

(1998) 08 MP CK 0041

In the Madhya Pradesh High Court

Case No : Miscellaneous Cr. Case No. 17 of 1998

R.G. Patil and Others

APPELLANT

Vs

Omprakash and Others

RESPONDENT

Date of Decision : 11-08-1998

Acts Referred:

Constitution of India, 1950 — Article 21

Criminal Procedure Code, 1973 (CrPC) — Section 202, 245(2), 482

Penal Code, 1860 (IPC) — Section 120B, 200, 202, 34, 420

Citation : (1999) 2 JLI 269

Hon'ble Judges : S.B. Sakrikar, J

Bench : Single Bench

Advocate : A. Salim, S.C. Bagadiya and H.S. Oberai, for the Appellant; B.N. Tiwan, for non-applicant No. 1 and, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sakrikar, J.—The accused-applicants, office bearers of Hindustan Liver Ltd., Mumbai have filed this petition u/s 482 Code of Criminal Procedure for quashing and setting aside the complaint filed by the non-applicant No. 1 in the Court of Judicial Magistrate First Class, Mhow, u/s 120-B and 420 of IPC.

2. Briefly stated the facts of the case are that on 17th February, 1973, non-applicant No. 1. Omprakash who carries on the trade of shop-keeper in Mhow. purchased 10 sealed tins of four Kg. of the Dalda Vanaspati manufactured by Hindustan Liver Ltd. Company @ 28.70 Rs. per tin. It is stated that on each of the tin the net weight of the contents was mentioned as 4 kgs. It is also alleged that the weight of the empty tin of the same lot weighed about 440 gm. It is further alleged that on the request of the customer when the alleged tins purchased from the shop of firm Pannalal Kannihalal of Mhow, the other non-applicants who is the dealer for selling of the said Dalda Vanaspati manufactured by the Company, on being weighed, it is found that the total weight of the tins including the container purchased in all the cases was less than 4.440 kg. On the

said facts it is stated that in each of the tins purchased by the complainant about 300 gms of Vanspati Ghee was found less than the net weight mentioned on the sealed tins. It is also stated that the aforesaid facts were brought to the knowledge of the Distributing Firm and the Salesman of the Company. The said person did not responded on the complaint of the complainant. On the aforesaid facts, non-applicant No. 1, on 24.2.1973 has filed a complaint against the applicants as also the Distributor and the Salesman of the Company, alleging that all the accused persons have conspired to defraud the public by selling less quantity of Vanaspati Ghee than the net weight mentioned on the sealed tins and prayed for taking action u/s 120-B and 420 IPC, against the alleged accused persons.

3. The learned Magistrate, on the basis of the statements recorded u/s 200 and 202 Code of Criminal Procedure as also the other material on record, registered a criminal case against the applicants and the other non-applicants for the offences punishable u/s 420/34 of IPC vide order dated 13.9.1973 and issued summons against the accused persons for their appearance in the Court. On appearance, the applicants have filed application u/s 245(2) of the Code of Criminal Procedure praying for the discharge of the accused persons and closing of the criminal case. The said application was dismissed by the learned Magistrate by order dated 1.9.1997 and rejected the prayer of the applicants. Aggrieved by the said order of the Magistrate, a Revision petition No. 307/97 was filed in the Court of Addl Sessions Judge, Mhow which was also dismissed vide order dated 18.11.97 Aggrieved by the said orders of the JMFC Mhow and ASJ Mhow, the applicants have filed this application u/s 482 of the Code of Criminal Procedure for quashing of the criminal complaint filed against the applicants and the other accused persons and also for quashing and setting aside the orders impugned of the learned Magistrate and the ASJ, Mhow.

4. I have heard Shri S.C. Bagadiya and Shri H.S. Oberio, learned Counsel for the applicants and Shri B.N. Tiwari, learned Counsel for non-applicant No. 1 (complainant). None appeared for non-applicants Nos. 2 to 4 & Shri Salim, learned PL. appearing for the non-applicant No. 5; State of M.P.

5. The learned Counsel for applicants contended that from the evidence and the facts available on the record, no case for committing any offence punishable u/s 420 IPC is made out against the present applicants and the other co-accused persons for selling of lesser quantity of the Vanaspati Ghee than the net weight of the contents as mentioned on the sealed tins. The learned Counsel also contended that in view of the long pendency of the criminal case registered against the applicants and in view of the facts and the nature of the offences alleged against the applicants, the complaint deserves to be quashed on the ground of inordinate delay.

6. As against this, learned Counsel for non-applicant No. 1 (complainant) submitted that on the basis of the evidence and the other material available on the record, a prima-facie case for framing of the charge u/s 420 read with

Section 120-B of IPC is made out against the applicants and the other co-accused persons. As such, the case registered against the applicants cannot be dropped and the order of the Court taking cognizance for the said offences cannot be quashed at this stage of the case u/s 482 of the Code of Criminal Procedure. The learned Counsel relied on the decisions of this Court in cases of Gopal v. Kanmyalal 1984 MPWN 452, Alok Mishra v. State of M.P. 1997 MPWN II 165, Surendra Kumar Jain v. Rajkumari and Ors. 1993 MPLJ 712 and also relied on the decisions of other Honourable High Courts in cases of Dhanraj Jain and Others Vs. B.K. Biswas and Others, , N.K. Narayanan and Others Vs. V. Vidyadharan, and Bhagabat Prasad Mohanty Vs. Kalanji Mohanty and Others, .

