

(1996) 02 AHC CK 0127

Allahabad High Court

Case No: Crl Miscellaneous Writ Petition No. 9111 of 1986

Yashpal Kohli and Another

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision: Feb. 5, 1996

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 210(1), 482
- Penal Code, 1860 (IPC) - Section 186, 353
- Prevention of Food Adulteration Act, 1954 - Section 16, 16(1), 7

Citation: (1997) 21 ACR 248

Hon'ble Judges: G.P. Mathur, J

Bench: Single Bench

Advocate: Dharam Pal Singh, for the Appellant; A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

G.P. Mathur, J.

This petition was initially filed u/s 482, Code of Criminal Procedure for quashing the order dated 28.1.1986 passed by I Ind Addl. Sessions Judge. The applicant moved an application for converting the petition into a writ petition under Article 226 of tire Constitution of India. The application was allowed and the applicant was permitted to convert the petition into writ petition. Therefore, the petition has been heard as is a writ petition under Article 226 of the Constitution of India.

2. The Food Inspector, Jhansi lodged a report at the police station stating that he went to the shop of the applicant at 5 p.m. on 6.9.1980 and took sample of mustard oil. After preparing necessary papers he asked the applicant Yashpal Kohily to sign the papers but he refused to do so and said that he would not allow him to take sample from his shop. Thereafter both the applicants forcibly turned him out of tire shop and also gave threats that in case he would not leave, he would be beaten.

After investigation, the police submitted charge-sheet against the applicant Under Sections 353 and 186, I.P.C. It appears that the Food Inspector also filed a complaint for prosecuting tire applicant u/s 7/16, Prevention of Food Adulteration Act. The accused-applicant took up a plea that in view of Section 210(1), Code of Criminal Procedure, complaint case should not proceed. The learned Magistrate, however, convicted the applicants u/s 16(1)(c) of P.F.A. Act and sentenced them to one years" R.I. and a fine of Rs. 2,000 each. The appeal preferred by the applicants was allowed by the learned Sessions Judge on 10.7.1985 and the judgment of the trial Court was set aside and the case was remanded to the Court of Magistrate for fresh trial treating the police case as tire leading case. After remand, the learned Magistrate framed charge u/s 16(1)(C) of P.F.A. Act against the applicants by his order dated 28.1.1986. The applicants preferred a revision but the same was dismissed by the learned Sessions Judge on 24.5.1986. The present petition has been filed for quashing of the aforesaid order.

3. I have heard learned Counsel for the applicant, learned State Counsel and have examined the record. The applicants have impugned the order dated 28.1.1986 in the present petition. By the aforesaid order, the learned Magistrate has framed a charge u/s 16(1)(c). P.F.A. Act against the applicant. Learned Counsel has contended that on the same facts two district charges could not be framed against the applicants and as the maximum sentence provided u/s 186, I.P.C. is only three months R.I. which is less than the punishment provided u/s 16(1)(c) of P.F.A. Act. The applicants could not be charged for the latter offence. In my opinion, the contention raised has no substance. Prevention of Food Adulteration Act is a special statute and has been enacted to make provisions for Prevention of Food Adulteration. It creates a specified offence namely one u/s 16(1)(c) of the Act if the Food Inspector is prevented from taking sample of food as authorised by the Act. The offence described u/s 186, I.P.C. is a general offence and it will be committed if someone voluntarily obstructs any public servant in the discharge of his public duty. It is well-settled principle that a special Statute shall prevail over a general statute. Therefore, the mere fact that the act alleged to have been committed by the applicants would amount to an offence u/s 186, I.P.C. would not mean that they cannot be prosecuted for having committed an offence u/s 16(1)(c), P.F.A. Act. It is not open lo the applicants to challenge their prosecution under the aforesaid provision merely on the ground that the same is more stringent or provides for a greater punishment than that u/s 186, I.P.C. It is for the Legislature to lay down what punishment should be provided under the special Statute. The Legislature in its wisdom thought it proper to provide for greater punishment with regard to offences under Prevention of Food Adulteration Act in order to eradicate the evil of adulteration in items of food. It cannot be a ground for not prosecuting the applicants under the said Statute. If the allegations made in the complaint are accepted on its face value, it cannot be held that no offence u/s 16(1)(c) of P.F.A. Act is made out against the applicants. In these circumstances, the charge under the

aforesaid section was rightly framed.

4. For the reasons mentioned above, there is no merit in this petition, which is accordingly dismissed. The stay order is vacated. The matter has become very old and therefore, the learned Magistrate shall proceed with the trial expeditiously without being influenced in any manner by any observation made in the present order.