

(1987) 10 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : Criminal M.P. (M) No. 813 of 1987

Union Products Amritsar

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 13-10-1987

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 14, 14A, 16, 20, 20(1)

Citation : (1988) 2 RCR(Criminal) 174 : (1989) 1 RCR(Criminal) 71 : (1988) 2 ShimLC 23

Hon'ble Judges : V.P. Bhatnagar, J

Bench : Single Bench

Advocate : D.S. Sahney, for the Appellant; M.R. Chaudhary, Asstt. A.G., for the Respondent

Judgement

V.P. Bhatnagar, J.—This is a petition moved under the provisions of Section 482 of the Code of Criminal Procedure and Article 227 of the Constitution praying that the complaint filed against the Petitioner (M/s. Union Products Amritsar) be quashed.

2. Although a number of grounds have been taken in the petition, Mr. D.S. Sahney, learned Counsel for the Petitioner, made a statement in this Court on September 21, 1987 that the only point he would press in support of this petition would be that the mandatory provisions of Section 20(1) Prevention of Food Adulteration Act, 1954 stood contravened inasmuch as the Food Inspector was not competent to launch the prosecution as held by the Supreme Court in A.K. Roy and Another Vs. State of Punjab and Others, .

2-A. The case has been taken up today for hearing arguments on the above point but Mr. D.S. Sahney, learned Counsel for the Petitioner, has made an oral submission seeking permission to withdraw the petition. This is allowed. As a result, the petition is dismissed as withdrawn.

3. Before parting with the case, it appears necessary that the applicability of the ratio laid down in A.K. Roy's case (supra) is briefly examined. This is because it has been stated at the bar that a number of courts subordinate to the High Court of Himachal Pradesh, following the aforesaid ratio, have started rejecting the complaints instituted by the Food Inspectors in Himachal Pradesh. In my view, A.K. Roy's case is based on different facts altogether and the subordinate courts in Himachal Pradesh appear to have fallen into a manifest error inasmuch as they have relied upon it in order to reject the complaints filed by the Food Inspectors in this State. The reasons for the above conclusion are as follows.

4. The basic question requiring determination is the interpretation of Section 20 of the Prevention of Food Adulteration Act, 1954. Its relevant portion reads as under:

20. Cognizance and trial of offences.-(I) No prosecution for an offence under this Act, not being an offence u/s 14 or Section 14A shall be instituted except by, or with the written consent of the Central Government or the State Government or a person authorised in this behalf, by general or special order, by the Central Government or the State Government....

The bare reading of the above provision shows that either the prosecution for an offence under the Prevention of Food Adulteration Act can be instituted by the Central Government or the State Government or a person duly authorised in this behalf or with the written consent of anyone of them. In case of the State of Himachal Pradesh, the State Government has authorised all the Chief Medical Officers in their respective districts to institute prosecution or to give written consent to institute prosecution vide notification No. HFW-B (A) 3-81 issued on October 17, 1983. In the present case, the Chief Medical Officer, Kangra gave his written consent by his letter dated November 25, 1983 which reads:

I, Dr. R.L. Sharma, Chief Medical Officer of Distt, Kangra having been authorised by Government of Himachal Pradesh vide notification No. HFW-H (B)(a) 3-1/81 dated 17th October, 1983 and after going through the report of Public Analyst and other relevant documents in respect of sample of sweet marvel taken from Ashok Kumar of M/s. Sita Ram Anand & Sons By Shri Bidhi Chand Sharma, Food Inspector, Distt. Kangra on (dated) 2/10/83 at Dharamsala and also after applying my mind fully to the case is of the opinion that it is a fit case for launching the prosecution u/s 7 of 16 of the P.F.A. Act, 1954.

Therefore, I authorise Shri B.C. Sharma, F.I. to launch the pro-secution u/s 20(1) of the said Act.

It appears that confusion has been created by the last 2 lines of the aforesaid letter authorising the Food Inspector to launch the prosecution u/s 20(1) of the Prevention of Food Adulteration Act. The argument which appears to have found favour with the subordinate courts is that the Chief Medical Officer could not so authorise the Food Inspector to launch the prosecution and to that extent such authorisation constituted sub-delegation of powers which the Chief Medical

Officer had u/s 20(1) *ibid* read with the State Government notification dated October 17, 1983. The above contention, in my view, is totally untenable because all that the Chief Medical Officer has done is to direct the Food Inspector concerned to file the complaint in the competent court. The *sine qua non* of Section 20(1) of the Prevention of Food Adulteration Act is the applying of mind to the facts of the case and thereafter according written consent for launching the prosecution and the Chief Medical Officer duly exercised that power himself. In other words, the Food Inspector in this case, at the time of filing the complaint, was duly armed with the written consent given by an authority competent to do so under the provisions of Section 20(1). If so, the mere filing of the complaint by the Food Inspector cannot, under any stretch of imagination, constitute an infraction of mandatory provisions of Section 20(1).

5. The facts of A.K Roy's case may now be noticed. In that case the prosecution was launched by the Food Inspector under purported delegation of authority in that behalf by the Food (Health) Authority who was authorised by the State Government of Punjab and it is not disputed that the Food (Health) Authority had not given any written consent for prosecution. Clearly, the above facts are distinguishable from the manner in which written consents are being accorded before launching the prosecution in the State of Himachal Pradesh. In fact, it has been observed towards the close of para 12 of A.K. Roy's case (*supra*) thus "It was also permissible for the Food (Health) Authority being the person authorised u/s 20(1) of the Act to give his written consent for the institution of such prosecutions by the Food Inspector, Faridkot as laid down by this Court in *The State of Bombay Vs. Parshottam Kanaivalal*, and *The Corporation of Calcutta Vs. Md. Omer Ali and Another*, . It is plain that the above observations have not been noticed in their correct perspective before applying the ratio of A.K Roy's case to the cases in the State of Himachal Pradesh in the aforesaid manner.

6. Since it has been stated at the bar before me that a number of courts in this State, following the ratio laid down in A.K. Roy's case (*supra*) are holding the prosecution to have not been launched properly and, therefore, are rejecting the complaints, it appears necessary that a copy of this order be immediately circulated amongst all the courts subordinate to this Court for bringing the correct position regarding the law applicable to this State to their notice.