence disclosed by the same or slightly different set of facts and which is not included within the ambit of the section, but we must point out that the provisions of section 195 cannot be evaded by resorting to devices or camouflage. For instance, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, on the ground that the latter offence is a minor one of the same character, or by describing the offence as one punishable under some other section of the Indian Penal Code, though in truth and substance the offence falls in the category of sections mentioned in section 195, Criminal Procedure Code. Merely by changing the garb or label of an offence which is essentially an offence covered by the provisions of section 195 prosecution for such an offence cannot be taken cognizance of by putting a wrong label on it. On behalf of the appellants Mr. Garg suggested that the prosecution of the appellants u/s 353, Indian Penal Code was by way of evasion of the requirements of section 195, Criminal Procedure Code. But we are satisfied that there is no substance in this argument and there is no camouflage or evasion in the present case.

11. In this regard, it is necessary to see the provisions of Prevention of food Adulteration Act. The object of the Act as it is stated in the preamble is to make provision for the Prevention of Adulteration of Food. The Act defines what is meant by adulteration and also lays down specific procedure for purchasing sample of suspect adulterated foods, for getting them examined from public analysis, for getting sanction from the prosecution and for prosecuting the accused thereafter. The Act gives certain rights to the accused and from the scores of the judgment that has been delivered under this Act those rights of the

accused have been scrupulously protected. However, the crucial question in whether this Act repeals the provisions of Indian Penal Code or has effect of repealing this provision viz. sections 270-273, 337 read with 34 of the Indian Penal Code. Section 25 of the Act provides for repealing and saving and it says that it, immediately before the commencement of this Act, there is in force in any State to which this Act extends any law corresponding to this Act, that corresponding law shall upon such commencement stand repealed. Admittedly, nothing was brought to my notice by Mr. Vashi that when the Prevention of Food Adulteration Act, 1954, commenced there was any Act having similar provisions and for controlling and governing food adulteration prevailing in the State of Maharashtra. Mr. Vashi also did not contend that this repealing section has effect of repealing the aforesaid three sections 270-273, 337 of the Indian Penal Code. However, even if, such an argument is advanced, same cannot be accepted because the Indian Penal Code is not a State Law but it is a Central Legislation. What is repealed by section 25 is the State Law relating or controlling to adulteration. Provisions of Indian Penal Code are applicable to all the States including the State of Maharashtra, but it is not State Law and this repealing provisions, therefore, do not affect the sections 270-273, 337 of the Indian Penal Code.

12. When the petitioners/accused are praying for quashing the charge sheet on the ground that the proceedings under Indian Penal Code are not at all maintainable in view of the provisions of Prevention of Food Adulteration Act, the burden lies on the accused to prove that they are entitled to such a relief. For that purpose they must show that there are provisions in the Prevention of Food Adulteration Act which nullify the aforesaid three sections of the Indian Penal Code or which make them dormant and non-applicable. It is also for the accused to show that the Prevention of Food Adulteration Act itself provides that the offence provided by the Act, no prosecution can be launched under the provisions of Indian Penal Code. It may be that for adulteration in food, Prevention of Food Adulteration Act has been enacted but nowhere in the Act the provisions of the sections 270-273, 337 are made redundant.

13. However, Mr. Vashi also contended that the charge-sheet is filed u/s 2(i) (n) /16 of the Prevention of Food Adulteration Act and since the prosecution has not been launched against the accused by following the procedure under the said Act, the charge in that regard was liable to be quashed. This argument is required to be accepted and the charge-sheet is required to be quashed. Hence, the order :--

ORDER

The petition is partly allowed.

The charge-sheet framed by the Chief Judicial Magistrate, Thane against the petitioners/accused u/s 2(i)(n) /16 of the Prevention of Food Adulteration Act is quashed.

Trial for offences under Indian Penal Code to proceed according to law.