

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-24994 of 2014 (O&M)
Date of Decision: February 18, 2015

Harsh Thakur

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.H.K.Aurora, Advocate
for the petitioner.

Mr.S.S.Chandumajra, Deputy Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of FIR No.157 dated 27.10.2010 under Sections 420, 482, 272 IPC (Section 272 added later on) registered at Police Station Sadar, District Hoshiarpur and subsequent proceedings arising therefrom.

It is mainly stated in the petition that on 27.10.2010, Dr.Harjot Pal Singh, Food Inspector under the supervision of Dr.Yash Mitra, District Health Officer visited the premises of the petitioner and carried out an inspection. At the time of inspection, 206 tins of Vanaspati Ghee weighing 15 kgs. each, 9 tins of Ghee weighing 15 kgs. each, two big containers having capacity of 16 kgs. of ghee, 217

plastic jars of Mohan Ghee, 10 plastic jars, Gopi Ghee, 3 plastic jars of Gopi Ghee ($\frac{1}{2}$ litre each) and 21 packets of Shaktiman Ghee besides equipments relating to packing, selling and preparation of Ghee were allegedly found from his possession. Dr.Harjot Pal Singh, Food Inspector, alleged in his complaint that this Ghee was being used by petitioner for sale to public for human consumption. A sample drawn from the Ghee, was found to be adulterated. Consequently, the Food Inspector filed four complaints against the petitioner under Section 7/16 of the Prevention of Food Adulteration Act, 1954 and under Rules 32 and 50 of the Prevention of Food Adulteration Rules, 1955 in the Court of learned Chief Judicial Magistrate, Hoshiarpur on 02.07.2011. During the course of evidence, the petitioner confessed his guilt and on the basis of his confession, he was held guilty for the offence under Section 7/16 of the Prevention of Food Adulteration Act, 1954 and his period of imprisonment already undergone by him was ordered to be set off against substantive sentence vide judgment dated 07.03.2013. Learned trial Court also directed that the petitioner should be released on probation on furnishing probation bonds in the sum of ₹15,000/- for six months under Section 4(i) of Probation of Offenders Act, 1958 and further the petitioner was directed to pay litigation expenses to the tune of ₹5,000/-.

It is further stated in the petition that on the same set of allegations, the police has also registered a separate FIR No.157 dated 27.10.2010 against the petitioner under Sections 420 and 482 IPC at Police Station Sadar Hoshiarpur, on the basis of secret

information. After registration of the FIR, police has presented the challan. Learned trial Court has framed the charges vide order dated 14.11.2011. It is further stated in the petition that FIR and the subsequent proceedings against the petitioner are liable to be quashed.

Notice of motion was issued and learned State counsel appeared, filed reply and contested the petition.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

From the record, I find that Annexure P-1 is the judgment passed by learned Chief Judicial Magistrate, Hoshiarpur passed in the complaint under Section 7/16 of Prevention of Food Adulteration Act, 1954 and under Rule 32, 50 of the Prevention of Food Adulteration Act Rules, 1955 filed by State through Government Good Inspector against Harsh Thakur on the facts that on 27.10.2010, complainant under the supervision of Dr.Yash Mitra, District Health Officer, Hoshiarpur visited the premises of accused and 206 tins of Vanaspati Ghee etc. were found as stated above. The judgment dated 07.03.2013 passed by learned CJM, Hoshiarpur shows that accused confessed his guilt during the trial and the Court has convicted him and released him on probation on furnishing probation bonds in the sum of ₹15,000/- for six months under Section 4(i) of Probation of Offenders act, 1958 and he is directed to pay litigation expenses to the tune of ₹5,000/-. Annexure P-5 is the FIR, which has been registered on the basis of secret information against Deepak Thakur

and Harsh Thakur that in connivance with their employee Gurdeep Singh, after mixing some quantity of Desi Ghee in Vanaspati Ghee are putting them in the tins of Ghee and plastic boxes and selling the same by putting labels of Khalas Desi Ghee of different registered companies and they are playing with the health of the people and are cheating the public by selling fake Desi Ghee. It is in the FIR itself that after registering the case, the Investigating Officer along with SHO of Police Station along with his staff, have gone to place of occurrence on 27.10.2010 i.e. on the same day as stated in the complaint case filed by the Government Food Inspector. The perusal of the FIR further shows that DHO and his staff was also along with the police party. In the complaint case under Section 7/16 of the Prevention of Food Adulteration Act, this DHO was also present when the samples etc. were drawn. When there is specific statue to deal with commission of offence of such type of nature and there is separate procedure given in the statue itself, as to which authority can file the complaint, how to search is made out and how to launch the prosecution etc., then the FIR cannot be registered. The Food Inspector, who is the authorized person under the Prevention of Food Adulteration Act, 1954, has already filed the complaint against the present petitioner, which has already been decided by convicting the petitioner and by releasing him on probation by learned CJM, Hoshiarpur. For the same occurrence, the present petitioner cannot be tried again in the FIR case.

From the perusal of the complaint as well as FIR, it is clear

that occurrence is of 27.10.2010. The facts of the complaint as well as the FIR are the same. DHO along with his staff was present in both the cases. After the decision of the complaint case, this FIR case cannot be proceeded further on the same set of facts and allegations against the petitioner. As per Section 26 of the General Clauses Act, 1897, where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

Learned counsel for the petitioner has placed reliance on the judgment passed by this Court in ***Shiv Kumar vs. State of Punjab, 2009(1) FAC 238***, in which petition was filed for quashing of the FIR on the grounds that the allegations against the petitioner fall within the ambit of Food Adulteration Act, 1954 and further that under Section 20 of the said Act, no prosecution can be launched without the written consent of the Central Government or the State Government or a person authorized by the Government in this behalf by general or special order by the Central Government or the State Government and it is held that in this behalf, the FIR under Sections 420, 269, 270 and 271 IPC cannot be proceeded with and the FIR was quashed. Learned counsel for the petitioner also cited judgment passed by the Hon'ble Patna High Court in ***Satish Mishra vs. State of Bihar and others, 2007(1) FAC 393***, in which it is held that Prevention of Food Adulteration Act, 1954 is a special statute and code in itself and by adding Sections of IPC, the police cannot make

out its own case. It is also held in this case that it has own set of authorities, which are authorized to conduct investigation, search, seizure and/or lanch prosecution in respect thereof including enquiry into the matter and the FIR was quashed.

On the same point, learned counsel for the petitioner cited judgment passed by the Hon'ble Gujarat High Court in ***Shambhu Dayal Agrawal and others vs. State of Gujarat, 2003(2) FAC 241.***

I have gone through all the above-cited judgments and the same fully apply to the facts of the present case.

In view of the above discussion, I find that registration of the FIR in the present case is wholly unjustified and abuse of process of law.

Therefore, finding merit in the present petition, the same is allowed. FIR No.157 dated 27.10.2010 under Sections 420, 482 and 272 IPC and subsequent proceedings arising therefrom are hereby quashed qua the petitioner only.

February 18, 2015
Vgulati

(INDERJIT SINGH)
JUDGE