

(2016) 01 MP CK 0020
In the Madhya Pradesh High Court
Case No : MCRC No. 1211 of 2012

Vivekanand and Others

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 16, Section 16(i) A(i), Section 7(i)
(iii)
Special Economic Zones Act, 2005 — Section 1(3), Section 20, Section 21, Section 22,
Secti

Citation : (2016) 3 MPLJ 125 : (2016) 4 RCRCriminal 699

Hon'ble Judges : J.K. Jain, J.

Bench : Single Bench

Advocate : Vivek Singh, Learned Counsel, for the Appellant; Milind Phadke,
Learned Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

J.K. Jain, J.—1. THIS petition under Section 482 of the Code of Criminal Procedure [for short "the Code"] has been filed for quashment of Criminal Case No. 30/2012, pending before Chief Judicial Magistrate (CJM), Dhar.

2. Brief facts of this case are that petitioner NO.1 is General Manager(Works) in the petitioner No. 2 Company and company has authorized petitioner No. 1 to appear in this case on behalf of the Company. The unit of petitioner No. 2 situated inside the Indore Special Economic Zone at Pithampur,(Dhar) and the unit is 100% export oriented unit, dealing in processing of organic spices for exports. On 20/06/2011 non-applicant Food Inspector Shri K.S. Solanki entered the premises of petitioner NO.2 and has taken the samples of two spices namely Chilly powder and organic turmeric powder from consignment destined for exports. On 19/01/2012 petitioners have received a letter along with the report of Public Analyst that the samples were adulterated. Thereafter, the Food Inspector has filed a private complaint against the petitioners which is registered

as Criminal Case NO. 30/2012 for the offence under Section 7(i)(iii) read with Section 16(i) A(i) of the Prevention of Food Adulteration Act, 1954 (in brief "the Act") in the Court of Chief Judicial Magistrate, Dhar. Chief Judicial Magistrate has taken the cognizance. Being aggrieved, the petitioners have filed this petition on various grounds.

3. Learned counsel for the petitioners submits that the petitioner's unit is situated inside the Indore Special Economic Zone at Pithampur (Dhar) and the unit is 100% export oriented unit. Thus, it is governed by the Special Economic Zones Act, 2005 (for short "SEZ Act") and rules made there under. Government of India Ministry of Finance Department of Revenue Central Board of Excise and Customs New Delhi issued a circular dated 8th January, 2002 (Annexure P/7) that the PFA Act is not applicable for food meant for export. The Food Inspector is not notified officer under Section 20 of the SEZ Act. Hence, he has no jurisdiction for taking sample from such unit. Therefore, the private complaint filed by the Food Inspector and taking cognizance by the CJM is without jurisdiction. Hence, the order of taking cognizance be set-aside.

4. On the other hand learned Government Advocate opposes the prayer and submits that the development Commissioner Indore, Special Economic Zone, granted permission to establish the unit in the Special Economic Zone vide Letter No. G-3/SSE/PROJ/2006-07/167 dated 25/07/2006 under certain terms and conditions. There is one of the condition that the petitioner may supply/sell goods or services in domestic tariff area in the terms of the provisions of SEZ Act, 2005 and rules and order made there under. Since Development Commissioner permitted to sell and supply goods and services in domestic tariff area, therefore, the petitioners are required to take license under PFA Act, 1954 and rules made there under. It is also pointed out that SEZ units are not exempted from taking license and following the rules there under. In such circumstances it cannot be held that Food Inspector was not authorized to take sample as per the provisions of PFA Act, 1954. Thus, there is no merit in the petition and it be dismissed.

5. After hearing the learned counsel for the parties I have perused the record.

6. The manufacturing unit of petitioner No. 2 company is situated in Indore, Special Economic Zone. The unit is 100% export oriented unit, to this effect the petitioners have filed the certificate of Importer Exporter Code (LEC) Number 420700001 date of issue on 28/08/2007. The question before this Court is whether the provisions of the PFA Act, 1954 are applicable to the petitioners unit. For this purpose it is useful to refer the relevant portion of Statement of Objects and Reasons annexed to the PFA (Amendment) bill 1974 which reads as under:--

"Adulteration of food articles is rampant in the country and has become a grave menace to the health and well being of the community. Keeping in view the gravity of the problem and the growing danger that it poses to the health of the nation, it has become necessary to amend the P.F.A. Act, 1954, so as to plug

loopholes and provide for more stringent and effective measures with a view to curb this menace."

