

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

Date of Decision : 15.3.2012

1. Crl. Rev. P. No. 321/2004

S. NAGRAJAN

..... Petitioner

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

Versus

STATE

..... Respondent

Through: Ms. Jasbir Kaur, APP

2. Crl. M. C. 2695/2004

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. This order shall dispose of Crl. Rev. P. 321/2004 and Crl.M.C. No.2695/2004 both titled S.Nagrajan Vs. State. Both these petitions are taken up together for disposal by a common order as the facts are similar and a common question is involved in the instant matter, as to whether the cognizance of an offence can be taken twice? Secondly, as to whether the second complaint in respect of the same offence of Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act') can be filed? Thirdly, as to whether the second complaint filed under the Act, which obviously has to be filed after obtaining the sanction from the competent Authority under Section 20 of the Act on the basis of a public analyst report can be filed when the said report of public analyst itself stands superseded.

2. In order to appreciate all these three legal submissions, it would be pertinent here to give the brief facts of both the cases.
3. In Crl. M.C. No. 2695/2004, a complaint was filed by the Department of Prevention of Food Adulteration against Madan Lal of M/s Popular Store, vendor-cum-proprietor, M/s.P.K.Agency supplier and National Dairy Development Board, manufacturer. The allegations made in the complaint were that on 24.08.1999 at about 6.00 PM, Food Inspector Mr.Pawan Bhatnagar had purchased a sample of double filtered mustard oil from Madan Lal, M/s.Popular Store, Shop No.34, Sector-6, R.K.Puram, New Delhi where the said article of food was found stored for sale. The sample consisting of approximately 1 liter (910 gram) of double filtered mustard oil (ready for sale of human consumption) was taken from original sealed tetra pack bearing label decoration. Three samples were prepared and one of the samples was got

analyzed from the public analyst. The sample was reported to be not conforming to the standards laid down under item No.A.17.06 of Appendix 'B' of PFA Rules, 1955 because the sample showed presence of Argemone oil which is injurious to health. It was observed that it was likely to cause death on consumption. On the basis of the said public analyst report, a complaint was filed against the aforesaid three accused persons for having committed an offence under the Act. This complaint was filed on 04.09.1998 against all the three accused persons. The Court on filing of the complaint directed the issuance of summons as it was a complaint filed by the public servant in the ordinary discharge of his duties. On 15.07.1999, while the matter was pending for service of the respondents, the Local Health Authority of PFA filed a fresh complaint against Mukesh Kumar, Proprietor and Manager of M/s.Popular Store, M/s P. K. Agency, a partnership firm consisting of

two partners namely K.K.Kalsi and Sh.Parun Kalsi, Gujarat Co-operative Milk Marketing Federation Ltd., sole selling agent of NDDB, Mr.K.K. Bhadra, Assistant Manger (Sale) of Gujarat Cooperative Milk Marketing Federation Ltd. as a Nominee, S. Nagrajan, Quality Control Officer, NDDB, Noida as Nominee of the Manufacturing Company NDDB and Mr.N.K.Chawla, Executive Director, NDDB alleging the same facts as were alleged in the earlier complaint. On the basis of the second complaint, the learned Magistrate passed a detailed order on 26.07.1999, the exact language of the order is as under:

"I have carefully perused the allegations leveled in complaint. Complaint has been filed by Sh. S. K. Nanda a public servant in discharge of his official duties and therefore, I do not find any necessity of examining him or other witness in support of complaint under Section 200 Cr.P.C. A perusal of complaint shows that prosecution regarding the alleged incident had already been instituted on 04.09.1998 against three accused viz Madan Lal, M/s P. K. Agencies and M/s NDDB and during proceedings of that case it was found that sample in question was sold by Mukesh Kumar and he

had signed all the documents as showing himself as Madan Lal and in those circumstances Mukesh Kumar was also impleaded as accused in case i.e. complaint no.111/1998. I have called for the record of that case and I have carefully perused that case file also. After necessary investigations, accused nos. 2 to 7 have also been found to be the persons responsible for the commission of offence. Considering the material on record, I find sufficient grounds and proceeding against all the accused for commission of offences under Section 16 (1)(1A) read with section 7 of PFA Act. Let all the accused be accordingly summoned for 16.11.1999 and this case be tagged with the main case file of 111/1998.”

4. The accused petitioner had put in appearance and filed an application for dropping the proceedings and recalling the order of issuance of summons on the ground that no case is made out against him. The learned Magistrate dismissed the application on 26.09.2003 holding that in view of Section 16 (A) of the Act, the offence is triable by a Judicial Magistrate or a Metropolitan Magistrate and not by Sessions Judge. The application of the petitioner was accordingly rejected.

