
(2006) 06 JH CK 0044
In the Jharkhand High Court
Case No : Cr.M.P. No. 587 of 2004

Ravi B. Parikh and Others

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 20-06-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 13(2), 16(1), 23
Prevention of Food Adulteration Rules, 1955 — Rule 32A, 44A, 9B

Citation : (2006) 06 JH CK 0044

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Advocate : P.D. Agarwal, for the Appellant; Deepak Kumar Prasad, for the Opp. Party No. 2 and , Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

D.K. Sinha, J.—The petitioners herein have preferred the petition u/s 482 Cr.P.C. for quashing the entire criminal prosecution including the order taking cognizance on 5.11.03 u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 by the court of S.D.J.M., Jamshedpur in C/2 Case No. 6243 of 2003.

2. The brief fact of the case as per the prosecution report is that the prosecution party visited M/s Regent Resorts and properties pvt., Ltd. Inner Circular Road, Bistupur, Jamshedpur in presence of the witnesses and found exposed and sold Lijjat Papad and Haldi Powder which were seized. On examined by the public analyst MADA, Dhanbad it were found misbranded and adulterated vide report of the analyst MADA dated 29.9.2003. The prosecution case was lodged in the Court of C.J.M. on 4.11.03 after obtaining the sanction by the competent authority and accordingly the cognizance was taken of the offence. The report of the analyst MADA, Dhanbad is annexure 1, 1/1 which is the part of the complaint case and the sanction letter of the C.S.-cum-C.M.O., Jamshedpur is Annexure-2.

3. The main contention which has been raised on behalf of the petitioners is the

non-compliance of the mandatory provision of Section 13(2) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as an Act) since the local health authority did not send the copy of the report of the public analyst calling upon the petitioners, that if they so desire, may make application to the Court within a period of 10 days from the date of receipt of the copy of the report to get the sample of the article kept by the local authority analyzed by the Central Food Laboratory and in this manner the prosecution failed to comply the mandatory provision of Rule 9B of the Prevention of Food Adulteration Rules, 1955. The right conferred under such provision of Act as well as rules is a valuable right of an accused and non-compliance of such provisions of law vitiates the proceeding at any stage. The public analyst MADA, Dhanabdi vide report Annexure 1/1 found Lijjat Papad adulterated due to presence of Kesari therein.

4. Rule 44A of the Prevention of Food Adulteration Rules 1955 speaks,"

No person in any State shall, with effect from such date as the State Government concerned may by notification In the Official Gazette specify in this behalf, sell or offer or expose for sale, or have In his possession for the purpose of sale, under any description or for use as an ingredient in the preparation of any article of food intended for sale-

- (a) Kesari gram (*Lathyrus sativus*) and its products.
- (b) Kesari dal (*Lathyrus sativus*) and its products.
- (c) Kesari dal flour (*Lathyrus sativus*) and its products.

5. However, it has been submitted on behalf of the petitioners that to the best of their knowledge, neither the Govt. of Jharkhand nor the Bihar Government has published any notification in the official gazette prohibiting the use of the Kesari flour or Kesari Dal for the use or expose for sale or for the purpose of sale under any description as an ingredient in the preparation of any article of food intended for sale.

6. The other irregularities which were found by the public analyst on the packet of the Lijjat Papad were as follows:

- (i) Best before use was not mentioned.
- (ii) Batch no. and Lot no. not visible and
- (iii) Greenish symbol and colour code stipulated is not in proper size as per requirement of Rule 32A.

7. Learned Counsel further submitted that the printing of packets is a function of the manufacturers and admittedly in the complaint petition the manufacturer has been mentioned as "Shree Mahila Griha Udyog Lijjat Papad and the Managing Director/Manager of Shree Mahila Griha Udyog Lijjat Papad have been figured as the principal accused. In absence of any allegation against the petitioners that

they were the manufacturers of the Lijjat Papad in question, their prosecution is bad in law.

8. Learned Counsel pointed out the provision of Section 23 of the Act which empowers Central Government to make rules and from perusal of the provisions of the said Section it transpires that no power has been given to the Central Government to make specific rules in respect of printing of any Greenish on the packet or disclosing the period best before use and therefore, printing of Greenish symbol in proper size is beyond the scope of Section 23 of the Prevention of Food Adulteration Act. Even there is no material on the record to assert that the petitioners were the manufacturers of Lijjat Papad and that they had adulterated by mixing Kesari flour and in absence of any such allegation, their prosecution is an abuse of the process of the Court and is liable to be quashed.

9. Similar issue was raised before this Court in Cr.M.P.No.630/05 in Suresh Kumar Agarwal v. State of Jharkhand and Anr. and it was held that compliance of Section 13(2) of the Prevention of Food Adulteration Act is mandatory and the accused has got a valuable right to get the sample in question analyzed by the Central Laboratory as the report of the local (health) authorities was not sacrosanct and may contain error.

10. A counter-affidavit has been filed on behalf of the O.P No. 2, which is silent on the point of law as to the mandatory requirement of Section 13(2) of the Prevention of Food Adulteration Act as well as Rule 9B of the Prevention of Food Adulteration Rules, 1955 Cases of L.M. Batra v. The State of Bihar, reported in 1994 (1) Cri 196, Sudhir Kumar Chopra v. State of Bihar and Ors. reported in 1995 (1) Cri 359 are also relevant on the issue.

11. In rejoinder to the counter-affidavit filed on behalf of the petitioners it is stated that they are not the Directors or Managers of the Mahila Griha Udyog Lijjat Papad, Mumbai wad who have been made the principal accused in the present case rather the petitioners are the Directors of Regent Resorts and Properties Pvt. Ltd. a company registered under the Companies Act, 1956. A copy of the memorandum of association has been annexed and marked as Annexure-4.

12. Having heard the rival contentions of the parties, I find that the prosecution failed to comply the mandatory provisions of Sections 13(2) of the Act as well as Rule 9B of the Prevention of Adulteration Rules, 1955 and on such score alone the cognizance order dated 5.11.03 pasced by the C.J.M., Jamshedpur in C/2 Case No.6243/03 now pending in the Court of S.D.J.M., "Jamshedpur requires interference and accordingly it is set aside as also the entire criminal prosecution against the petitioners.

13. This petition is allowed.