7. I have considered the rival submissions of the learned Counsel for parties and also carefully perused the record of the trial Court.

8. On perusal of the record, it emerged that at no stage of time the net weight of the contents and the empty container was measured despite the orders of the Magistrate dated 5.4.1975. The alleged sealed tins were deposited by the complainant in the Court alongwith his complaint and on the application of the complainant, by order dated 5.4.1973, the learned Magistrate, directed the Food Inspector Mhow to find out the net weight of the contents and its container weighting them separately after obtaining one sealed tin lying deposited in the Court and submit his report. But the learned Food Inspector did not open the seal and not submitted his report with regard to the net contents of the Vanaspati Ghee found in the sealed tin and the weight of the empty container used in the packing of the said contents. The Food Inspector (P.W. 5) as apparent from his report Ex. P. 3 and his statement recorded u/s 202 Code of Criminal Procedure had submitted his report only by weighing the alleged sealed tins together with the contents and the containers used for packing of the said Vanaspati Ghee. The learned Food Inspector, at the time of his report, took the weight of one empty tin of Dalda Vanaspati of the applicant-Company produced by the complainant, and on the basis of the weight of the said container, submitted his report stating that in nine tins out of the alleged ten tins the net weight of the Vanaspati Ghee was found to be less than 4 kgs, the net weight mentioned on the said tins. On. perusal of the report (Ex.P.3), it is clear that the net weight of the 10 sealed tins together with the container was found different for each of the sealed tins. As per his report, the total weight of the 9 sealed tins, according to him was found less than 4.440 kgs. Whereas the weight of one of the sealed tin was found more than 4.440 kgs. In view of the report (Ex.P. 3) it is apparent that the total weight of the sealed tins vary in different packings and in view of the said facts it cannot be held that the net contents of the Vanaspati Ghee in the tins in question was lesser than the net weight mentioned on the said tins by taking into consideration the weight of one of the empty tin produced by the complainant of the same company

9. In view of the evidence of the complainant and the aforesaid facts available on the record, prima-facie no case of conspiracy for committing fraud with the

customers by selling of the less Vanaspati Ghee than the net weight mentioned on the sealed tin is made out against the applicants and the other co-accused persons for taking action for the offences punishable u/s 420 and 120-B of IPC.

10. On perusal of the record, it is also found that the disputed tins were purchased by the non-applicant No. 1 (complainant) from the shop of Respondents Nos. 2 to 4 on 17th February 1973. The complaint was filed on 24.2.1973 and the learned Magistrate registered the case against the accused persons on 13.9.1973 and thereafter the case is pending at the stage of framing of the charges against the applicants till 4th August 1998. On the ground of the aforesaid delay the complaint case pending against the applicants and the other co-accused persons deserves to be quashed. On this point the law is well settled in case of *Sheela Borse* 1986 CrILJ SC 249, the Apex Court held that the fundamental right of speedy trial is implisive under Article 21 of the Constitution and the consequences of the violation of that right would be that the prosecution itself would be liable to be quashed on the ground that it is in breach of the fundamental rights. In case of *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , the Apex Court has also pointed out that in all criminal prosecutions the right of speedy public trial which has a wide amplitude is now in alienable fundamental rights of the citizen under Article 21 and is available in all criminal prosecutions irrespective of the nature of the offence involved. Relying on the aforesaid decisions of the Apex Court, this Court in the following cases; *Sajjan Singh v. State of M.P.* 1990(1) MPWN 147, *Chandoo v. State of M.P.* 1989 MPLJ 420, *Kallu v. State of M.P.* 1989(1) MPWN 227 and *Anand Kumar v. State of M.P.* 1990(1) MPWN 150, quashed the prosecutions pending against the accused persons on the ground of inordinate delay. The present case is also pending with the trial Court after its registration at the stage of the charge since 13.9.1973. As such, in view of the aforesaid long pendency of the case on hand, the complaint filed by the non-applicants deserves to be quashed.

11. In view of the facts and the evidence available on the record as stated above, no prima-facie case for taking cognizance against the accused persons for the offences punishable u/s 420, 120-B IPC is made out and on this ground also as no fruitful purpose is likely to be served in continuing the said criminal case, the further trial of the pending criminal case against the applicants deserves to be quashed in the light of the decision of this Court in case of *Izhar Qureshi v. State of M.P.* 1998(1) MPWN 24. The decisions of this Court and the other Honourable High Courts relied on by the non-applicant (complainant) are on the different points and not applicable to this case for deciding the matter in controversy.

12. In view of the facts and circumstances of the present case and the law applicable, it is a fit case where the powers u/s 482 Code of Criminal Procedure are required to be exercised for securing ends of justice and to prevent abuse of the process of the Court.

13. In the result, this petition is allowed and the impugned orders of the JMFC, Mhow and Addl. Sessions Judge Mhow, respectively dated 1.9.97 and 18.11.97

are set aside. The complaint filed by the non-applicant No. 1 is quashed and the applicants stands discharged of the charges u/s 420 read with Section 34 of IPC in pending Criminal case No. 455/91. No orders as to the costs.