
(2013) 03 MP CK 0119

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri. Case No. 1974 of 2013

Prahlad Raghuvanshi Alias Raja and Others

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Food Safety and Standards Act, 2006 — Section 26(2)(i), 3(j), 31, 40, 41

Penal Code, 1860 (IPC) — Section 188, 269, 273, 34

Citation : (2013) 3 MPHT 54

Hon'ble Judges : M.C. Garg, J

Bench : Single Bench

Advocate : H.S. Dubey and Mr. M.K. Gontia, for the Appellant; Akshay Namdeo, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

M.C. Garg, J.—This petition u/s 482, Cr.P.C. has been filed by the petitioners being aggrieved by registration of criminal case against them under Sections 26(2)(i), (iv) and (v) of the Food Safety and Standards Act, 2006 for which an FIR was registered against the petitioner on the information of one Inspector Naresh Sharma of Police Station, Kotwali, Mandla, who also conducted some search and took possession of 460 cartons containing Rajshree Gutka having Tobacco alleging that offence under Sections 269, 273, 188 /34 of IPC and Section 26(2)(i), (iv) and (v) of the Food Safety and Standards Act, 2006 is made out against the petitioners. On that basis, even a challan was filed before the Court of CJM, Mandla. The petitioners summoned by that Court and they have appeared in that Court. The said case was registered as Criminal Case No. 3595/2012. According to learned Counsel for the petitioners, registration of FIR, at the instance of Police Inspector, in this matter, is bad in law inasmuch as, no FIR under the Food Safety and Standards Act, 2006 can be registered at the instance of the Police after coming into force of the notification making Act applicable in the State of Madhya Pradesh which has been issued on 31-7-2009,

in the light of Sections 41 and 42 of the said Act, which read as under:--

41. Power of search, seizure, investigation, prosecution and procedure thereof.--

(1) Notwithstanding anything contained in sub-section (2) of Section 31, the Food Safety Officer may search any place, seize any article of food or adulterant, if there is a reasonable doubt about them being involved in commission of any offence relating to food and shall thereafter inform the Designated Officer of the actions taken by him in writing:

Provided that no search shall be deemed to be irregular by reason only of the fact that witnesses for the search are not inhabitants of the locality in which the place searched is situated.

(2) Save as in this Act otherwise expressly provided, provisions of the Code of Criminal Procedure, 1973 relating to search, seizure, summon, investigation and prosecution, shall apply, as far as may be, to all action taken by the Food Safety Officer under this Act.

42. Procedure for launching prosecution.-- (1) The Food Safety Officer shall be responsible for inspection of food business, drawing samples and sending them to Food Analyst for analysis.

(2) The Food Analyst after receiving the sample from the Food Safety Officer shall analyse the sample and send the analysis report mentioning method of sampling and analysis within fourteen days to Designated Officer with a copy to Commissioner of Food Safety.

(3) The Designated Officer after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution.

(4) The Commissioner of Food Safety shall, if he so deems fit decide, within the period prescribed by the Central Government, as per the gravity of offence, whether the matter be referred to,--

(a) a Court of ordinary jurisdiction in case of offences punishable with imprisonment for a term up to three years; or

(b) a Special Court in case of offences punishable with imprisonment for a term exceeding three years where such Special Court is established and in case no Special Court is established, such cases shall be tried by a Court of ordinary jurisdiction.

(5) The Commissioner of Food Safety shall communicate his decision to the Designated Officer and the concerned Food Safety Officer who shall launch prosecution before Courts of ordinary jurisdiction or Special Court, as the case may be; and such communication shall also be sent to the purchaser if the sample was taken u/s 40.

2. It is submitted that the provisions of the aforesaid Act specifically provide that for the purpose of carrying out the search, seizure, investigation and prosecution, Food Safety Officer who is required to be appointed by the Commissioner of Food Safety is only competent to carry out the search and to launch prosecution. It is submitted that Tobacco is a food article as defined u/s 3(j) of the Act which reads as under:--

3. (j) "food" means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food, to the extent defined in clause (ZK) genetically modified or engineered food or food containing" such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances:

Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, nature, substance or quality.

3. It is, thus, submitted that on the basis of the search conducted by the Police Inspector, no prosecution would have been launched against the petitioners at least u/s 26(2)(i), (iv) and (v) of the Food Safety and Standards Act, 2006. To that extent, it is submitted that the proceedings initiated against the petitioners including carrying out of the search is illegal and requires to be quashed because the Police has no jurisdiction to carry out search. In this respect, learned Counsel for the petitioners has relied upon the judgment of Allahabad High Court in the case of M/s Pepsico India Holdings (Pvt) Ltd. and Another Vs. State of U.P. and Others,

4. Learned Panel Lawyer while arguing on the aforesaid provisions, so far as the provisions of Section 26(2)(i), (iv) and (v) of the Food Safety and Standards Act, 2006, has submitted that in this case seizure has taken place on account of prohibition of keeping Tobacco and Nicotine etc. which are injurious for health without any licence and it is, therefore, submitted that the possession of 460 cartons of Rajshree Gutka was violative of the circular issued by the Commissioner, which was also issued under the Food Safety and Regulation, 2011. In this regard, it is also pointed out that the direction was also issued by the Commissioner (Food and Safety), to all concerned to ensure that the provisions of Khadya Suraksha Aur Manak (Vikray Pratishedh Aur Nirbadhan) Viniyam, 2011 are complied with.

5. It is submitted that since the sale and possession of Tobacco is totally prohibited in the State of Madhya Pradesh, the possession of Gutka by the petitioners was itself crime and in this case search and seizure has not been done by the authorised officer and it is prayed that liberty be granted to the

State of Madhya Pradesh to take appropriate action in the matter.

6. With liberty as prayed for by the State of Madhya Pradesh to take appropriate proceeding against the petitioners in accordance with the provisions contained in the Food Safety and Standards Act, 2006, the proceedings initiated against the petitioners pursuant to FIR No. 399/2012 are quashed. It is further made clear that for a period of two months, the goods seized be not released to the petitioners. Accordingly, this petition is hereby allowed to the extent indicated hereinabove.