5. The petitioner feeling aggrieved by the order of the learned Magistrate preferred a revision petition before the Sessions Court which was dismissed on 04.09.2004 by Sh.S.N.Dhingra, (as his Lordship then was). It was held that the second complaint which was filed by the Department of Prevention of Food Adulteration was in the nature of supplementary complaint to the first one and this was permissible as is done in the police case under Section 173(8) Cr.P.C. It was also observed by the learned Sessions Judge that the offence of sale, distribution, manufacturing etc. of adulterated article of food are distinct offences and a complaint could be filed for each of them separately, therefore, it was observed by the learned Sessions Judge that the complaint which has been filed by the petitioner in the instant case could be treated as a complaint against the vender and distributor while as the second complaint was essentially against the manufacturer and the sole selling agent.

Accordingly, the revision petition of the petitioner was dismissed.

6. The petitioner feeling aggrieved by the orders dated 26.09.2003 passed by the learned Magistrate and the order dated 04.09.2004, passed by the learned Sessions Judge, rejecting the revision petition, filed the present petition under section 482 Cr.PC not only for quashing of the two orders passed by the courts below but also the complaint itself.
7. In Crl.Rev. P. No.321/2004 in similar circumstances, a complaint was filed by Mr.R.K.Ahuja, Local Health Authority titled Delhi Administration Vs. Roopchand & Ors. before the learned Metropolitan Magistrate for alleged offence under Section 16(1)(1A) read with Section 7 of the Act against the accused persons, namely, Roop Chand, M/s.Rohit Distributors Pvt. Ltd. and NDDB holding that the offences are triable by the learned Sessions Court. During the pendency of the

case, another complaint was filed on 18.03.1999 before the learned Metropolitan Magistrate pertaining to the same offence as the first complaint, with additional accused persons including the present petitioner. The learned Magistrate, vide order dated 22.03.1999, took cognizance of the same offence again and summoned the accused persons including the present petitioner. The learned ASJ was pleased to summon the file on the second complaint titled Delhi Administration Vs. Dharambir Jain & Ors. from the Court of the learned Metropolitan Magistrate and thereafter, passed an order on 06.05.2004 discharging the three accused companies i.e. M/s Rohit Distributor Pvt. Ltd., M/s.GCMMF and NDDDB holding that they cannot be prosecuted as being juristic persons. On 11.05.2004, the learned ASJ directed the framing of the charges against the present petitioner for commission of offences punishable under Section 16(1)(1A) read with section 7 of the Act, and

hence, the present petition under Section 482 Cr.P.C was filed for setting aside the impugned order dated 11.05.2004 and quashing of the complaint itself.

8. I have heard Mr.Dinesh Mathur, the learned senior counsel for the petitioner as well as Ms.Jasbir Kaur, the learned APP and have gone through the record.
9. Mr.Mathur, the learned senior counsel for the petitioner has raised three contentions. The first contention which has been raised by the learned senior counsel is that the cognizance of an offence can be taken only once. In the instant case, the complaint under Section 7 read with Section 16(1) (1A) of the Act was filed, of which cognizance was taken by the learned Magistrate and notice was issued to the three respondents, namely, Madan Lal of M/s.Popular Store, vendor-cum-proprietor or M/s.P.K.Agency supplier and National Diary Development Board, manufacturer. It was further contended that it was not open to the learned Magistrate

to entertain the second complaint in respect of the same incident and issue notices to the accused persons afresh.

10. The second contention was that the offence under the Act is triable by Magistrate and it could not be tried by the Sessions Court, therefore, the second complaint which was filed for transfer to the Sessions Court, of which the cognizance was taken by the learned Sessions Court was not sustainable.
11. The third contention of Mr.Mathur, the learned senior counsel was that once the first complaint was filed by the Department of Prevention of Food Adulteration under Section 16(1) (1A) read with section 7 of the Act and the cognizance was taken, the accused had a right under Section 13(2) of the Act to get the sample tested afresh by the public analyst. It has been contended that once the report of the Central Food Laboratory on the second sample was given by the said organization then that report superseded the report of the public analyst. It

has also been contended that in the instant case, the learned Magistrate, by entertaining the second complaint has practically entertained the complaint based on the second sanction purported to have been granted by the sanctioning authority on the basis of a public analyst report which stands superseded and such a procedure followed by the learned Magistrate was totally illegal and not in consonance with the provisions of law.

12. The learned APP could not refute any of the contentions and left to the Court to pass such orders as may be deemed fit under the facts and circumstances of the case.
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 myself in agreement with the contentions raised by the learned counsel for the petitioner. The cognizance of an offence can be taken only in terms of Section 190 of

Cr.P.C. One of the modes for taking cognizance is on the basis of a complaint. It may be also pertinent here to mention that a cognizance of an offence can be taken only once, therefore, once the complaint is filed under the Act, in the instant case, being the first complaint against the three accused, namely, Madan Lal of M/s.Popular Store, vendor-cum-proprietor or M/s.P.K.Agency supplier and National Dairy Development Board, manufacturer, the second complaint was totally barred and accordingly the cognizance of the second complaint or the second offence in the second complaint against the new accused persons could not have been taken. The cognizance of the offence against the new accused persons in such an eventuality could be taken only during the course of trial in pursuance to Section 319 Cr.P.C. in case the evidence would have come up against them.

