

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.283 OF 2016

Anil s/o Shrikrishna Agarwal,
Age 49 years, Occu. Business,
Proprietor of Radhakrishna
Industries, Plot No. E-14, M.I.D.C.,
Latur, District Latur

.. Petitioner

Versus

1. The State of Maharashtra,
through M.I.D.C. Police
Station, Latur, District Latur
2. The Food Inspector,
Food & Drug Administration,
Administrative Building, Latur,
District Latur

.. Respondents

Smt. Anjali Bajpai (Dube), Advocate for petitioner
Mr N.T. Bhagat, A.P.P. for respondents No.1 and 2

CORAM : V.K. JADHAV, J.

DATE : 3rd August 2016

PER COURT

Heard both sides.

2. Being aggrieved by the order passed by the Additional Sessions Judge, Latur dated 21st July 2015 in Criminal Revision No.47 of 2012, confirming the order passed by the Chief Judicial Magistrate, Latur against the present petitioner/accused below Exh.119 on 15th March 2012, thereby framing charge against the petitioner/accused, the petitioner has preferred this petition.

3. Brief facts, giving rise to the present Writ Petition are as follows:

4. The petitioner runs a proprietary firm at Latur. The respondent No.2 - Food Inspector had visited the shop of the petitioner and collected some of the tea powder. In due course, the same had been sent to public analyst at Pune and on receiving the report of sample, being sub-standard, the respondent - Food Inspector filed complaint to Police Station, M.I.D.C. Latur on 18th December 2002 bearing F.I.R. No.3022/2002, After due investigation, the Police submitted charge-sheet against the petitioner/accused before the Judicial Magistrate, First Class, Latur, which is registered as R.C.C.No.7 of 2003. The petitioner/accused has raised an objection for framing of charge being in contravention of provisions of Section 20 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act of 1954' for brevity), by filing application Exh.33. Learned Judge of the trial Court, vide order dated 19th November 2008, rejected the said application below Exh.33. Being aggrieved by the said order passed below Exh.33, the petitioner/accused preferred Criminal Revision No.12/2009 before the Sessions Court, Latur. The said revision came to be allowed by setting aside the order passed below Exh.33, however, while setting aside the said order, the revisional Court directed the Judicial Magistrate, First Class - 2, Latur to serve the notice on the complainant, who is Food Inspector - respondent No.2 with a specific direction to present the complaint, as provided under Section 20 of the Act of 1954. Thereafter, the said R.C.C. No.7 of 2003 came to be transferred to Chief Judicial Magistrate, Latur and renumbered as R.C.C. No. 298 of 2009. On 15th March 2012, the prosecution filed an

application Exh.99 stating therein that there is confusion regarding the complaint being a private complaint or Police complaint and further prayed that the charge be framed against the petitioner/accused. The said application came to be opposed by the present petitioner/accused on the ground that the application Exh.99 is not tenable in view of the specific directions given by the Sessions Judge in Criminal Revision No.12 of 2009, as aforesaid. However, the learned Chief Judicial Magistrate, Latur by order dated 15th March 2012, vide Exh.119 framed the charge against the petitioner/accused for the offence punishable under Section 272 of the Indian Penal Code.

5, Being aggrieved by the said order of framing of charge vide Exh.119, the petitioner/accused preferred Criminal Revision No.47 of 2012 before the Sessions Court, Latur. The learned Additional Sessions Judge by order dated 21st July 2015, dismissed the Criminal Revision by confirming the order passed by learned Chief Judicial Magistrate, Latur below Exh.119. Hence, this writ petition.

6. Learned Counsel for the petitioner/accused submits that in Criminal Revision No.12 of 2009, the Ad hoc Additional Sessions Judge-2, Latur, in paragraph 10 of the judgment has observed that the submissions made on behalf of the State are not justified in respect of the prosecution under Section 272 of the Indian Penal Code. Provisions of Section 272 of Indian Penal Code are general provisions, whereas the offence punishable under Section 16 of the Act of 1954 is a specific enactment. Thus, the complaint under Section 272 of the Indian Penal Code would not be attracted. Thus, the learned Ad hoc Additional Sessions Judge - 2, Latur has directed the Magistrate to

