

(2001) 09 OHC CK 0001

In the Orissa High Court

Case No : Criminal Mic. Case No. 994 of 1998

Onkarmal Nanakram

APPELLANT

Vs

Sri Bisnu Charan Mohanty and Another

RESPONDENT

Date of Decision : 07-09-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 16(1), 20A, 7

Citation : (2001) 09 OHC CK 0001

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : Subash Ch. Lal, for the Appellant;

Judgement

A.S. Naidu, J.—This appeal is filed invoking the inherent jurisdiction of this Court u/s 482 of the Code Criminal Procedure, 1973, inter alia, praying to quash the order dated 25.3.1991 taking cognizance by the learned S.D.I.M., Jagat singh pur against the Petitioner u/s 16(1) (a) (i) read with Section 7 of the Prevention of Food Adulteration Act, 1954 in 2 (c) C.C. No. 44 of 1991.

2. On the basis of complaint filed by Sri. Bishnu Charan Mohanty, Food Inspector, Cuttack the aforesaid case was initiated. The brief facts as alleged in the complaint petition as are follows:

On 28.7.1990 at about 11.30 A.M., the complainant inspected the grocery shop of Sk. Alai Box situated at Saharahata, P.O. Sardol, P.S. Tirtol in the district of Cuttack. After disclosing his identification and after serving a notice u/s 11 (1) (a) of the Prevention of Food Adulteration Act, 1954, (hereinafter called as "the Act" in short), the complainant purchased 750 grams of mustard oil and 600 grams of Attaym payment of the price thereof and obtained money receipt. The purchased mustard oil was divided into three equal parts and each part was kept in three clean dry empty and natural sample bottles. Each bottle was labelled, packed" wrapped and sealed properly observing all the formalities recurred under the Rules. The other sample of Atta was also processed in the similar manner

and both the sample bottles of mustard oil and Atta were sent to the Public Analyst of Govt. of Orissa, Bhubaneswar. After examining the samples, the Public Analyst in his report dated 3.9.1990 opined that the sample of mustard oil is adulterated. It is further alleged that on being questioned at the time of inspection, the accused Sk. Alai Box produced the cash memo No. 3 707 dated 17.7.1990 of Onkarmal Nanakram, Malgodown, Cuttack in token of purchase of oil. The cash memo which is said to have been produced by Sk. Alai Box reveals that 3 tins of mustard oil of "Rath brand" were purchased. On the basis of the aforesaid allegations, the learned Magistrate took cognizance against the Petitioner and Sk. Alai Box, who were arraigned as accused Nos. 1 and 2 respectively.

3. Mr. S.Ch. Lal, Learned Counsel appearing for the Petitioner, vehemently contended that the averments made in the complaint petition, taken in its entirety do not make any offence against the Petitioner M/s. Onkarmal Nanakram and therefore, the order taking cognizance so far as the Petitioner is concerned must be held to be bad in law. It is further averred that the cash memo which was produced by accused No. 2 only reveals that 3 tins of mustard oil of "Rath brand" were purchased from the Petitioner at Cuttack. The Food Inspector, neither in the complaint petition, nor in his report had made any statement that he had collected the samples from any of the sealed tins of "Rath brand" mustard Oil. There is not an iota of averment of allegation to the effect that the mustard oil which was sold by accused Sk. Alai Box and purchased by the Food Inspector, as sample, was out of the sealed tins supplied by the present Petitioner.

4. "Complaint" as defined in the Code of Criminal Procedure, 1973, in short, "the Code" reads as follows:

(d) "Complaint" means by any allegation made "orally or in writing to a Magistrate, with a view to his taking action under this Code, that some persons, whether known or unknown, has committed an offence, but it does not include a police report.

Explanation.- A report made by a police officer in a case which discloses after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made be deemed to be the complainant.

5. It is apparent from the aforesaid definition that a complaint must contain the allegation against the person who is alleged to have committed the offence in question. There is no manner of doubt that if the complaint petition does not make out any offence against any of the accused mentioned therein, then the Magistrate lacks initial jurisdiction and power to take cognizance of the offence.

