

(2010) 11 JH CK 0019

Jharkhand High Court

Case No: Criminal Miscellaneous P. No. 745 of 2008

Manoj Prabhakar and Another

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Nov. 22, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Prevention of Food Adulteration Act, 1954 - Section 10, 13(2), 16, 2, 6
- Prevention of Food Adulteration Rules, 1955 - Rule 32

Citation: (2011) 2 Crimes 221 : (2011) 1 JCR 404 : (2011) 7 RCR(Criminal) 606

Hon'ble Judges: Dilip kumar sinha, J

Bench: Single Bench

Final Decision: Allowed

Judgement

D.K. Sinha, J.

The instant petition has been filed on behalf of the Petitioners invoking the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure for quashing of the entire criminal prosecution of the Petitioners arising out of C-IV Case No. 22 of 2008 in which cognizance of the offence has been taken u/s 16(i)(a) of the Prevention of Food Adulteration Act. 1954 by the C.J.M., Ranchi on 5.1.2008 now pending before the Sub-Divisional Judicial Magistrate, Ranchi.

2. The prosecution story in short was that the O.P. No. 2 Mahesh Pandey, Food Inspector, Ranchi visited the business premises of M/s. Gujarat Co-operative Milk Marketing Federation Limited at Shop No. 5 Agriculture Marketing Yard, Pandra, Ranchi on 4.10.2007 and collected the samples of:

(i) Amul Masti Spiced Butter Milk.

(ii) "Stamina", Batch No L-1 and

(iii) "Amul Cool" bearing paper slips Nos. 687, 688 and 689 respectively on payment against the receipt and sent all these items to the public analyst, Mineral Area Development Authority, Dhanbad, Jharkhand for test and report.

3. The public analyst Jharkhand by its report No. 524PFF/2007 dated 16th December, 2007 opined that manufacturing date of the sample Stamina Sports Drink was 11.5.2007 best before 120 days from manufacturing and that the end of the period was lapsed so it was not suitable for marketability. On the basis of the report of the public analyst the Food Inspector O.P. No. 2 instituted prosecution in the Court of the C.J.M., Ranchi against the Petitioners herein for the alleged offence u/s 16(i)(a) of the Prevention of Food Adulteration Act, 1954 after obtaining written consent from the Civil Surgeon-cum-Chief Medical Officer, Ranchi on 3.1.2008. The official complaint was filed in the Court on 5.1.2008 having got bearing of the signature of the C.J.M. Ranchi with the endorsement of the date thereon.

4. Mr. Jai Prakash, the learned senior counsel at the outset submitted on behalf of the Petitioners that the sample collected by the Food Inspector was "Stamina" bearing batch No. L-1 whereas the report of the Public Analyst MADA relates to "Stamina Sports Drinks" batch No. 32, as such, the prosecution was launched on the basis of the report of the Public Analyst on examination of such sample which was not collected from the shop of the Petitioners. Learned senior counsel explained, that the batch numbers are allotted to the products in one lot, accordingly, different batch numbers used to be allotted for the different lots of manufacturing of the products and on this ground alone that the batch number of the sample tested did not match, with the batch number of sample collected, the criminal prosecution of the Petitioners was liable to be set aside.

5. Advancing his argument Mr. Jai Prakash submitted that there was no penal provision in the Prevention of Food Adulteration Act, 1954 for the non-marketability of the given product "Stamina" Sports drink, yet, cognizance of the offence has been taken u/s 16(i)(a) of the Act which speaks:

Subject to the provisions of Sub-section (1-A), if any person--

(a) whether by himself or by any other person on his behalf, imports into India or manufactures for sales, or stores, sells or distributes any article of food--

(i) which is adulterated within the meaning of Sub-clause (m) of Clause (ia) of Section 2 or misbranded within the meaning of Clause (ix) of that section or the sale of which is prohibited under any provision of this Act or any rule made thereunder or by an order of the Food (Health) Authority he shall, in addition to the penalty to which he may be liable under the provisions of Section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine which shall not be less than one thousand rupees.

6. Learned senior counsel explained that the penal provision of the Act did not speak that, "not suitable for marketability was an offence under the Act". The report of the public analyst was silent about other two items as to whether it was adulterated or otherwise. The word adulterated has been defined and explained in various manner in Section 2 of the Act including under (m) which speaks if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health with the proviso. The opinion of the Public Analyst as mentioned and referred to hereinbefore even did not come within the purview of the proviso of Section 2(m) of the Act and even if it could be admitted that the test report was of the sample which was collected it was never held as misbranded so as to call for penal consequence.

