

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+CRL. M.C. Nos. 833/2001, 837/2001, 2157/2004 and 2647/2001

Date of Decision : 06.03.2012

CRL. M.C. No. 833/2001

S. NAGRAJAN

..... Petitioner

Through: Mr. D.C. Mathur, Sr.
Adv. with Mr. Mohit
Mathur, Adv.

Versus

STATE

..... Respondent

Through: Ms. Jasbir Kaur, APP

Crl. M. C. 837/2001

S. NAGRAJAN

..... Petitioner

Through: Mr. D.C. Mathur, Sr.
Adv. with Mr. Mohit
Mathur, Adv.

Versus

STATE

..... Respondent

Through: Ms. Jasbir Kaur, APP

Crl. M. C. No. 2157/2004

S. NAGRAJAN

..... Petitioner

Through: Mr. D.C. Mathur, Sr.
Adv. with Mr. Mohit
Mathur, Adv.

Versus

STATE

..... Respondent
Through: Ms. Jasbir Kaur, APP

Crl. M. C. 2647/2001

S. NAGRAJAN

..... Petitioner
Through: Mr. D.C. Mathur, Sr.
Adv. with Mr. Mohit
Mathur, Adv.

Versus

STATE

..... Respondent
Through: Ms. Jasbir Kaur, APP

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

V.K. SHALI, J. (Oral)

1. These are petitions against the order passed by the learned Magistrate directing framing of notice under Section 272/273 IPC, which was challenged before the Sessions Court by way of a revision petition, which was also dismissed, and hence, separate petitions under Section 482 Cr.P.C. have been filed.
2. In the Crl. M.C. No. 833/2001, the facts are one Mazhar Ansari along with his wife was treated at AIIMS for alleged epidemic dropsy. The police had recorded the

statement of Mazhar Ansari, wherein he had stated that he had purchased one packet of Dhara Mustard Oil from Jamia Millia Super Bazar, Delhi. After consuming the same, he developed medical complications which were diagnosed as dropsy. On his statement, an FIR bearing no. 804/1998, under Section 324/272/273 IPC was registered by P.S. Sri Niwas Puri, New Delhi. The police also seized the open packet of Dhara Oil. The oil was sent to the Public Analyst of Directorate of Prevention of Food Adulteration, Food Laboratory, Government of India, who opined that the mustard oil is adulterated, on account of presence of argemone oil, which is responsible for causing dropsy. The present petitioner was a Junior Executive (Quality) with M/s National Dairy Development Board and he was also appointed as a nominee under Section 17 of the Prevention of Food Adulteration Act. Since, he was alleged to be responsible for checking the quality control before packaging of mustard oil, therefore, the case was registered against him and after

investigation, the charge sheet was filed against him for an offence under Section 324/272/273 IPC. The learned Magistrate after hearing arguments framed a notice on 13.07.2000 against the petitioner under Section 272/273 IPC while as no notice under Section 324 IPC was given. The petitioner had assailed the framing of notice under Section 272/273 IPC on the ground that there was absence of mens rea on his part which was prima facie to be established before a notice is given for an offence under the Indian Penal Code, therefore, it had been contended that he deserves to be discharged. The revision petition of the petitioner for discharge was rejected by Ms. Ina Malhotra, the learned Additional Sessions Judge on 01.02.2001, and hence, the present petition bearing no. 833/2001 was filed.

3. In CrI.M.C. No. 837/2001, an FIR was registered in similar circumstances. On the basis of a complaint of Ishrat Ahsan, an FIR No. 798/1998, under Section 324/272/273 IPC by P.S. Sri Niwaspuri, New Delhi was

registered. The learned Magistrate had directed framing of notice on 14.07.2000. In this case, FIR was registered only under Section 272/273 IPC and a revision petition was preferred by the nominee S. Nagrajan, raising the same plea of absence of mens rea apart from other pleas which was dismissed by the same Sessions Judge on 01.02.2001.

4. In the Crl. M. C. No. 2157/2004, on 13.08.1998, an FIR bearing No. 528/1998, under Section 272/273 IPC, by P.S. Bhajanpuri, Delhi was registered on the complaint of one Beeru who had fallen sick after eating vegetables prepared in the mustard oil. The learned ASJ discharged the petitioner on 02.2.2001 of commission of offence under Section 328 IPC and remanded the matter back to the learned Magistrate for offences under Section 272/273 IPC. The learned Magistrate, vide order dated 21.03.2001 directed the framing of charge against the petitioner under Section 272/273 IPC. The petitioner moved an application on 01.12.2001, seeking dropping of

proceedings on the ground that there was no material to attract the ingredients of Section 272/273 IPC which was dismissed by the learned Magistrate on 07.04.2004, and hence, the present petition under Section 482 Cr.P.C was filed for quashing of the proceedings.

