

(2010) 07 JH CK 0024

Jharkhand High Court

Case No: Criminal M.P. No. 1466 of 2006

Fuleshwar Yadav

APPELLANT

Vs

The State of Jharkhand and
Another

RESPONDENT

Date of Decision: July 7, 2010

Acts Referred:

- Prevention of Food Adulteration Act, 1954 - Section 16(1)

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Final Decision: Allowed

Judgement

D.G.R. Patnaik, J.

Petitioner in this writ application has challenged the order dated 17.10.2003 passed by the Sub-Divisional Judicial Magistrate, Deoghar, whereby cognizance for the offence u/s 16(1)(a)(i) of the prevention of Food Adulteration Act has been taken against the petitioner and he has been summoned to face trial.

Challenge also is to the order dated 08.06.2006 passed in Criminal revision No. 146 of 2003, by Additional Sessions Judge, Fast Track Court IV, Deoghar, whereby the revision application filed by the petitioner against the impugned order of cognizance, was dismissed.

2. Facts of the case in brief are as follows:

On 16.10.2003, the Food Inspector, Hazaribagh, seized a bottle of Pepsi from the petitioner's possession, on the ground that it was misbranded. The sample of the material seized, were sent to the Public Analyst and from the report of the Public Analyst, it was confirmed that the article which was being sold by the petitioner, was misbranded. On the basis of such report, a complaint was lodged, after the competent authority had sanctioned for the prosecution of the petitioner.

3. Assailing the impugned order of cognizance, counsel for the petitioner has raised several grounds, out of which the main ground advanced by him is that the petitioner cannot be prosecuted for an alleged act which was never declared by the legislature as an offence.

Elaborating his arguments, learned Counsel submits that the thrust of the allegation against the petitioner is that the bottle of Pepsi which was seized from the possession of the petitioner was misbranded in as much as, the quantities of added sugar was not mentioned on the bottle as per Standard A-01 of Appendix 1 of P.F.A. Rules, 1955. Learned Counsel submits that the amendment in the Food Adulteration Act and the corresponding Rules whereby it was made mandatory for the manufacturers of such food items to mention the specifications as per Standard A-01 of Appendix 1 of P.F.A. Rules, 1955, came into effect from 01.10.2003 and, therefore, prior to the date when the amended provision of law came into force, there was no requirement or mandate either upon the vendor of such food items or even the manufacturer of such food items, to mention the specifications as per Standard A-01 of Appendix 1 of P.F.A. Rules" 1955.

Learned Counsel adds that in the present case, admittedly, the date of occurrence is 06.08.2003 when the bottle of Pepsi was seized from the petitioner's possession. It is further admitted that the petitioner was a mere vendor and not the manufacturer of the food items. Since on that date, there was no mandatory requirement of law for mentioning the specifications as per Standard A-01 referred to in the Appendix 1 of P.F.A. Rules, on the bottle of the food products, the petitioner cannot be prosecuted for any such alleged offence. In support of his arguments, learned Counsel would refer to the judgment of this Court in the case of Partha Sarathi Kumar and Anr. v. State of Jharkhand and Anr. reported in 2005 (1) JLR 557.

4. Counsel for the State would though contend that the petitioner was found to be a vendor of a sweetened carbonated drink, sold by the brand name of Pepsi and the sample which was seized from his possession did not contain the specifications relating to the quantity of sugar in the food items, but concede that Appendix-B of the P.F.A. Rules, 1955, came into effect from 01.10.2003, whereas the date of occurrence in the present case is that of 06.08.2003.

5. The same issue as raised in the present case, came to be considered by a Bench of this Court in the case of Partha Sarathi Kumar (supra), wherein the facts indicated that samples of carbonated cold drinks was seized on 18th August, 2003, from the vendor and the prosecution was initiated against the vendor on the ground that the bottles did not mention the quantity of added sugar either on the cap or crown of the bottles and it being an alleged violation of the P.F.A. Rules, 1955, the prosecution was sought to be initiated against the vendor. After considering the amended Rules by which it was made mandatory for mentioning the specifications as per Standard A-01 of Appendix B of P.F.A. Rules, 1955, this Court held that the amended Rule had come into effect from. 01.10.2003 and, therefore, the

non-compliance of the provisions of amended Rule, prior to the date when the amended Rule came into force, cannot constitute a punishable offence.

6. The facts in the present case are almost identical in as much as, for the same nature of offence as in the case of Partha Sarathi Kumar (supra), the petitioner is sought to be prosecuted. The alleged misbranding of the carbonated water which was seized from the petitioner's possession, related to the period when the amended Rule did not come into force as observed above.,

The ratio decided in the case of Partha Sarathi Kumar (supra), does squarely apply to the facts of the present case also.

7. I find, therefore, that in the present facts and circumstances, no case is being made out against the petitioner for his prosecution for the offence u/s 16(1)(a)(i) of the Act. In the result, this application is allowed. The impugned order of cognizance and the entire criminal proceeding, following the impugned order of cognizance which is pending against the petitioner in the court of Sub-Divisional Judicial Magistrate, Deoghar, vide G.O.C.R. Case No. 18 of 2003, is hereby quashed.