15. The petitioner in the instant case had rightly agitated before the learned Magistrate that the second complaint could not have been filed, and therefore, they ought to have been discharged in respect of the second complaint, but this request was rejected by the learned Magistrate on 26.9.2003. Curiously enough, the revision was also dismissed by the learned Sessions Judge by giving an erroneous interpretation to the provisions of law. The learned Additional Sessions Judge relied upon Section 173(8) Cr.P.C., which permits the filing of a supplementary charge-sheet in a police case. There is a distinct procedure prescribed under the Code of Criminal Procedure for a police case and a complaint case. The Magistrate or much less a court of Sessions cannot follow two different procedures and try an accused person by amalgamating two different procedures. So far as Section 173 (8) of Cr.P.C. is concerned, it appears under the Chapter XII of the Cr.P.C. under the heading

'investigation', it comes into operation in a situation when an offence which is cognizable is registered by the police and an FIR is registered that the law envisages filing of a charge sheet and a supplementary charge sheet. When the cognizance is taken on the basis of a complaint, the Magistrate has to follow a procedure prescribed under Section 200, 202 and 204 and not under Section 173 Cr.P.C. This kind of amalgamation of two different kinds of procedures by the learned Sessions Judge has caused serious prejudice to the accused. The first complaint which was filed in the instant case was held by the learned Additional Sessions Judge to be permitted as a complaint against the vendor and the supplier, while as the second complaint can be treated against the manufacturer and the distributor. With utmost respect to the reasoning of the learned Sessions Judge, such an interpretation is erroneous. It is not open to the Judge to contend that the first complaint is

against the vendor and the supplier specifically when the manufacturer was made a party in the first complaint itself. Moreover, under the Prevention of Food Adulteration Act only one complaint is filed by the Department against all the accused persons whether they are vendors, suppliers, distributors or manufacturers. There is no provision in Cr.P.C. for filing of a second complaint which may be akin to the filing of a supplementary charge-sheet in a police case. Therefore, I feel the reasoning given by the learned Magistrate as well as the learned Sessions Judge in this regard was totally erroneous. I am of the view that only the first complaint against the petitioner was sustainable.

16. The second contention of the learned senior counsel for the petitioner that the procedure followed by the Magistrate has caused serious prejudice to him in as much as his application for sending a second sample of

mustard oil to Central Food Laboratory for which an application was filed was still pending and simultaneously a second complaint was entertained which was also illegal. The petitioner, on receipt of the first complaint, had appeared in the Court and exercised his right to get the second sample of the mustard oil examined. This application was kept in abeyance and in the second case the application was allowed and the mustard oil was sent to the Central Food Laboratory. In both these contingencies, it has caused prejudice to the accused persons. In the first case, where the sample was not sent for analysis by the Court, a prejudice was caused in as much as with the passage of time the sample has become old and putrid and even if the sample is tested today, obviously, it will not result favourably for the petitioner because of chemical changes which would have taken place in the oil over the period of time. Therefore, in such a contingency, the

petitioners right to have the second sample examined from the Central Food Laboratory has been defeated and a prejudice has been caused to him of the benefit of sending the second sample to the Central Food Laboratory. In the second case, the second sample was analyzed by CFL and the report received from them superseded the report of the public analyst. Once the report of the public analyst is superseded, the second complaint in which the sanction was accorded on the basis of the public analyst report, becomes non-est because the second sanction which had been granted by the Court on the basis of report which was superseded and which cannot be taken cognizance of. On this ground also, I feel that the second complaint against the petitioner is not maintainable as the cognizance of the offence is already taken once. Moreover, the second complaint is filed on the basis of a sanction obtained on the basis of a public analyst report because by the time

the sanction for filing the certain complaint was reached, the report of the Central Food Laboratory had already been received and the report of the Public Analyst had already been superseded.

17. For the reasons mentioned above, I feel that the order dated 11.05.2004 in Crl.R.P.No.321/2004 and the orders dated 04.09.2004 and 26.07.1999 in Crl.M.C. No.2695/2004 passed by the learned Magistrate as well as by the learned Additional Sessions Judge with regard to entertaining the second complaint are liable to be set aside. As a matter of fact, the second complaint ought not to have been filed as the matter is old and a lot of time has already gone by, the sample has become itself putrid. Thus, no useful purpose would be served by putting the petitioner to trial.
18. I, therefore, in the interest of justice quash the entire proceedings in respect of both the cases. Accordingly, the order dated 11.05.2004 in Crl. R.P. No.321/2004 and

the orders dated 04.09.2004 and 26.07.1999 in Crl.M.C.
No.2695/2004 are set aside.

19. Accordingly, both the petitions are allowed.

V.K. SHALI, J.

MARCH 15, 2012
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