

(2023) 08 JH CK 0052

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 2319, 2334 Of 2012

R.S. Sodhi And Others

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 24-08-2023

Acts Referred:

Prevention Of Food Adulteration Rules, 1955 — Rule 12, 17

Prevention Of Food Adulteration Act, 1954 — Section 10(4), 16(a), 17, 17(1), 17(2)

Citation : (2023) 08 JH CK 0052

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Yogesh Modi, Azeemuddin, Shiv Shankar Kumar

Final Decision : Allowed/Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. In both the petitions, common questions of fact and law are involved and both the petitions are arising out of same FIR and order taking cognizance, that is why both the petitions are being heard together.

2. These petitions have been filed for quashing the entire criminal prosecution being GOCR No.12 of 2006 (T.R. No.1153 of 2012) under Section 16(a) of the Prevention of Food Adulteration Act, 1954 including the order dated 11.09.2012 passed by the learned 1st Additional Sessions Judge, Deoghar in Criminal Revision No.74 of 2012 as well as the order taking cognizance dated 11.08.2006, pending in the court of the learned Judicial Magistrate, Deoghar.

3. The case was filed alleging therein that on 21.07.2006, the Food Inspector collected a sample of Amul Kool from the co-accused Sonu Kumar Ghosh and sent the same to public analyst as required under Section 10(4) of the Act, 1954. The Public Analyst reported that the sample of Amul Kool is misbranded as manufacturing date and batch number etc. are not mentioned on the bottle. On the basis of the aforesaid allegations, the prosecution report was filed against the

petitioners, who are Managing Director of Gujarat Co-operative Milk Marketing Federation Limited, Anand, Gujarat and the Managing Director of Basundhra Dairy, Nagpur.

4. Learned counsel for the petitioners submits that the case has been filed against the Managing Director of Gujarat Co-operative Milk Marketing Federation Limited, Anand, Gujarat and the Managing Director of Basundhra Dairy, Nagpur as well as Sunu Kumar Ghosh. He further submits that the petitioner in Cr.M.P. No.2319 of 2012 is the Managing Director of Gujarat Co-operative Milk Marketing Federation Limited, Anand, Gujarat and the petitioner in Cr.M.P. No.2334 of 2012 is the Managing Director of Basundhra Dairy, Nagpur. He submits that the Public Analyst has submitted the report saying that the batch number and date of manufacture are not disclosed in the same collected by the Food Inspector and in view of that, the case has been registered for misbranding. He draws attention of the Court to Form-VI, which is the document with regard to seizure of the article in question and by way of referring this document, he submits that the Food Inspector has recorded batch number and manufacturing date. He further submits that Form-VII in terms of Rule 17, there is also mention of batch number and manufacturing date, which was addressed to the Public Analyst. He submits that these two documents itself suggest that the batch number and manufacturing date were there and in spite of that, the Public Analyst has given report that batch number and manufacturing date are not there. He also submits that the Public Analyst has given a report in a routine manner without applying his mind. He further submits that the petitioners are higher officials of the company in question and in view of Section 17, the only person who is nominated under Sub-section (2) of Section 17 can be prosecuted and further the company is not made party in the case. He also submits that the petitioners have moved before the revisional court challenging the order taking cognizance in Criminal Revision No.74 of 2012, however, the same was dismissed vide order dated 11.09.2012 on the ground of limitation. On these grounds, he submits that the entire criminal proceeding may kindly be quashed.

5. Learned counsel for the State jointly submit that there are allegations against the petitioners and the learned counsel has rightly taken cognizance against them and the criminal revision filed by the petitioner has also been rightly dismissed.

6. In view of the above submissions of the learned counsel for the parties, the Court has gone through the materials on the record including the contents of the prosecution report as well as the analyst report and Form-VI and Form-VII and also the order taking cognizance. Form-VI in view of Rule 12 of the Prevention of Food Adulteration Act, 1954 is on the record, which clearly suggest that batch number of the seized article was mentioned as 117/05 and manufacturing date was recorded as 27.04.2006 and in Form-VII in view of Rule 17 of the said Act, 1954, batch number was mentioned as 117/06 and manufacturing date was recorded as 27.04.2006 and both the documents are issued under the signature

of the Food Inspector, who has seized the article in question, but surprisingly the Public Analyst has given a report that there is no batch number and date of manufacture and he has reported that this is the case of misbranded. In view of that, it appears that the Public Analyst without applying his mind, has given the said report. Further, if the company is accused under the said Act, the procedure is prescribed therein under Sub-section(2) of Section 17 of the said Act, 1954, which reads as under:

"17(2). Any company may, by order in writing, authorise any of its directors or managers (such manager being employed mainly in a managerial or supervisory capacity) to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this Act and may give notice to the Local (Health) Authority, in such form and in such manner as may be prescribed, alongwith the written consent of such director or manager for being so nominated."

7. Looking into Sub-section (2) of Section 17 of the said Act, it appears that only nominated person under Act can be prosecuted if there is any violation. However, in the case in hand the higher officials of the said company have been made accused. The scheme of Sub-section (1) of Section 17 is clear that the cases where a person has been nominated under Sub-section (2) of Section 17, he alone can be proceeded against and and punished for the crime in question. It is only where no such person has been nominated that every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of its business, can be proceeded against and punished. The proviso, however, lays down an exception that any such person proceeded against, shall not be liable to be punished if he proves that the offence was committed without his knowledge and that he had exercised all due diligence to prevent the commission of such offence. A reference may be made to the judgment passed in *R. Banerjee v. H.D. Dubey*; (AIR 1992 SC 1168).

8. In the case in hand, as has been discussed hereinabove, the case of misbranding itself is not proved in view of the documents on record. Further, how these petitioners are looking into day-to-day affairs of the company, is not disclosed in the petition and in view of Sub-section (2) of Section 17. Further, the case of the petitioners are strengthened.

9. In view of the above facts, reasons and analysis, the entire criminal prosecution being GOCR No.12 of 2006 (T.R. No.1153 of 2012) including the order dated 11.09.2012 as well as the order taking cognizance dated 11.08.2006, pending in the court of the learned Judicial Magistrate, Deoghar are quashed.

10. Accordingly, these petitions are allowed and disposed of.