

§~R-18 to 21

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 104/2012 & CrI.M.A.Nos. 395/2012 & 10092/2013**

PRADEEP KUMAR AGGARWAL & ORS. Petitioners
Through: Mr. S.S. Gandhi, Senior Advocate,
with Mr. Arun K. Sharma,
Advocate

versus

STATE THRU FOOD INSPECTOR (PFA) GOVT OF NCT OF
DELHI Respondent
Through: Mr.Navin Sharma, Additional
Public Prosecutor for respondent-
State

+ **CRL.M.C. 106/2012 & CrI.M.A.Nos.398/2012 & 10212/2013**

PRADEEP KUMAR AGGARWAL & ORS. Petitioners
Through: Mr. S.S. Gandhi, Senior Advocate,
with Mr. Arun K. Sharma,
Advocate

versus

STATE THRU FOOD INSPECTOR (PFA) GOVT OF NCT OF
DELHI Respondent
Through: Mr.Navin Sharma, Additional
Public Prosecutor for respondent-
State

+ **CRL.M.C. 135/2012 & CrI.M.A.Nos.493/2012 & 10091/2013**

DEEPAK AGGARWAL & ORS. Petitioners

26

Through: Mr. S.S. Gandhi, Senior Advocate,
with Mr. Arun K. Sharma,
Advocate

versus

STATE THRU FOOD INSPECTOR (PFA) GOVT OF NCT OF
DELHI Respondent

Through: Mr. Navin Sharma, Additional
Public Prosecutor for respondent-
State

+ **CRL.M.C. 136/2012 & Crl.M.A. Nos.494/2012 & 10093/2013**

DEEPAK AGGARWAL & ORS. Petitioners

Through: Mr. S.S. Gandhi, Senior Advocate,
with Mr. Arun K. Sharma,
Advocate

versus

STATE THRU FOOD INSPECTOR (PFA) GOVT OF NCT OF
DELHI Respondent

Through: Mr. Navin Sharma, Additional
Public Prosecutor for respondent-
State

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
% **21.05.2015**

In the above captioned four petitions, quashing of Complaint
No.97/11 *Department of PFA Vs. Vikas Garg etc.* [in Crl.M.C.

Crl.M.C.No.104/2012
Crl.M.C.No.106/2012
Crl.M.C.No.135/2012
Crl.M.C.No.136/2012

Page 2

27

No.106/2012]; Complaint No.178/2010 *Department of PFA Vs. Rajinder Prasad Mittal etc.* [in Crl.M.C.No.106/2012]; Complaint No.73/11 *Department of PFA Vs. Mukesh Kumar & ors.* [in Crl.M.C.No.135/2012] and Complaint No.179/10 *Department of PFA Vs. Rajiv Kumar Arora* [in Crl.M.C.No.136/2012] and impugned summoning order is sought on the ground that the seized *gutka (shikhar)* does not come within the purview of *The Prevention of Food Adulteration Act & Rules*.

Learned senior counsel for petitioner submitted that in the above captioned petitions, quashing of the impugned complaint and summoning order is sought on identical grounds, and therefore, these four petitions were heard together and are being disposed of by this common judgment.

Learned senior counsel for petitioner relies upon decisions in *Ram Babu Rastogi Vs. State through Food Inspector (PFA), Government of NCT of Delhi* 190 (2012) DLT 348; *Godawat Pan Masala Products I.P. Ltd. and anr. Vs. Union of India & ors.* (2004) 7 SCC 68 and *Joshy K. V. & ors. Vs. State of Kerala & ors.* 2013 (1) FAC 78 to submit that recovered *gutka (shikhar)* is not a food item and thus, not covered under the provisions of *The Prevention of Food Adulteration Act & Rules* and so, the complaints in question and summoning orders deserve to be quashed.

Mr. Vinod Diwkar, learned Additional Public Prosecutor for respondent-State draws the attention of this Court to the summoning order and submits that the above issue is required to be dealt with at trial. It is submitted by learned Additional Public Prosecutor for respondent-State that Notice under Section 251 of the Cr.P.C. has not yet been filed

in the complaints in question and that the petitioners have an alternate and efficacious remedy to urge the pleas taken herein before the trial court at the stage of hearing at the time of framing of Notice under Section 251 of the Cr.P.C.