5. In the Crl. M. C. 2647/2001, the facts were that on 29.08.1998, the complainant Fakir Chand Mandi along with one of his friends was admitted to AIIMS for swelling in the legs and on his statement, an FIR No. 450/1998, under Section 324/272/273 IPC was registered by P.S. Hazrat Nizamuddin, New Delhi. After completion of the investigation, a charge sheet was filed on the basis of allegations that the complainant had consumed Dhara Mustard Oil, manufactured by M/s NDDB and suffered illness. On 02.08.2000, the learned Magistrate was pleased to frame a notice under Section 272 IPC which is a non-cognizable offence and discharged the petitioner for an offence under Section 324/273 IPC. The petitioner feeling aggrieved by the said order preferred a criminal

revision petition bearing no. 33/2001, under Section 397 read with section 399 Cr.P.C. before the Sessions Court, which was dismissed vide order dated 26.03.2001.

6. Thus in all these four cases, although the facts are different but what is essentially in issue is the notice given to the petitioner under Section 272 and 273 IPC for having committed an offence under the penal Code. For this purpose, the petitioner has been enroled only on account of being a nominee of the NDDB under Section 17 of the Prevention of Food Adulteration Act.
7. I have heard Mr. Dinesh Mathur, the learned senior counsel for the petitioner as well as Ms. Jasbir Kaur, the learned APP for the State and have also gone through the record. The learned senior counsel has assailed both the orders of the Magistrate directing the framing of charges under Section 272/273 IPC as well as the rejection of the revision petition by the learned Sessions Court on the ground that the offence under section 272 IPC deals with the situation where a person adulterates any article of

food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as a food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

8. Similarly, it was contended that Section 273 IPC also contemplates a situation where a person sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink shall be punished with imprisonment of either description or a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.
9. It was contended that by reading of both these Sections the main ground for putting a person for trial for an offence under Section 272/273 IPC is to show to the

Court, prima facie, that it is the petitioner who has adulterated the article of food or drink while as in the instant case, there is no evidence to show on record that it was the petitioner Mr. S. Nagrajan who had adulterated the mustard oil on account of presence of argemone oil. It has been contended by the learned senior counsel for the petitioner that he has been enrope for the offences under Section 272/273 IPC only in the capacity of a nominee having been declared under Section 17 of the Prevention of Food Adulteration Act while as the prosecution cannot rely upon Section 17 of the Prevention of Food Adulteration Act to enrope the nominee. It has also been contended that though the offence of adulteration under Prevention of Food Adulteration Act can enrope a person to trial, who has nothing to do with the offence but has been named as a nominee, by way of vicarious liability but under the Indian Penal Code, a person cannot be charged of an offence of adulteration under Section 272 or 273 IPC

unless and until a positive act or omission is shown on his part coupled with his intention to adulterate which would constitute mens rea and therefore, not only the order passed by the learned Magistrate or the learned Sessions Judge, directing framing of notice against the petitioner, is unsustainable in the eyes of law, but the complaint itself is not maintainable.

10. The third submission which was made by the learned senior counsel was to the effect that an offence under Section 272/273 IPC is a non-cognizable offence, which cannot be investigated by the local police without complying with the Section 155 (2) Cr.P.C. by virtue of which the prior permission of the learned Magistrate is to be obtained before investigation. It was contended that this embargo on the power of police to investigate the non-cognizable offence could not be circumvented by adding a section like 324/328 IPC which was a cognizable offence, and thereby, initiating the investigation into the matter against the present petitioner.

11. The learned senior counsel for the petitioned relied upon the case titled **Basir-Ul-Huq Vs. State of West Bengal** AIR 1953 SC 293 of the Apex Court to contend that such a camouflage and use of power to investigate the matter, it could not have been done and thus the entire proceedings are ab initio void.
12. The learned APP could not refute any of the submissions made by the learned senior counsel for the petitioner to the satisfaction of the Court or give any plausible answer as to why the Magistrate had ordered directing the framing of notice and the revision petition dismissing the appeal against the order of Magistrate. The learned APP has not been able to show as to how the complaint against the petitioner under Section 272/273 IPC is sustainable when there is no prima facie evidence against the petitioner having done any act or commission, which resulted in adulteration of oil.

