

(2011) 01 PAT CK 0092

In the Patna High Court

Case No : Criminal Miscellaneous No. 18727 of 1998

Ramesh Kumar Jagnani

APPELLANT

Vs

State of Bihar and Food Inspector

RESPONDENT

Date of Decision : 06-01-2011

Acts Referred:

Citation : (2011) 01 PAT CK 0092

Final Decision : Allowed

Judgement

Joti Saran, J.—Heard learned Counsel appearing on behalf of the Petitioner and learned Counsel appearing on behalf of the State.

2.The proceeding in question has been initiated on the basis of a prosecution report submitted by the Complainant-Food Inspector, Patna alleging exposed sale of calcium which was alleged to be adulterated within the meaning of Section 2(a) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act), by the partnership firm, namely, M/s Anand Industries having its office and business at Gosai Tola, Patna-13, of which the Petitioner is said to be the managing partner. The Public Analyst report which forms part of the complaint renders the sample in question as not being of Calcium.

3. The Sub-Divisional Judicial Magistrate, Patna upon consideration of the materials on record was pleased to take cognizance of the offence under Sections 16(1)(a) of the Act against the Petitioner and another, giving rise to the present application.

4. This application was heard and admitted by a Bench of this Court on 28.01.1999 and the interim order passed on 9.9.1998 staying further proceedings before the court below was directed to continue. Thereafter the matter was taken up by a Bench of this Court on 9.4.2010 when it was referred for hearing by a Division Bench on the issue as to whether the provisions of Rule 7(3) of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the Rules) was directory or mandatory.

5. Mr. Nawal Kishore Agrawal, learned senior counsel representing the Petitioner at the outset submitted that the aforesaid issue on which the matter was referred to the Division Bench for consideration stood concluded by a judgment of the Supreme Court reported in T.V. Usman Vs. Food Inspector, Tellicherry Municipality, Tellicherry, holding Rule 7(3) of the Rules as directory. He submitted that the said judgment, however, could not be placed before the learned Single Judge at the time of passing of the order dated 9.4.2010 referring the matter to the Division Bench. Learned Counsel submitted that in the aforesaid view of the matter, he was prepared to assist the Court on the merits of the case with a view to its final disposal or for its hearing by the Single Judge, since the issue of reference stood answered in the judgment of the Supreme Court. Considering that the matter has already engaged the attention of the Court since 1998, we deemed appropriate to hear and dispose of the matter on merits.

6. Mr. Agrawal raised very short issue for consideration. He submits that a plain reading of the prosecution report placed at Annexure-1 of the application which is the basis of the initiation of the proceeding does not constitute any offence committed by the Petitioner so as to entail criminal prosecution. It is submitted that the allegations as set out in the prosecution report does not constitute any offence against the Petitioner. It is further submitted that the Petitioner is not engaged in the sale of calcium propionate rather calcium or sodium propionate is used for manufacture of bread in a proportion not exceeding 0.5 per cent. Learned senior

7. Mr. Agrawal, with reference to Section 17 of the Act, submits that the Petitioner has been wrongfully roped in the present case and that unless it is proved that the alleged offence has been committed with the consent or connivance of the Petitioner or is attributable to the Petitioner, he cannot stand charged for the alleged offences. Mr. Agrawal concluding his argument submitted that whereas the ingredient used in the manufacture of bread is calcium propionate the sample is that of calcium. It is thus submitted that in the accompanying circumstances the continuation of the criminal prosecution of the Petitioner would be an abuse of the process of the Court inasmuch as in absence of any evidence connecting the Petitioner with the alleged offences, his ultimate

8. Mr. Lala Kailash Bihari Prasad, learned Counsel appearing on behalf of the State while opposing the contentions of learned Counsel for the Petitioner submits that undoubtedly the Court in exercise of the power inherent u/s 482 of the Code of Criminal Procedure can quash any criminal proceeding arising from a police report or complaint but there ought to be circumstances warranting the same. He submits that the case in hand is not one of the cases requiring indulgence by this Court and that the Petitioner should be relegated to the court below to face the trial in order to ascertain his involvement in the transaction. He submits that in normal circumstances every criminal prosecution arising from a police report or a complaint should be allowed to reach its logical conclusion and the present case is no different. It is contended that the summary of allegations

as set out in the prosecution report does manifest breach of provisions of the Act inasmuch as the samples recovered from the premises of the firm of which the Petitioner is said to be a managing partner, was found to be adulterated and not in the nature of calcium. He submits that even though there is no direct allegation against the Petitioner in the prosecution report but the very nature of duty being discharged by the Petitioner as a managing partner creates an onus on the Petitioner to stand clear of the allegations as set out in the prosecution report.

9. Learned Counsel for the State in support of his

10. We have heard the parties at length and also perused the materials on record of the proceedings. A perusal of the complaint which is in the form of prosecution report placed at Annexure-1 of the application manifests that the prosecution was instituted against the Petitioner and one other for alleged recovery of adulterated calcium found within the premises of M/s Anand Industries of which the Petitioner was said to be a managing partner. The complaint nowhere indicts the Petitioner in any manner or connects him with the alleged recovery of adulterated calcium as required u/s 17 of the Act. In absence of there being any direct allegation against the Petitioner connecting him with the alleged offence, a sweeping allegation of general nature would not ipso facto indict the Petitioner with the alleged offence unless it is so demonstrated in the complaint petition/prosecution report. The allegation as set out in the prosecution report does not in any manner connect the Petitioner with the alleged offence. In fact, a plain reading of the complaint which is in the form of the prosecution report does not set out any allegations against the Petitioner. In absence of allegations against the Petitioner constituting any offence punishable under the provisions of the Act, no useful purpose would be served in allowing the prosecution to continue as in the accompanying circumstances the ultimate conviction of the Petitioner would appear very bleak. We can do no better than to reproduce paragraph-7 of the judgment rendered by the Supreme Court in the case of Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others, :

7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie established the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

11. The case in hand has its own special features, of there being not even a whisper of allegation against the Petitioner as regarding any breach having been

committed by him or having been a party to the breach. Simply because the Petitioner happens to be a managing partner, ipso facto would not bring him within the mischief of the provisions of Section 17(4) of the Act. The legal position as to the prosecution of the Directors and the Officers of the company having been explicitly explained in Section 17 of the Act, the absence of allegation connecting the Petitioner with the offence alleged and the breach committed, the continuance of his criminal prosecution would be unjust and an abuse of the process of the Court. We accordingly quash the order taking cognizance dated 27.1.1997 passed in Case No. 18(M) of 1997, by the Sub Divisional Judicial Magistrate, Patna and the entire criminal prosecution initiated pursuant thereto. The application stands allowed but without any order as to costs.