7. It was the above bill which became the law as the P.F.A. (Amendment) Act 34 of 1976. It is thus evident that the Parliament in enacting the law was concerned only with the adulteration of food meant for consumption within the country. It is only proper to point out in this connection that while S. 5 of the Act prohibits import of adulterated and misbranded food there is no provision prohibiting export of such food. Sec. 16 provides for penalty on person who "whether himself or by another person on his behalf, imports into India or manufactures for sale or stores, sells or distribute any article of food". While there is a specific mention about import, there is significant omission of the word "export". This also is an indication to show that the purpose of the Act is confined to providing unadulterated articles of food to the people of the country and has no application to commodities meant for export.

8. Now, I would like to refer Objects and Reasons of the Special Economic Zones, Act 2005 which reads as under:--

"The Government of India had announced a Special Economic Zone Scheme in April, 2000 with a view to provide an internationally competitive environment for exports. The objectives of Special Economic Zones include making available goods and services free of taxes and duties supported by integrated infrastructure for export production, expeditious and single window approval mechanism and a package of incentives to attract foreign and domestic investments for promoting export-led growth."

9. There are quality control provisions enacted in Section 20,21,22 of the SEZ Act, 2005. For ready reference these Sections are as under:

"20. Agency to inspect.--Notwithstanding anything contained in any other law for the time being in force, the Central Government may, by notification, specify any officer or agency to carry out surveys or inspections for securing of compliance with the provisions of any Central Act by a Developer or an entrepreneur, as the case may be, and such officer or agency shall submit verification and compliance reports, in such manner and within such time as may be specified in the said notification.

21. Single enforcement officer or agency for notified offences.--

(1) The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.

(2) The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offence or offences committed in a Special Economic Zone.

(3) Every officer or agency authorised under Sub-section (2) shall have all the

corresponding powers of investigation, inspection, search or seizure as is provided under the relevant Central Act in respect of the notified offences.

22. Investigation, inspection and search or seizure.--The agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation, inspection and search or seizure in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone: Provided that no investigation, inspection and search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or Sub-section (3) of section 21 without prior approval of the Development Commissioner concerned: Provided further that any officer or agency, if so authorised by the Central Government, may carry out the investigation, inspection and search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner."

10. Central Govt. while exercising the power under Section 1(3) of SEZ Act, 2005, appointed the date 13/01/2010 on which the Sections 20,21 and 22 of the said Act came into force. Central Govt. has also notified that the Act or omission made punishable under the foreign trade (Development and Regulation) Act, 1992 as notified offences for the purpose of SEZ Act, 2005 and authorized the Development Commissioner of the jurisdictional Special Economic Zone to be enforcement Officer in respect of the notified offences committed in a Special Economic Zone.

11. Section 22 of the SEZ Act provided that no investigation, inspection and search or seizure carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or sub-section (3) of Section 21 without prior approval of the Development Commissioner concerned:

In the present case Food Inspector K.S. Solanki has taken the sample without prior approval of the concerned Development Commissioner and certainly he is not notified officer to carry out search or inspection. For securing the compliance of provision of any Central Act it is also relevant to mention that Section 51 of the SEZ Act provides that the provisions of this Act shall have effect notwithstanding anything inconsistent herewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

12. The provisions of P.F.A. Act applies only to articles of food meant for consumption inside the country and as such no application to articles of food meant for export. In the present case, petitioner's unit is situated in Special Economic Zone and petitioner's unit is 100% export oriented unit. Thus, the provisions of PFA Act are not applicable to the petitioner's unit.

13. The development Commissioner Indore, Special Economic Zone, granted permission to establish the unit in the Special Economic Zone vide Letter No. G-3/

SSE/PROJ/2006-07/167 dated 25/07/2006. Prosecution has not filed any document to the effect that the petitioner's unit is manufacturing good or services for domestic tariff area. There is no case of the complainant that the chilly powder and organic turmeric powder were meant for local sell or sell inside the country.

14. In such a situation, I am of the view that the provisions of PFA Act shall not be applicable to the petitioners unit, situated inside the Special Economic Zone. Thus, the Food Inspector has no authority to take the sample from petitioners unit which is 100% export oriented unit. Therefore, taking samples from the petitioner's unit and taking cognizance by the CJM is without jurisdiction.

15. Thus, the petition is hereby allowed and the order of taking the cognizance by the CJM in Criminal Case No. 30/2012 (State of M.P. through K.S. Solanki Food Inspector v. Vivekanand) is set-aside.

Copy of the order be sent to CJM Dhar for compliance.