
(2011) 01 AHC CK 0284

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 52641 of 2010

Om Kattha Udyog and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 10(4)

Citation : (2011) 2 ADJ 260 : (2011) 4 AWC 3678 : (2011) CriLJ 1446 : (2011) 3 RCR(Criminal) 312 : (2011) 3 RCR(Criminal) 312

Hon'ble Judges : Sheo Kumar Singh, J;Rajesh Chandra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Rajesh Chandra, J.—Petitioner No. 2 Santosh Singh Chandel is running an Unit in the name of Petitioner No. 1 "M/s Om Kattha Udyog" and is manufacturing/processing Kattha (for industrial use) since the year 1993 under registration with District Industries Centre, Directorate of Industries, Government of U.P.

2. Petitioners have filed this petition with a prayer that a direction in the nature of mandamus may be issued directing the Sub Divisional Magistrate, Akbarpur, District Ramabai Nagar to open the seal of business premises of M/s Om Kattha Udyog.

3. The contention of the Petitioners is that due to the influence of some political leaders of the area, the executive authorities raided the Petitioners' unit on 30.7.2010 and after making an enquiry about the said unit with Sri Anirudh Singh, brother of the Petitioner who by chance was present there having nothing to do with the Petitioners' Unit, prepared a report and lodged a First Information Report on frivolous grounds against Anirudh Singh. On 30.7.2010 itself, the Petitioners' complete unit was sealed arbitrarily under the orders of the Sub Divisional Magistrate, Akbarpur (Respondent No. 3) and no seizure memo was even provided to the Petitioners. Further contention of the Petitioners is that the unit is being run in accordance with law and all the precautions have been taken

by the Petitioners by specifically mentioning on the wrappers that Kattha for industrial use is being packed. There is a clear indication on the wrappers that the manufacturer is "Om Kattha Udyog" and the Kattha is "for industrial use only", "non edible" and "beverage is injurious for health".

4. According to the Petitioners, the above said Anirudh Singh was granted bail by the Sessions Court whereas the arrest of the Petitioner No. 2 Santosh Singh has been stayed by this Court in Criminal Misc. Writ Petition No. 14733 of 2010. It has further been alleged that the Small Scale Unit "Om Kattha Udyog" is manufacturing Kattha for industrial use only and has never claimed to have manufactured or sold Kattha as a food product. The unit has been sealed with mala fide intentions without affording any opportunity of hearing to the Petitioners and without making any proper enquiry under the Law.

5. The counter-affidavit has been filed by the Chief Food Inspector, District Ramabai Nagar in which it has been deposed that the Petitioners have tried to create an impression that the Kattha, which was seized from the premises of the Petitioners was only for industrial use though, infact, this Kattha was being manufactured and packed for human consumption, It has further been stated that the unit of the Petitioners has been sealed by the Sub-Divisional Magistrate under a memo dated 30.7.2010, which was prepared at the spot and bears the signature of Anirudh Singh who is the brother of Petitioner No. 2 Santosh Singh.

6. Petitioners have filed rejoinder affidavit in which the allegations made in the main petition have been reiterated. It has further been mentioned that the Respondents have not been able to disclose as to under what provision, the Petitioners' unit has been seized.

7. We have heard the learned Counsel for the Petitioners as well as the learned State counsel Shri A.K. Agrawal, who got the counter-affidavit filed promptly and have also gone through the entire record of the case.

8. The question as to whether the Kattha which was seized at the premises of the Petitioners, was being manufactured/ processed for industrial use only or was being prepared for human consumption is not to be decided by this Court as it is within the realm of criminal Courts. The First Information Report has already been registered and the investigation is going on. If any charge-sheet or complaint is ultimately filed against the Petitioners then the criminal Court will decide as to whether any offence was committed in relation to the Kattha or not.

9. However so far the seized goods are concerned with the action of the Sub-Divisional Magistrate, by which the premises of the Petitioners have been sealed. The learned State counsel vehemently argued that the premises of the Petitioners have been seized u/s 10(4) of the Prevention of Food Adulteration Act, 1954. For ready reference, Section 10(4) of the Act is reproduced below:

10. Power of food inspectors:

(1) ...

(2) ...

(3) ...

(4) If any article intended for food appears to any food inspector to be adulterated or misbranded, he may seize and carry away or keep in the safe custody, of the vendor such article in order that it maybe dealt with as hereinafter provided and he shall, in either case, take a sample of such article and submit the same for analysis to a public analyst.

10. A perusal of the aforesaid provision makes it evident that the food inspector has been given the power only to seize the adulterated or misbranded article and take sample etc. It has no where been provided in Section 10(4) of the Act that the food inspector or any other authority shall have the power to seize the premises.

11. In view of the above, it is clear that the Sub-Divisional Magistrate exceeded his powers in sealing the premises of the Petitioners as there is no such provision in the Act giving any such authority. Under the aforesaid section only the articles intended for food and suspected as adulterated or misbranded could be seized and not the premises where such articles have been kept. The Sub Divisional Magistrate acted arbitrarily and his order dated 30.7.2010 regarding seal of the premises of the Petitioners is liable to be set aside.

12. However, so far the seized goods are concerned, the law is take its own course and at the same time the further progress after the seizure steps is also to be continued/ completed in accordance with law.

13. The petition is allowed and the order passed by the Sub-Divisional Magistrate Akbarpur, District Ramabai Nagar dated 30.7.2010 regarding sealing of the premises of the Petitioners is set aside. The Sub Divisional Magistrate concerned is directed to open the seal of the premises of the Petitioners immediately.