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**(2004) 09 PAT CK 0170**

**Patna High Court**

**Case No:** Criminal Miscellaneous No. 5972 of 2004

Raj Kumar Agrawal

APPELLANT

Vs

State of Bihar

RESPONDENT

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**Date of Decision:** Sept. 20, 2004

**Acts Referred:**

- Prevention of Food Adulteration Act, 1954 - Section 14A, 16(1)(a), 2(ix)(k)

**Citation:** (2004) 4 PLJR 438

**Hon'ble Judges:** M.L. Visa, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

M.L. Visa, J.

This application by petitioner has been filed for quashing the order dated 12.5.2000 passed by learned Subdivisional Judicial Magistrate, Patna in Case No. 19 (M) of 2000 taking cognizance u/s 16(1)(a) of the Prevention of Food Adulteration Act, 1954 (In short, "the Act"). Brief facts of the case are that on 8.9.1999, a poly packet carrying 400 grams of biscuits showing the name of manufacturer as Hulas Confectionary Private Limited, Pawanipur, Parsa made in Nepal was taken from the shop of petitioner, named and styled as M/s Jai Mata Di Kirana Store situate at Mulchand Path, Paharpur, Kankarbagh, Patna and it was sent to public analyst at Combined Food and Drug Laboratory, Agamkuan who, after analysis, submitted its report that the sample contravened provision of Rules 32(e) and 64BB of Prevention of Food Adulteration Rules, 1955 (In short "the Rules") and, hence, sample in question was misbranded within the meaning of Section 2(ix)(k) of the Act. A prosecution report was submitted and learned Subdivisional Judicial Magistrate, Patna, by his order dated 12.5.2003, took cognizance u/s 16(1)(a) of the Act and issued summons for appearance of petitioner. The petitioner has challenged this order before this Court.

2. Learned counsel of petitioner submits that from the report of public analyst (Annexure-2), it is evident that no adulteration in the quality of biscuits was found and only allegation is that sample contravened Rules 32A and 64BB. According to him, requirements of Rules 32(e) and 64BB are to be complied with by manufacturer and, admittedly, petitioner is not a manufacturer, hence, his prosecution is bad and illegal. The next point advance on behalf of petitioner is that the order granting sanction of prosecution of petitioner is in a printed form (Annexure-4) which shows that its blank columns have been filled up by someone and it further shows that this sanction has been granted without any application of mind and it has been granted in a mechanical manner which amounts that there is no sanction for prosecution of petitioner in the eye of law. On these grounds, prayer for quashing the order dated 12.5.2000 passed by Subdivisional Judicial Magistrate, Patna taking cognizance against the petitioner in Case No. 19(M) of 2000 has been made.

3. The learned counsel of petitioner, during the course of argument, has submitted that at the time of taking sample from the shop of petitioner, required information regarding name of manufacturer of biscuit and its purchase was given by petitioner which is evident from Form VI (Annexure-3). From perusal of Annexure-3, I find that on the sample, name and address of manufacturer were mentioned. The plea of petitioner, as made out in para-11 of his application that at the time of inspection, necessary information regarding manufacturer of biscuits and its purchase was furnished in terms of Section 14A of the Act only remains a plea and is not supported by any document. The name of manufacturer was already printed on the sample and from this, it cannot be said that the petitioner disclosed the name, address and other particulars of the person from whom he purchased the article of food as required u/s 14A of the Act.

4. On the point of sanction, the learned counsel of petitioner submits that sanction order (Annexure-3) shows that it was in a printed form and its blank columns were filled up by someone without applying mind. According to him sanctioning authority, before according sanction, has to apply mind and grant of sanction is not a mere formality and it is meant to serve a very useful public purpose. In support of this argument, he has relied upon a decision of this Court in the case of Dr. Guneshwar Singh vs. State of Bihar, 1974 PLJR 511. The facts of the aforesaid case, which has been relied upon by the learned counsel of petitioner, were quite different from the facts of this case. In that case, initially sanction was accorded for prosecution of a particular person but, thereafter, prayer was made for summoning the son of the accused against whom earlier sanction was granted which was rejected by the learned Magistrate against which revision before this Court was filed which was also dismissed considering the fact that at time of purchase of mustard oil by Food Inspector, son of main accused was already in the shop of his father and he had in fact sold the mustard oil and granted receipt for price paid but in spite of it, there was no whisper of his name and, therefore, it was manifest that authority wanted to prosecute his father who was the shopkeeper and not him. The facts of

the present case are quite different. It is true that sanction order is in printed form and its columns have been filled up but then sanction has been granted by competent authority and at this stage, it cannot be said that there was no application of mind and it has been granted in mechanical way. The plea of petitioner, that for the defects pointed out by public analyst in the sample, the manufacturer is liable and not petitioner who is, admittedly, not a manufacturer, cannot be a ground for quashing the order of cognizance against him because petitioner was found selling the biscuits and for any misbranded article of food which a person found selling though manufactured by somebody else, he is liable u/s 16(1)(a) of the Act. Considering the aforesaid facts, I find no merit in the application which is, accordingly, dismissed.