

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 71 OF 2015
WITH
CRIMINAL APPLICATION NO. 4911 OF 2015

Surendra Laxmichand Lodaya (Jain) & Anr. .. Petitioners

Versus

The State of Maharashtra & Ors. .. Respondents

Mr. B.R. Waramaa, Advocate for the petitioners.
Mr. S.G. Karlekar, A.P.P. for respondent/State.

CORAM : A.V.NIRGUDE &
INDIRA K. JAIN, JJ.
DATED : 07.03.2016

P.C. :-

1. Heard. Rule, made returnable forthwith and heard finally with the consent of learned Counsel appearing for the parties.

2. The applicants are accused in Crime No.382 of 2014 registered at Chalisgaon Police Station, Dist. Jalgaon, for offence punishable under section 272, 273 and 420 r/w 34 of the Indian Penal Code and section

26(1), 26(2)(i), 27(1), 27(2)(c) r/w 3(1)(zz)(V) and 59 (3) of the Food Safety and Standards Act, 2006 (for short "the said Act").

3. In usual course of business, the Food Safety Officer collected samples from the petitioners' dairy. The sample was sent to food analysis. The analyst opined that the sample was not safe for human consumption. It contained sugar and it did not contain sufficient amount of milk fat. After the report was received, second sample was sent for Central Laboratory, where opinion came that the milk was of sub-standard quality. On receipt of first opinion, the Food Safety Officer rushed to the Police Station and lodged complaint alleging the offences as mentioned above.

4. Questions before us is – Whether the Food Safety Officer could have gone in a case of this nature to the police station for lodging complaint? The answer is in negative.

5. The said Act is complete code in itself. The Food Safety Officer is empowered to collect samples and send them for food analysis. There are definitions of terms "unsafe food" and "sub-standard food". In-case a person is found manufacturing or selling or storing etc.

unsafe food, same is made punishable under section 59 of the Act. Such offence is made punishable with imprisonment of six months minimum. There are aggravated forms of offence punishable under section 59 of the Act. But, in-case a person is found manufacturing or selling or storing etc. sub-standard food, there is only penalty provided under section 51 of the Act. The adjudication about levying penalty is also in-house mechanism. The designated officer of the District is empowered to adjudicate such case and impose penalty under section 68 of the Act.

6. In this case, though initially Food Safety Officer rather unnecessarily rushed to police station and lodged complaint, subsequently when the sample in this case was branded as sub-standard, the designated officer adjudicated the case u/s 68 of the Act and imposed penalty u/s 51 of the Act. He wrote reasoned judgment, which is produced on record. In view of these facts, it is clear that earlier allegation about "unsafe food" stood withdrawn. Now the sample was found "sub-standard" for which civil penalty is provided u/s 51 of the Act. We hold that at-least in this case, the Food Safety Officer was not justified in filing complaint with police. If such complaint is filed, such complaint should be either withdrawn or should be quashed by us.

7. The writ petition is allowed in terms of prayer clauses (A) to (D) of the petition. Rule made absolute accordingly.

8. In view of disposal of the writ petition, connected criminal application does not survive and stands disposed of accordingly.

[INDIRA K. JAIN,J.]

[A.V.NIRGUDE,J.]