

(2012) 02 P&H CK 0308

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. M-18260 of 2010

Vijay Kumar

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Feb. 8, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Prevention of Food Adulteration Act, 1954 - Section 16

Citation: (2012) 3 JCC 1877

Hon'ble Judges: Nirmaljit Kaur, J

Bench: Single Bench

Advocate: G.S. Sawhney, for the Appellant; Navdeep Sukhna, D.A.G., Punjab. for the State, for the Respondent

Final Decision: Allowed

Judgement

Nirmaljit Kaur, J.

This is a petition u/s 482 of the Cr.P.C. for quashing of the complaint u/s 16 of the Prevention of Food Adulteration Act dated 21.04.2010 along with all consequential proceedings arising therefrom. Brief facts of the case are that on 27.08.2009, the Food Inspector being complainant along with one Dr. Hardeep Kaur inspected the premises of the petitioner and found him having about 30 sealed Jars of Shri Hari Deshi Ghee (each Jar of 500 ml.) in his possession for sale. The Food Inspector after disclosing his identity as alleged in the complaint and after giving a notice in writing on Form VI, randomly selected three jars of Shri Hari Deshi Ghee for the purpose of analysis and divided the samples into three equal parts. After receiving the analysis report, the said Food Inspector filed the complaint in the Court of Sub Divisional Judicial Magistrate, Anandpur Sahib (Ropar).

2. Accordingly, the present petition has been filed praying for quashing of the said complaint.

3. White praying for quashing the said complaint, learned counsel for the petitioner had submitted that the petitioner is a vendor and not a manufacturer. It was further stated by him that there is no dispute that the manufacturer was one Manorma Foods Private Limited and that the said samples were taken from the sealed jars.

4. Reliance was accordingly placed on the judgments of this Court in the cases titled as Anil Kumar vs. State of Punjab and another reported as 2010 (1) 378, State of Punjab vs. Jagdish Chand and another reported as 2004 (2) FAC 83, as well as, the judgment of Hon"ble the Apex Court rendered in the case titled as P. Unnikrishnan vs. Food Inspector, Palghat Municipality, Kerala State reported as 1996 (2) PFAC 25, to stated that no offence was made out against the petitioner who is a seller and not the manufacturer.

5. Reply on behalf of respondent-State has been filed. Even in the reply, the said facts are not disputed. It was contended by learned counsel for the respondent-State that as per the Public Analyst Report, the sample found was misbranded and adulterated and not fit for human consumption.

Heard.

6. It is not disputed that the said Ghee was manufactured by the manufacturer Manorma Foods Private Limited being respondent No. 2. In the complaint, there was no mention that the said jars of Shri Hari Deshi Ghee has been tampered with or any mishandling has been done by the petitioner. Moreover, the Food Inspector had stated in para No. 5 of the complaint that the jars were sealed.

7. It is not the case of the complainant that the petitioner had not sold the article of food to the Food Inspector in the same State in which he had purchased as was manufactured by the manufacturer.

8. The fact that the sample was taken from the sealed jars has not been disputed. It is also not disputed that there is no allegation of tampering with the said food articles.

9. Reliance has been placed by the petitioner on the judgment of Hon"ble the Apex. Court in the case titled as P. Unnikrishnan (supra) to state that if the article of Food is purchased from the manufacturer and was sold to the Food Inspector in the same form in the same condition, the petitioner cannot be held liable for the violation of any Act or Rules.

10. In the judgment rendered by this Court in the case State of Punjab (supra), it was held that since the sample was taken from a stitched bag, the accused who is a dealer cannot be held guilty, in case the same is found to be sub-standard. In the case Arun Kumar and others vs. State of Punjab reported as 1996 (2) FAC 143, this Court came to the conclusion that the samples of the fertilizer were taken from the machine stitched bags. Thus, in the absence of the allegation that the same was meddled or tampered, no offence can be made out against the dealer from whose

custody the machine stitched bags were taken. Similar view was held by this Court in the case titled as Tarsem Singh vs. Union of India and others reported as 1996 (2) PFAC 283.

11. Hon'ble the Supreme Court in the case of M/s Kisan Beej Bhandar, Abohar v. Chief Agricultural Officers, Ferozepur and another reported as 1990 SCC (Cri.) 623, in a similar case-held as under :-

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In that view of the matter, on the facts found that it was a full tin in a sealed condition, the liability arising out of misbranding was not of the appellant. Unless he had any other source of information about misbranding-and it has not been established-the appellant is entitled to the protection of sub-section (3).

12. In a similar situation, this Court, in the case of M/s Guru Nanak Pesticides, Nabha & Ors. v. State of Punjab reported as 2010 (1) RCR (Cri) 30, quashed the criminal proceedings as under :--

6. xxx

There is clear-cut plea in the petition that they were selling the insecticide in the sealed container in the original form as obtained from the manufacturer and the sample was also taken from the original packing. This plea has not been controverted by the State. Thus, there remains no controversy that the impugned sample was obtained from the sealed containers lying in the premises of the firm and there is no material to indicate that the insecticide was not properly stored. Thus, the petitioners being the stockiest/dealer/distributor, involved in the sale of insecticides, cannot be held liable for misbranding of the insecticides and only the manufacturer would be liable. In this context reliance can be placed on the cases of M/s Kisan Beej Bhandan Abohar v. Chief Agricultural Officers, Ferozepur 1990 SCC (Cri.) 623 and M/s Vimal and Co. Grain Market, Mullanpur v. State of Punjab, 2002 (2) RCR (Cri) 56 (P & H), followed in the case of Deepak Sharma & Ors. v. State of Punjab, 2002 (2) RCR (Cri) 24 and reliance can be safely placed on the case of M/s Punjab Beej Bhandar Bela & Anr. v. State of Punjab through Insecticide Inspector. Ropar, 2008 (1) RCR (Cri) 998, wherein also this Court quashed the criminal proceedings against the licensed dealer

Thus taking into consideration that the petitioner is neither the manufacturer nor is any tampering alleged, no offence can be made out against the petitioner.;

In view of the above, the present petition is allowed and the complaint u/s 16 of the Prevention of Food Adulteration Act dated 21.04.2010 along with all consequential proceedings arising therefrom, are, hereby, quashed qua petitioner only.