7. Raising the technical point, learned senior counsel Mr. Jai Prakash attracted the attention that the complainant O.P. No. 2 (Food Inspector) while collecting the samples did not follow the statutory provision u/s 10(iii) of the Prevention Food Adulteration Act, 1954 which speaks,--

A food Inspector shall have power-

(a) to take samples of any article of food from--

(i) any person selling such article

(ii) any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee

(iii) a consignee after delivery of any such article to him and to send such samples for analyst to the public analyst for the local area within which sample has been taken.

(3) Where any sample is taken under Clause (a) of Sub-section (1), or Sub-section (2), its cost calculated and the rate at which the article is usually sold to the public shall be paid to the person from whom it is taken.

8. In the instant case though prosecution report presented before the C.J.M. having got bearing at the foot that a purchase voucher was annexed but it was nowhere found on the record and in the counter-affidavit filed on behalf of the O.P.-State the copy of the alleged purchase voucher was not annexed to controvert contention that has been specifically pleaded.

9. Raising the next point, the learned senior counsel submitted that the prosecution, failed to comply with the provision of Section 13(2) of the Act.

10. On the other hand, a composite counter-affidavit has been filed on behalf of the members of the Opposite Party. Learned APP submitted that the samples of three products being "Amul Masti Spiced Butter Milk", "Stamina" and Amul Cool" bearing Code No. /SL. Nos. 687, 688, 689 were collected respectively from M/s. Gujarat

Co-operative Milk Marketing Federation, Shop No. 5, Pandra, Ranchi on payment and as against purchase vouchers and the same were sent to the public analysis MADA, Dhanbad for analyst and report. The public analyst vide his report No. 524 opined that "manufacturing date of sample Stamina Sports Drink is 11.5.2007 best before 120 days from manufacturing the end of period has been lapsed, so it is not suitable for marketability". It is further stated that when Food Inspector visited the business premises of the Petitioners, samples of three products were taken and were codified being Sl. Nos. 687, 688 and 689 which were countersigned by the Petitioners to which three sets of each sample were prepared, one set was sent to the public analyst and two sets of each sample were taken in the custody of Local Health Authority and that sample bearing Code No. /Sl. No. 688 was the product in respect of which the public analyst communicated his report vide No. 524 dated 16.10.2007 and that the public analyst was silent about the other two products which were also collected with Serial Code Nos. 687 and 689. Admittedly, the analyst report did not opine that the sample with Sl. No. 688 was adulterated rather it was stated being not suitable in marketability. Learned APP submitted that though the product was not adulterated but it was sold beyond the "best before use" period in contravention of Rule 32 of the Prevention of Food Adulteration Rules, 1955. However, Explanation VIII of Rule 32 of the Prevention of Food Adulteration Rules, 1955 explains:

"Best Before" means the date which signifies the end of the period under any stated storage conditions during which the product will remain fully marketable and will retain any specific qualities for which tacit or express claims have been made. However, provided that beyond the date the food may still be perfectly satisfactory.

11. Upon careful perusal of the pleadings and argument advanced on behalf of the parties, I find that the sample vide Sl. No. 688 collected from the business premises of the Petitioners has neither been found adulterated nor misbranded under the definition of Section 2 of the Act. The public analyst of Mineral Area Development Authority, Dhanbad, Jharkhand has simply opined about the sample, "not suitable for marketability". It is nowhere stated that the sample in question had lost its specific qualities on account of the fact that it was collected from the shops of the Petitioners and it could be gathered from its label that storage condition was limited only for 120 days and for want of otherwise comment that the product/sample was now no longer fit for human consumption beyond the period of 120 days from the date of manufacturing, it would not be appropriate to continue the criminal prosecution of the Petitioners for the alleged offence u/s 16(i)(a) of the Prevention of Food Adulteration Act on the ground that the sample "Stamina" was neither found adulterated nor misbranded.

12. In view of the above discussions, I find that the prosecution of the Petitioners cannot be sustained under law and their entire prosecution arising out of C-IV-22 of 2008 pending before the S.D.J.M., Ranchi is set aside.

Accordingly, this petition is allowed.