

(2010) 10 AHC CK 0163

Allahabad High Court

Case No: Criminal Case No.850 of 1992

Kothari Products Ltd.and Anr.

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Oct. 19, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Prevention of Food Adulteration Act, 1954 - Section 16(a)(i), 20, 7(v)
- Prevention of Food Adulteration Rules, 1955 - Rule 37(A)

Hon'ble Judges: S.N.H.Zaidi, J

Final Decision: Allowed

Judgement

S.N.H. Zaidi, J.

By means of this application filed under Section 482 Cr.P.C. the applicants have invoked the inherent powers of this Court with a prayer that the proceedings of Criminal Case No.1145 of 1989, under Section 7/16 Prevention of Food Adulteration Act, for short the P.F.A. Act, pending before the Judicial MagistrateII (Economic Offences) Lucknow, be quashed.

2. The relevant facts, in brief, are that on 25.9.1986. Mr. F.A. Khan, the then Food Inspector, Lucknow, collected the samples of Zarda (Tobacco) mixed Pan Parag Pan Masala from the shop of Jagdish Kumar at Dubagga, Lucknow by purchasing the packets of the said pan masala in accordance with rules. The packets of the said pan masala were supplied to the vendor by the wholeseller Amba Charan and were manufactured by applicant No.1. The sample packets were sent for analysis to the Public Analyst. According to the report of the Public Analyst, the ingredients of the Pan Masala were not shown on the label of the packets in violation of Rule 37A of the Rules, framed under the PFA Act. A complaint case has accordingly been instituted under Section 7(v) read with Section 16(a)(i) of the PFA Act against the vendor, the whole seller and the manufacturing company and its owner and

partners after obtaining the written consent of prosecution from the Chief Medical Officer/Local Health Authority, Lucknow.

3. The Magistrate took cognizance upon the complaint and summoned the accused persons including applicant Nos. 1 and 2, who are the manufacturing company and one of its Directors respectively.

4. I have heard Mr. Mahesh Chandra, learned counsel for the applicants, learned A.G.A. for the State and perused the record.

5. Mr. Mahesh Chandra submitted that since the sanction for prosecution has not been accorded by the competent authority, hence the prosecution of the applicants in the complaint case is bad in law and the proceedings of the case is liable to be quashed. He further submitted that the prosecution for any offence under the PFA Act can only be instituted with the written consent of the Central Government or the State Government or a person authorized in this behalf by general or special order by the Central Government or the State Government as required by Section 20 of the said Act but in the instant case written consent, Annexure No.3 to the writ petition, has been obtained from the Chief Medical Officer/Local Health Authority, Lucknow who is not an authorized person.

6. Learned A.G.A., per contra, submitted that the Chief Medical Officer, Lucknow, was fully competent to accord sanction as the local Health Authority as he was declared to be Incharge of the Health Administration under the PFA Act for the whole of district under Notification No. 6000/XVIX72255, dated 18.9.1976.

7. The learned counsel for the applicants, however, referred to another Notification No.6001/XVIX72255 of the said date and submitted that for the prosecution of the offence committed within five Nagar Mahapalikas of Kanpur, Agra, Varanasi, Allahabad and Lucknow under the PFA Act, the Nagar Swasthya Adhikaris of the respective Nagar Mahapalika has been authorized to accord sanction under Section 20 of the PFA Act. He also submitted that, as per Form No.6, Annexure 2 to the application, the packets of pan masala were sold at Dubagga, which indisputably lies within the area of Lucknow Nagar Mahapalika.

Notification No.6001, dated 18.9.1976 is reproduced below:

"Legislation Supplement, Part IV.

Delegation LegislationSection (8)

No.6001/XVIX72255

September 18, 1976.

In exercise of powers under Section 20 of the Prevention of Food Adulteration Act, 1954 (Act NO.XXXVU of 1954), the Governor is pleased to authorize with effect from the date of publication of this notification in the official Gazette, all the "Local

(Health) Authorities" appointed as such under the State Government notification NO.6000/XVIX72255, dated September 18, 1976 to sanction prosecution for offences committed against the provisions of the said Act within their districts. However, for the 5 Mahapalikas of Lucknow, Varanasi, Allahabad, Kanpur and Agra such prosecution shall be sanctioned by the Nagar Swasthya Adhikaris of the respective Mahapalikas.

Ghulam Husain

Commissioner and Secretary"

8. Since in Notification No.6001, Nagar Mahapalikas have been given special status and sanction to prosecution was authorized to Nagar Swasthya Adhikari in respect of five Nagar Mahapalikas, Including Lucknow, therefore, only Nagar Swasthya Adhikari was authorized to accord sanction for prosecution in respect of offences under the PFA Act and since in the instant case prosecution was not accorded by the Nagar Swasthya Adhikari of Nagar Mahapalika, Lucknow, therefore, it can not be said to be a legal sanction by a competent authority and as such no prosecution for the alleged violation of Rule 37A read with Section 7(v)/16(1)(a)(i) of the PFA Act can be instituted on the basis of the impugned sanction/consent. Accordingly, the cognizance of the offence taken by the Magistrate against the applicant on the basis of such sanction is bad in law and can not be sustained.

9. The application is, therefore, allowed and the proceedings of the aforesaid criminal case are, hereby, quashed.