
(2010) 07 JH CK 0037

Jharkhand High Court

Case No: Criminal M.P. No. 1457 of 2006

Baleshwar Prasad

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: July 31, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Prevention of Food Adulteration Act, 1954 - Section 16(1), 19(2), 20A
- Prevention of Food Adulteration Rules, 1955 - Rule 5

Citation: (2010) 4 JLR 164

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

D.G.R. Patnaik, J.

Heard the learned Counsel for the petitioner and the learned Counsel for the State as also the counsel for the Opposite Party No. 2 in all the three applications, which involve identical questions for determination.

2. The present Cr. Miscellaneous Petitions have been filed u/s 482 of the Cr.P.C. by the petitioner, praying for quashing the order of cognizance, passed by the Sub-Divisional Judicial Magistrate, Deoghar for the offence u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 and also against the orders of the Sessions Judge, rejecting the Cr. Revision applications filed by him against the impugned orders of cognizance passed by the Magistrate.

3. Facts relevant for the disposal of these cases are as follows:

The petitioner in all these three Cr. Miscellaneous Petition is vendor of various food articles including salt.

The complainant-Food Inspector visited the retail shop of the petitioner and found the petitioner's selling salt of different brands. The Food Inspector purchased samples of the different brands of salt and after obtaining the petitioner's signatures on each sample, forwarded the samples for examination to the Combined Food and Drugs Laboratory, Agamkuan, Patna. The test reports of the samples, submitted by the Laboratory, confirmed that the samples of salt does not conform to the prescribed standard under Rule A.15.01 of Appendix B read with Rule 5 of the Prevention of Food Adulteration Rules, 1955. Thus, on the basis of the Laboratory Report, the complainant had concluded that the petitioner was found selling adulterated salt.

The petitioner had pleaded that different brands of salt of which the seized samples were prepared, were neither produced nor manufactured by him. Rather, the various brands of salt was produced from different manufacturers and he had believed bona fide in good faith that the salt, which was supplied to him by the manufacturers did conform to the prescribed standard as laid down under the Prevention of Food Adulteration Rules.

In support of his claim, he had also produced bills/vouchers of purchase, issued by the purported manufacturers.

On the basis of the above disclosure, the Food Inspector submitted separate Prosecution Reports for prosecuting the petitioner as also the manufacturers, named by the petitioner, for the offence u/s 16(1)(a)(i) of the Food Adulteration Act, 1954, after obtaining due sanction from the local Health authority.

On the basis of the Prosecution Reports, the learned court below took cognizance of the offence, directing issuance of summons to the petitioner to face trial in each of the cases.

Being aggrieved with the orders of cognizance, the petitioner filed separate Cr. Revision applications before the Sessions Judge, but the same were dismissed.

4. The petitioner has assailed the impugned orders of both the courts below on several grounds though, learned Counsel for the petitioner has mainly stressed upon the ground that since admittedly, the petitioner is not the manufacturer of salt, the samples of which was collected from his possession, he is protected under the provisions of Section 19(2) of the Prevention of Food Adulteration Act and he cannot be prosecuted for the alleged offence.

5. Learned Counsel for the State, on the other hand, would argue that the facts, as stated in the Prosecution's Report would amply demonstrate that the petitioner was found selling adulterated salt. Under such circumstances, the initiation of the Prosecution against the petitioner for the offence under the provisions of the P.F.A. Act, cannot be said to be illegal. Learned Counsel submits that the prosecution of the petitioner is based entirely on the fact that he was found selling adulterated salt

and merely because on the basis of the statements of the petitioner, the manufacturer has also been named as an accused, in itself, would not indicate that the petitioner's claim of his defence, has been accepted.

6. For better appreciation of the rival submissions, the provisions of Section 19(2) of the P.F.A. Act, 1954 may be noted:

19 "[2) A vendor shall not be deemed to have committed an offence pertaining to sale of any adulterated or misbranded article of food if he proved....

(a) that he purchased the article of food----

(i) in a case, where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer;

(ii) in any other case, from any manufacturer, distributor or dealer with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.]

7. From a bare reading of the provision, it would be manifest that the initial onus is on the vendor and if he proves that he purchased the food articles with a written warranty in the prescribed form, he shall not be deemed to have committed any offence. This onus is discharged by proving that the vendor had purchased the article of food with a written warranty in the prescribed form by a duly licensed manufacturer, distributor or a dealer.

The provision also lays down that besides proving that he had purchased the article of food from a duly licensed manufacturer, distributor or dealer with written warranty in the prescribed form, the onus also lies on the vendor to prove that the article of food while in his possession, was properly stored and that he had sold it in the same state as he purchased it.

8. The requirement of proof, as envisaged in Section 19(2) of the Act, implies that such proof can be brought in evidence only in course of trial and not at the stage of taking cognizance of the offence. The fact that the petitioner was found selling the alleged adulterated salt, is in itself, sufficient to indicate a prima facie case for the offence under the Act against the vendor and in this view of the matter, the impugned order of cognizance cannot be faulted.

9. From the arguments of the learned Counsel for the petitioner, it appears that the insistence is on dispensing with the requirement to prove the defence raised by the petitioner on the ground that such proof is not required since the fact that the petitioner had purchased the salt from the manufacturer has been admitted by the Prosecution.

This argument of the learned Counsel is not tenable.

The fact that the petitioner being vendor, has taken the defence as may be available to him u/s 19(2) of the Act, only makes it necessary for the prosecution to join the manufacturer and the distributor also in the same trial. Such joint trial being envisaged u/s 20A of the Act. Thus, the mere fact that the manufacturer has also been made as co-accused in itself, does not indicate that the prosecution has accepted in toto, the defence as would be available to the petitioner under the provisions of Section 19(2) of the Act. The petitioner has to prove that he had actually purchased the seized sample of salt from the manufacturer and further, that he had stored the article of food in the same state as it was purchased by him. The manufacturer, who is claimed to have given warranty, shall be entitled to participate in the hearing and to give evidence. Thus, the benefit of Sub-section 2 of Section 19 of the Act, can be availed by the petitioner on the article of the Food only if he has proved that he has sold the salt in the original condition as he had purchased from the manufacturer. The satisfaction referred to in this Section, is therefore, to be reached by the Court on the basis of the materials available on record and no other Rule or any other guidelines can be laid down regarding the data and the quantum of material necessary or sufficient to reach the satisfaction.

10. In the light of the facts and circumstances of the case and the discussions made above, I do not find any illegality or impropriety in the impugned orders of cognizance, as passed by the Magistrate. All these Cr. Miscellaneous petitions [Cr. M.P. Nos. 1457, 1459 and 1460 of 2006] are accordingly dismissed.