13. I have carefully considered the submissions made by the learned senior counsel for the petitioner and have gone through the record.
14. I find merit in the submissions made by the learned senior counsel for the petitioner. No doubt, Section 272/273 IPC makes it an offence where a person who is responsible for adulteration of any article of food or drink, therefore, whoever has actually adulterated the article of food or the edible oil will have to be put to trial. But a person cannot be put to trial for an offence under Section 272/273 IPC by invoking Section 17 of the Prevention of Food Adulteration Act dealing with a nominee. Under the Prevention of Food Adulteration Act, the offence of adulteration is a strict liability offence and the offence does not require proof of mens rea while as under Section 272/273 IPC of a person must have mens rea for being charged. Under the Prevention of Corruption Act, the manufacturing company can declare a person as a nominee by completing certain pre-

requisite formalities. Once these formalities are completed, this nominee would be responsible, in case, any adulteration in the article of food or the drink is found to be in existence but then the prosecution has to be under the Prevention of Food Adulteration Act. Similarly, in the event of a Director or the Managing Director being made liable, it has to be established that the Director is in-charge and responsible for the day to day conduct of the business of the company before he can be charged. There is no dispute about the fact that the authority which is competent to lodge the prosecution for an offence of food adulteration punishable under Section 17 of the Prevention of Food Adulteration Act can also resort to Section 272/273 IPC and seek the prosecution of the accused by joining trial for both these offences, but in the absence of such a joining trial for both these offences, it is not open to the prosecution while initiating a prosecution against the accused for an offence under Section 272/273 IPC to resort to provisions

of Prevention of Food Adulteration Act which has been precisely done in the instant case. Therefore, this is totally against the provisions of law prescribed under the Indian Penal Code.

15. I, accordingly, feel that a complaint which is filed essentially only under Section 272/273 IPC against the nominee, is in itself not sustainable in the eyes of law. If the complaint itself is not sustainable against the nominee, as he is not the person who has adulterated the article of food or the drink which happens to be mustard oil in the instant case, obviously, no notice under Section 272/273 IPC could be framed against him much less the same could have been sustained by the Sessions Court.
16. There is another aspect of the matter which has been shown to be in existence in the instant case that it is the violation of Section 155(2) Cr.P.C. which puts an embargo on the powers of the prosecuting agency to investigate a non-cognizable offence. It is not in dispute

that both the offences under Section 272/273 IPC are non-cognizable offences, and therefore, the said offences could not be investigated by the police on account of the registration of the FIR. But the investigation for the aforesaid offences under Section 272/273 IPC was sought to be camouflaged by adding Section 324 IPC in three of the cases and one for an offence under Section 328 IPC by the prosecution knowing well that such an offence against the petitioner is for a cognizable offence against the petitioner which in all the four cases were not made out. The Apex Court in case titled **Basir-UI-Huq Vs. State of West Bengal** AIR 1953 SC 293 has deprecated such a practice being adopted for the purpose of investigation of a non-cognizable offence. The words which are used are as under:-

"It has also to be borne in mind that the provisions of that section cannot be evaded by resorting to devices or camouflages. The test whether there is evasion of the section or not is whether the facts disclose primarily and essentially an offence for which a complaint of the Court or of the public servant is required."

In other words, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, upon the ground that such latter offence is a minor offence of the same character, or by describing the offence as being one punishable under some other section of the Indian Penal Code."

17. In view of the aforesaid facts and the circumstances of the case, I am of the considered opinion that the order of framing of notice under Section 272/273 IPC, in all the Crl. M.C. Nos.833/2001, 837/2001, 2157/2004 and 2647/2001, the order passed by the learned Sessions Judge rejecting the revision petition against the said order are unsustainable in the eyes of law, and accordingly, are set aside and further all the four FIRs bearing nos. 804/1998, under Section 324/272/273 IPC, registered by P.S. Sri Niwas Puri, New Delhi in Crl. M. C. No. 833/2001, FIR No. 798/1998, under Section 324/272/273 IPC, registered by P.S. Sri Niwasपुरी, New Delhi in Crl. M. C. No. 837/2001, FIR No. 528/1998,

under Section 328/272/273 IPC, registered by P.S. Bhajanpuri, Delhi in Crl. M. C. No. 2157/2004 and FIR No. 450/1998, under Section 324/272/273 IPC, registered by P.S. Hazrat Nizamuddin, New Delhi in Crl. M. C. No. 2647/2001 qua the present petitioner are quashed and all the four petitions are allowed.

18. No orders as to costs.

V.K. SHALI, J.

March 06, 2012
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