
(2006) 04 JH CK 0002

In the Jharkhand High Court

Case No : Criminal Miscellaneous No. 365 of 2000 (R)

M.N. Choudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-04-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 10, 13(2), 16, 16(1), 7
Prevention of Food Adulteration Rules, 1955 — Rule 9(A), 9(B)

Citation : 2007 FAJ 38 : 2007 1 FAC 106

Hon'ble Judges : D.K. Sinha, J

Bench : Single Bench

Advocate : V. Gopal and S. Prasad, for the Appellant; Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

D.K. Sinha, J.—The petitioner M.N. Choudhary has preferred this petition u/s 482 Cr.P.C. for quashing the cognizance order dated 10.12.1999 passed by the C.J.M., Ranchi in case No. C(iv) 20/99 as well as the entire criminal proceeding in connection with the said case presently pending in the Court of S.D.J.M., Ranchi.

2. The O.P.No. 2 as well as 3 pursuant to the notice received filed the counter-affidavit at flag "A" and rejoinder thereof at flag "B".

3. The brief fact of the case is that O.P.No. 2 had collected the sample of iodized salt from the premises of Hotel, Ranchi Ashok on 31.8.1999 to be analyzed by the analyst Ranchi. However, a prosecution report was submitted by the Civil surgeon-cum-C.M.O., O.P.No. 3 in the Court of C.J.M., Ranchi on 1.12.99 with the allegation that the salt collected from the premises of Hotel Ranchi Ashok was adulterated and it did not conform to the specification laid down under Prevention of Food Adulteration Rules as per report of the public analyst Bihar, Patna vide report No. 2261 dated 8.10.1999 which attracted the offence u/s 16(1) (a) of Prevention of Food Adulteration Act, 1954. On the basis of the written

report submitted by the O.P.No. 3 the cognizance of the offence was taken against the petitioner M.N. Choudhary, General Manager of Hotel, Ranchi Ashok as well as another Ashok Kumar Singh, Store Incharge of the said Hotel under the aforesaid section.

4. The learned Counsel for the petitioner submitted that the sample in question purported to have been taken by the O.P.No. 2 from the store of the Hotel was not meant for sale rather the same was being used as an ingredient for preparation of food. Both the samples were taken on 31.8.99 and the case was registered on 1.12.99 but no report of the analyst was made over to the petitioner as per requirement of law u/s 13(2) of the

5. Prevention of Food Adulteration Act and Rule 9(A) of the Prevention of Food Adulteration Rules. The petitioner was the General Manager of the Hotel and not a person Incharge of the affairs of the store or the kitchen of the Hotel.

6. Learned Counsel further submitted that the mandatory provisions of Section 13(2) of the Act and Rule 9(A) of the Prevention of Food Adulteration Rule having not been followed in the present case either by notice or by the registered cover or by sending a letter to the petitioner within 10 days of the receipt of such report of the analyst as to whether the petitioner was intended to get it analyzed by the Central Laboratory with the permission of Court.

7. Reliance has been placed upon the decision reported in 1994(1) E.C. C.196. In L.M. Batra v. State of Bihar the Hon"ble Patna High Court laid down that under the amended Section of the Food Adulteration Act, a valuable right has been given to the accused by giving a copy of the report of the public analyst and also delivering him that if he so desired may get the sample analyzed by the Central Food Laboratory by making an application to the Court and non-application of this provision vitiates the entire proceedings.

8. Similarly sanctioning authority i.e. Civil Surgeon-cum-C.M.O. without applying his judicial mind simply put the sentence," Prosecution sanctioned after perusal of the report it is not mentioned therein that upon being satisfied with the allegation and the report of the analyst he had accorded sanction for launching prosecution against the petitioner and another and therefore, the said sanction for the prosecution is improper.