Since petitioners have an alternate and efficacious remedy available to them to urge the pleas taken herein before trial court at the time of framing of Notice under Section 251 of Cr.P.C., therefore, this Court finds that inherent powers of this Court under Section 482 of the Cr.P.C. are not required to be invoked to quash the proceedings arising out of the complaints in question. It is being so said in view of dictum of the Apex Court in *Bhushan Kumar & Anr. Vs. State (NCT of Delhi) & Anr.* AIR 2012 SC 1747, which persuades this Court not to exercise inherent jurisdiction under Section 482 Cr.P.C. to entertain this petition. The pertinent observations of Apex Court in *Bhushan Kumar (Supra)*, are as under:-

"17. It is inherent in Section 251 of the Code that when an accused appears before the trial Court pursuant to summons issued under Section 204 of the Code in a summons trial case, it is the bounden duty of the trial Court to carefully go through the allegations made in the charge-sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code."

Further, on this aspect, the dictum of the Apex Court in *Krishan Kumar Variar v. Share Shoppe* (2010) 12 SCC is as under:-

"4. In our opinion, in such cases where the accused or any other person raises an objection that the trial court has no jurisdiction in the matter, the said person should file an application before the trial court making this averment and giving the relevant facts. Whether a court has jurisdiction to try/entertain a case will, at least in part, depend upon the facts of the case. Hence, instead of rushing to the higher court against the summoning order, the person concerned should approach the trial court with a suitable application for this purpose and the trial court should after hearing both the sides and recording evidence, if necessary, decide the question of jurisdiction before proceeding further with the case.

5. For the reasons stated hereinabove, the impugned judgment and order is set aside and the appeal is allowed. The appellant, if so advised, may approach the trial court with a suitable application in this connection and, if such an application is filed, the trial court shall after hearing both the sides and after recording evidence on the question on jurisdiction, shall decide the question of jurisdiction before further proceeding with the trial."

In view of authoritative pronouncement of the Apex Court in *Bhushan Kumar & Krishan Kumar (supra)*, as referred to hereinabove, inherent powers of this Court under Section 482 of the Cr.P.C. are not exercised and petitioners are relegated to urge the pleas taken herein

before the trial court at the hearing on the point of framing of Notice under Section 251 of Cr.P.C. and if it is so done, then trial court shall deal with the pleas raised herein by passing a speaking and reasoned order. At the stage of framing of Notice under Section 251 of Cr.P.C., trial court is not expected to function like a post office and to mechanically frame Notice, but is rather bound by law to apply its mind to find out whether *prima facie* case is made out against the accused or not. Similar view has been already taken by a coordinate Bench of this Court in *S.K. Bhalla V. State and Others* 180 (2011) DLT 219.

Needless to say, if the trial court finds that no case is made out against petitioners, then the decision of the Apex Court in *Adalat Prasad Vs Rooplal Jindal and Ors.* (2004) 7 SCC 338 will not stand in the way of trial court to drop the proceedings against petitioners and if trial court chooses to proceed against petitioners, then petitioners will have the remedy as available in the law. It is so said because dropping of proceedings at Notice stage cannot possibly be equated with recalling of summoning order.

Purely as an interim measure, till the arguments on the point of framing of Notice under Section 251 of Cr.P.C. are concluded, personal appearance of petitioners be not insisted upon by the trial court upon petitioners filing an application under Section 205 of Cr.P.C. alongwith their affidavit with the following undertaking: -

a. that the proceedings of the case shall be regularly conducted by

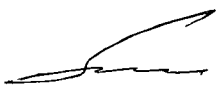
31
counsel (whose name shall be disclosed in application), who shall appear on behalf of petitioners on every hearing and will not seek adjournment;

- b. that petitioners shall not dispute their identity as accused in the case;*
- c. that the petitioners shall appear in person as and when directed in future to do so; and*
- d. that petitioners shall not raise the question of prejudice in future.*

It is made clear that if petitioners delay the proceedings before the trial court, then petitioners will not have the benefit of exemption from personal appearance extended by this Court. Let the trial court pass order on framing of Notice within three months from the date already fixed.

The above captioned four petitions and applications are accordingly disposed of with aforesaid directions while refraining to comment upon merits, lest it may prejudice either side at the hearing on the framing of Notice under Section 251 of Cr.P.C.

Dasti.


(SUNIL GAUR)
JUDGE

MAY 21, 2015

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