

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No 331 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- SAMASTIPUR

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M/s Parmatma Allied Feed Co Pvt Ltd having its registered office at Industrial Area, Mohanpur, Samastipur, Distt. Samastipur through its Director, Malti Devi w/o Sri Dinesh Prasad Resident of vill. - Mathurapur, P.S. Warisnagar, Distt. - Samastipur

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, Samastipur
2. Shri Sudhir Kumar Singh, The Sub Divisional officer, Samastipur
3. Ajay Kumar, Food Safety officer, Darbhanga Division, Darbhanga
4. The Superintendent of Police, Samastipur
5. The officer In - Charge, Mushrigharari Police Station, Samastipur

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Alok Kr Agarwal & Ruchi Mohanka, Advocates

For the Respondent/s : Mr A P Singh, SC XV & Mr S K Ranjan, AC to SC XV

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

Date: 26-05-2015

Regrettably, inspite of adjournments having been granted, State has chosen not to file any counter affidavit. The matter, being urgent, has been ordered to be taken up by the Vacation Judge. It is, accordingly, taken up by the Vacation Judge.

2 The petitioner has a registered small scale industry unit manufacturing poultry feed and cattle feed. The raw materials for poultry feed and cattle feed, inter alia, include vegetable oil, mustard oil. The Food Safety Officer, purportedly exercising power under the

Food Safety Standards Act, 2006 (for brevity, *the Act*) raided the premises of the petitioner and on an allegation, that it was manufacturing adulterated vegetable oil for selling in the market, sealed the factory premises itself.

3 Petitioner, apart from challenging on merits the prosecution that is sought to be lodged, has restricted the relief to unsealing of the factory on the ground that the power to search and seize under the Act, is contained in Section 41 of the Act and it nowhere authorizes the officer to seal the factory premises itself. If he suspected any “food” to be adulterated, he had the jurisdiction to seize those items and, upon analysis, institute prosecution but nothing of that sort was done. The Food Safety Officer took samples of mustard oil, vegetable oil found therein, sent it for analysis and sealed the entire factory. Learned counsel for the petitioner further states that even the analysis report, which has since been received, clearly discloses no adulteration at all. Thus, the question remains what is the offence and whether the officer had the authority to seal the factory. Prima facie, in view of the report of the food analyst, no offence can at all be said to have been committed but that would be a subject matter of proceedings that have been initiated pursuant to the first information report lodged.

4 However, it is the authority of the Food Safety

Officer which is being challenged. The first thing to be seen is what is food because if something is not food then there is no jurisdiction on the Food Safety Officer to take any action. Food is defined under Section 3 (j) of the Act:

“:food” means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food to the extent defined in clause (zk), genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances:

Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, nature, substance or quality;”

5 Thus seen, the definition of food is restrictive to food for human consumption. Surely, cattle feed and poultry feed are not meant for human consumption. Petitioner was using food items that is mustard oil, vegetable oil as raw materials. They are not sold by it. No one has found it selling. A further reading of the said definition would show that food includes primary food. Primary food

is defined in Section 3 (zk) to mean primary agriculture produce. Mustard oil, vegetable oil are not again primary food. Now we may come to Section 41 which reads as under:

“41. Power of search, seizure, investigation, prosecution and procedure thereof.-(1) Notwithstanding anything contained in sub-section (2) of section 31, the Food Safety Officer may search any place, seize any article of food or adulterant, if there is a reasonable doubt about them being involved in commission of any offence relating to food and shall thereafter inform the Designated Officer of the actions taken by him in writing:

Provided that no search shall be deemed to be irregular by reason only of the fact that witnesses for the search are not inhabitants of the locality in which the place searched is situated.”

6 This is the only power given on the Food Safety Officer to search, seize, investigate, prosecute. A reference to the said provision would show that he has the power to search any place but seize only articles of food or adulteration but there is no provision authorizing him to seal a factory premises. Even if I refer to the provisions of the Code of Criminal Procedure, there is no such power conferred on any authority. Thus, clearly on both these issues, the Food Safety Officer, Samastipur has exceeded his jurisdiction.

7 In that view of the matter, this Court has no option but to hold that sealing of the factory premises is wholly illegal and

unauthorized. It is, accordingly, directed that the Food Safety Officer, Samastipur would forthwith unseal the factory premises and would not create any further impediment in working of the petitioner's factory. The articles of food like mustard oil and vegetable oil, which were found there and samples already taken, had already been tested and no adulteration was found, they also cannot be made subject matter of seizure any more. They have to be released to the petitioner.

8 Thus, in terms aforesaid, this writ petition is finally disposed of.

(Navaniti Prasad Singh, J)

M.E.H./-AFR

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