
(2012) 03 CHH CK 0081
In the Chhattisgarh High Court
Case No : Criminal Misc. Petition No. 681 of 2011

Vinay Hegde

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 19-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 16(1)(a)(i), 17(1), 19(2)(a)(ii),
2(ix)(k), 7(1)

Citation : (2012) 03 CHH CK 0081

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Advocate : Surendra Singh, with Abhishek Sinha, for the Appellant; Suryakant Mishra, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

T.P. Sharma, J.—By this petition u/s 482 of the Criminal Procedure Code, the petitioner has prayed for quashment of criminal proceeding pending before the Court of Additional Chief Judicial Magistrate, Raipur in Criminal Complaint Case No. 1234/2010 for the offence punishable u/s 7(ii) of the Prevention of Food Adulteration Act, 1954 (for short "the Act") read with Rule 42(S) of the Prevention of Food Adulteration Rules, 1955 (for short "the Rules"), section 7(v) of the Act read with Rule 12-A of the Rules, sections 16(1)(a)(i) and (ii) of the Act. I have heard learned counsel for the parties, perused copy of the complaint, copies of other material filed along with the complaint and the Food Adulteration Report.

2. As per undisputed facts of the case, respondent No. 5 Firm M/s Indonesian Foods Ltd. is manufacturer of the food article Top Ramen Smoodles, the petitioner is Manager of respondent No. 3 i.e. Firm M/s Brooke Bond Lipton Ltd. who is purchaser of the alleged food article from respondent No. 5 for selling and has sold the article through its local seller respondent No. 2. The Food Inspector

has purchased the food article from respondent No. 2 in accordance with the prescribed procedure and thereafter, it has been sent for analysis. As per report of the Public Analyst, Test for Monosodium Glutamate is positive, the article was adulterated as misbranded in terms of section 2(ix)(k) of the Act read with Rule 42(S) of the Rules. After complying with the procedure, prosecution has been launched against the petitioner.

3. Learned Senior Advocate appearing on behalf of the petitioner submits that the petitioner is not manufacturer of the food article Top Ramen Smoodles, as per allegation made in the complaint, respondent No. 5 is manufacturer of the food article, respondent No. 3 has purchased the article for selling the same and the petitioner is Manager of respondent No. 3. Respondent No. 2 who is authorized agent of the petitioner and respondent No. 3, has sold the aforesaid article to the Food Inspector. Therefore, if any misbranding has been committed or their it has been committed by respondent No. 5, not by the petitioner or respondent No. 3 or respondent No. 2. The petitioner has given his declaration that he has purchased the sealed article of food from respondent No. 5 which is sufficient compliance in terms of section 19(2)(a)(ii) of the Act that he has purchased the scaled article from the manufacturer with a written warranty. Learned Senior Advocate further submits that the petitioner is also protected in accordance with the proviso to section 17(1) of the Act that the alleged misbranding has not been committed by him or within his knowledge and that he has exercised all due diligence to prevent the commission of such offence. Learned Senior Advocate also submits that Monosodium Glutamate (MSG) is the most common article found in natural milk and other primary food article commonly found in milk and tomato in huge quantity. Learned Senior Advocate contends that vide the alleged Public Analyst report, the Public Analyst has found the positive test of Monosodium Glutamate, but has not given any finding that MSG or any quantity of such has been added. Natural presence of MSG in the food article by itself is not offence punishable under the provisions of the Act, unless the prosecution is able to satisfy that it has been added.

4. Learned Senior Advocate placed reliance in the matter of C.L. Yadav and Another Vs. State of Madhya Pradesh and Another, , in which the Madhya Pradesh High Court has held that in absence of any material to show that it has been added, mere presence of MSG which is natural and found primarily in the food article, continuance of prosecution under the provisions of the Act for violation of Rule 42(S) of the Rules is not sustainable under the law.

5. On the other hand, learned State counsel opposes the petition and submits that the aforesaid defence is a matter of evidence and the petitioner may take all defence available to him under the law including the defence of MSG. Material collected on behalf of the prosecution is sufficient for proceeding against the petitioner for the offence committed under the provisions of the Act.

6. As per para 6 and other paras of the complaint, respondent No. 5 is manufacturer of Top Ramen Smoodles, the food article, the petitioner is not

manufacturer of the aforesaid article, he is not required to make any declaration upon the back of the food, he is required to show that he has purchased the sealed article from respondent No. 5 who is registered licensee of the manufacturer. As per case of the prosecution, respondent No. 5 is the manufacturer of the food article, it was under obligation to make aforesaid declaration, if required, in accordance with Rule 42(S) of the Rules which reads as follows:--

Every advertisement for and/or a package of food containing added Monosodium Glutamate shall carry the following declaration, namely:--

Respondent No. 5 has not given such declaration.

7. The complainant has not shown any material prima facie, against the petitioner that the petitioner was having knowledge that Monosodium Glutamate has been added or even about the presence of MSG in the food article.

8. While dealing with same question, the High Court of Madhya Pradesh in C.L. Yadav (supra) has held that in absence of any material to show that MSG has been added, persons found in possession of such article for selling cannot be held responsible for commission of the offence punishable under sections 7(1) read with section 16(1)(a)(i) of the Act.

9. In these circumstances, if the allegation made in the complaint along with other documents is admitted by the petitioner in its face value, even then, conviction of the petitioner for the offence u/s 7(ii) of the Act read with Rule 42(S) of the Rules, section 7(v) of the Act read with Rule 12-A of the Rules and sections 16(1)(a)(i) and (ii) of the Act, would not be possible. Therefore, continuance of proceeding against the petitioner for the aforesaid offences is only abuse of the process of the Court and are liable to be quashed in exercise of inherent jurisdiction in terms of section 482 of the Cr.P.C.

10. Consequently, the petition is allowed. Criminal proceeding pending against the petitioner before the Court of Additional Chief Judicial Magistrate, Raipur in Criminal Complaint Case No. 1234/2010 for the offence punishable u/s 7(H) of the Act read with Rule 42(S) of the Rules, section 7(v) of the Act read with Rule 12-A of the Rules, and sections 16(1)(a)(i) and (ii) of the Act is hereby quashed. I.A. Nos. 1 and 2 stand disposed of.