9. Finally it has been submitted that the petitioner being the Managing Director of Hotel Ranchi Ashok was not the person Incharge of the affairs of the Hotel and he was in no manner responsible as the Managing Director of the keeping of the stores of the hotel and much prior to the alleged occurrence, the petitioner vide Annexure-4 had sent a letter to the Civil Suregeon, Ranchi Sadar Hospital Ranchi by nominating the Store keeper of Hotel Ranchi Ashok as responsible person for "Food Adulteration Matter" with the request to keep the letter in his record and the letter was received on 26.7.97 in the Office of the Civil Surgeon, Ranchi about two years prior to the alleged occurrence.

10. The Supreme Court of India in *Municipal Corporation of Delhi Vs. Laxmi Narain Tandon and Others*, held that,"

The broad scheme of the Act is to prohibit and penalize the sale, or import, manufacture, storage or distribution for sale of any adulterated article of food. The terms "store" and "distribute" take their colour from the context and the collocation of words in which they occur in Sections 7 and 16. "Storage" or "distribution" of an adulterated article of food for a purpose other than for sale does not fall within the mischief of this section. That this is the right construction of the terms "store" and "distribute" in Section 16(1) will be further clear from a reference to Section 10. Under that section, the Food Inspector, whom the Act assigns a pivotal position for the enforcement of its provisions, is authorized to take samples of an article of food only from particular persons indulging in a specified course of business activity. The immediate or ultimate end of such activity is the sale of an article of food. The section does not give a blanket power to the Food Inspector to take samples of an article of food from a person who is not covered by any of the Sub-clauses of Sub-section 1(a) or Sub-section 2. The three sub-clauses of Sub-section 1(a) apply only to a person who answers the description of a seller or conveyer, deliverer, actual or potential, of an article of food to a purchaser or consignee or his consignee after delivery of such an article to him. Sub-section (2) further makes it clear that sample can be taken only of that article of food which is "manufactured", "stored" or exposed for sale. It follows that if an article of food is not intended for sale and is in the possession of a person who does not fulfil the character of a seller, conveyer, deliverer, consignee, manufacturer or storer for sale such as is referred in Sub-sections 1(a) and (2) of the section, the Food Inspector will not be competent under the law to take a sample and on such sample being found adulterated, to validly launch prosecution thereon. In short, the expression "store" in Section 7 means "storing for sale", and consequently storing of an adulterated article of food for purposes other than for sale would not constitute an offence u/s 16(1)(a).

11. In *L.M. Batra v. State of Bihar* reported in 1994(1) E.C.C.196 Patna High Court held that if an article of food is not stored in the sense that it was stored for sale, Food Inspector could not be acted within his powers to enter and inspect that place and take sample of that article. Unless that Article is stored for same, the Food Inspector will not be competent under the law to take a sample or on such sample being found adulterated validly managed prosecution therein. The sample of salt collected from the store of Hotel, Ranchi Ashok did not amount to be kept for sale and therefore, the prosecution is not maintainable against the petitioner Managing Director. In the present case also the mandatory provision of Section 13(2) of the Food Adulteration Act, 1954 as well as Rule 9(B) of the Prevention of Food Adulteration Rules, 1955 have not been complied which authorized a legal right to the accused to get the sample re-analyzed by the Central Laboratory on the receipt of the report by the petitioner within 10 days of the report of the analyst and therefore, the Court finds that the petitioner has been deprived of the valuable right conferred u/s 13(2) of the Prevention of Food

Adulteration Act, 1954 and Rule 9(B) of the Prevention of Food Adulteration Rule, 1955.

12. As held by the Supreme Court of India in *Municipal Corporation of Delhi v. Laxmi Narain Tandon and Ors.*(supra) referred to above it is held that the salt recovered from the store of the Hotel was not meant for sale and hence no offence is attracted u/s 16(1)(a) of the Prevention of Food Adulteration Act, 1954 and in view of the discussions made hereinabove, the order impugned dated 10.12.1999 for the cognizance of the offence u/s 16(1)(a) of the Prevention of Food Adulteration Act as against the petitioner is quashed with consequential effect.

This petition is allowed.