6. I have carefully gone through the complaint petition and the relevant documents and find that there is absolutely no material to connect the present Petitioner with alleged offence. The scope and authority of the High Court while

exercising the power u/s 482 of the Code so" far as quashing a criminal proceeding are concerned have been elaborately dealt with in the decisions of Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, . While laying down the guidelines and the grounds on which the proceeding should be quashed the Apex Court held as follows:

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 a 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.

7. In the case of Dr. Sharda Prasad Sinha Vs. State of Bihar, it has been observed as follows:

It is now settled law that where the allegations set out in the complaint or the charge-sheet do not constitute any offence, it is competent to the High Court exercising its inherent jurisdiction u/s 482 of the Code of Criminal Procedure to quash the order passed by the Magistrate taking cognizance of the offence.

8. It is, thus, manifestly clear that the proceedings against the accused at the initial stage can be quashed only if on the face of the complaint and all the papers accompanying the same, an offence is made out against him. In other words, the test is that taking allegations and the complaint, as they are, without adding or subtracting any thing, if no offence is made out, then this Court is justified in quashing the proceeding in exercise of its powers u/s 482 of the Code.

9. In the instant case as has been submitted by Mr. Lal, Learned Counsel for the Petitioner, there is absolutely no material to reveal that the sample mustard oil was collected from the accused Sk. Alai Box out of the sealed tins with "Rath brand", which was purchased from the Petitioner. In absence of such allegation, in my view, the impugned order taking cognizance against the Petitioner cannot be sustained.

10. It is submitted by the Learned Counsel for the State that though there is no

allegation in the complaint petition, yet the documents which have been filed may establish an offence against the Petitioner also. I am afraid, at the stage of taking cognizance, the Magistrate must be satisfied on the basis of the allegations made in the complaint petition as to whether any prima facie case had been made out against the accused persons or not. Since a reading of the complaint petition does not make out a prima facie case against the Petitioner, the complaint case cannot be permitted to proceed against him. The only document "cash memo" also does not reveal that the specimen collected was out of the tins covered by the cash memo. of course, it is made clear that if during the course of trial any evidence is led from which the Magistrate would be satisfied that the offence in question has been committed by the Petitioner, it would be open for him to proceed against the Petitioner in accordance with law. As a matter of fact, Section 20-A of the Prevention of Food Adulteration Act, 1954 visualises such a situation. My above view finds support from the unreported judgment of this Court in the case of M/s. Prabholal Jagdish Prasad v. P.C. Mishra, Food Inspector, Criminal Misc. Case No. 617 of 1983 (disposed of on 6.9.1985).

11. In the present case, the complaint was filed on 22.3.1990. After receiving P.R., cognizance was taken and summons were issued on 25.3.1991. The present Petitioner on surrendering was released on bail, whereas the other accused Sk. Alai Box has not been apprehended till today. More than 10 years have passed in the meantime and the aforesaid complaint petition is pending till date. In view of such delay and in view of the fact that no prima facie case has been made out against the present Petitioner, I have no hesitation to quash the order dated 25.3.1991 taking cognizance of the offence u/s (16) (a) (i) read with Section 7 of the Act so far as the Petitioner M/s. Onkarmal Nanakram represented through its proprietor Basant Kumar Lal is concerned. Accordingly, the order dated 25.3.2001 passed by the learned S.D.J.M., Jagat singh pur in 2 (c) C.C. No. 44 of 1991 is quashed so far as the Petitioner is concerned. The complaint case, however, shall proceed as against the other accused Sk. Alai Box. It is needless to say that the observations made in this order are prima facie in nature and shall not affect the merit of the case.

12. Before parting, I once again reiterate that if during course of trial the evidence led would reveal that the Petitioner has committed the offence in question, it would be open to the learned Magistrate to proceed against him in consonance with law.