issue notice to the complainant - Food Inspector concerned, to take recourse of the Code of Criminal Procedure and present the complaint in accordance with law. The revision is thus partly allowed to the extent of directions, as aforesaid and partly dismissed to the extent of prayer of discharge. Learned Counsel submits that the revision is partly dismissed to the extent of prayer of discharge so far as the provisions of Section 16 of the Act of 1954 are concerned. So far as Section 272 of the Indian Penal Code is concerned, it seems from the observations made by Ad hoc Additional Sessions Judge - 2, Latur in paragraphs No.10 and 11 of the judgment that the petitioner/accused has been discharged for the offence punishable under Section 272 of the Indian Penal Code. Learned Counsel submits that otherwise also, the charge under Section 272 of the Indian Penal Code cannot be attracted in the given set of allegations. The report of the public analyst is placed on record and as per the opinion expressed in the said report, the sample does not conform to the standards of tea as per the provisions of Food Adulteration Rules 1955. It has nowhere stated in the said report that the said sample is noxious food or drink, as contemplated under Section 272 of the Indian Penal Code. The said report along with its accompaniments is taken on record and marked as 'X' for the purpose of identification. Learned Counsel further submits that in view of the provisions of Section 20 of the Act of 1954, the prosecution for an offence under Section 16 of the Act can be instituted only with the consent of the Central Government or State Government or a person authorised in this behalf by general or special order by the Central Government or State Government. Learned Counsel submits that even though the revisional Court in

Criminal Revision No.12 of 2009 has given specific directions to the Magistrate to serve the notice on the complainant – Food Inspector for presenting the complaint as contemplated under Section 20 of the Act of 1954, in accordance with law and even though in compliance of the said directions, the notice was given to the respondent-Food Inspector by the learned Magistrate, the respondent-Food Inspector has not complied with the said directions. Learned Counsel submits that in view of this, the petitioner/accused is also required to be discharged for non-complying the provisions of Section 20 of the Act of 1954 as well as not obeying the directions given by the Additional Sessions Judge in Criminal Revision No.12 of 2009. He submits that in the backdrop of this, the entire approach of the Chief Judicial Magistrate, while framing the charge under Section 272 of the Indian Penal Code against the petitioner and further confirming the said order by the Ad hoc Additional Sessions Judge-2, Latur in Criminal Revision No.47 of 2012 is not proper, correct and legal. Both the orders are thus liable to be quashed and set aside.

7. Learned A.P.P. submits the respondent-Food Inspector, Latur, in compliance with the order of the revisional Court in Criminal Revision No.12 of 2009, filed an application Exh.118 dated 3rd March 2012 before the learned Chief Judicial Magistrate, Latur pointing out therein that the written consent from the proper authority has been taken and then the complaint has been lodged and, therefore, there is no need to take consent again from the said authority. Learned A.P.P. submits that therefore, order of framing the charge vide Exh.119 and further, the order passed by the revisional Court in Criminal Revision No.47 of

2012 requires no interference. There is no substance in the writ petition and the same is liable to be dismissed.

8. Upon perusal of the order passed by the Ad hoc Additional Sessions Judge-2, Latur in Criminal Revision No.12 of 2009, it appears that the learned Ad hoc Additional Sessions Judge has partly accepted the prayer of discharge so far as the complaint against the petitioner under Section 272 of the Indian Penal Code is concerned. So far as the charge under Section 16 of the Act of 1954 is concerned, in the fitness of the things, the learned Judge has directed the Magistrate to issue notice to the complainant-Food Inspector concerned directing him to take the recourse of the Code of Criminal Procedure and present the complaint in accordance with law. It further appears from the record that the learned Chief Judicial Magistrate, Latur, by order dated 25th November 2011, issued notice to the complainant-Food Inspector in compliance with the order passed by the Sessions Court in Criminal Revision No.12 of 2009 dated 9th December 2009. In view of above, the order passed by the Chief Judicial Magistrate, Latur dated 15th March 2012 below Exh.119 framing charge against the petitioner/accused for the offence punishable under Section 272 of the Indian Penal Code is illegal, incorrect and improper. The said order below Exh.119 is also not sustainable in view of the report of the public analyst placed on record before this Court, which is marked as 'X' for identification. The said report only speaks about the sample not conforming the standards of tea as per the provisions of Food Adulteration Rules, 1955. So, the report does not speak anything

about the article being noxious, as contemplated under Section 272 of Indian Penal Code. Thus, in view of the order passed by the revisional Court in Criminal Revision No.12 of 2009, which has attained finality and in view of report of public analyst, as aforesaid, the order passed below Exh.119 is liable to be quashed and set aside. Consequently, the order passed by the Additional Sessions Judge, Latur on 21st July 2015 in Criminal Revision No.47 of 2012 is also required to be quashed and set aside, for the reason that the learned Additional Sessions Judge, Latur has treated the said Criminal Revision No.47 of 2012 as an appeal in disguise against the judgment and order passed by equally competent Court in Criminal Revision No.12/2009.

9. Learned A.P.P. has pointed out that by an application Exh.118 dated 3rd March 2012, the respondent-Food Inspector, in compliance with the order passed by the revisional Court in Criminal Revision No.12 of 2009 pointed out to the learned Chief Judicial Magistrate that the written consent from the proper authority has already been taken and the complaint has been lodged in accordance with law. It has to be considered here that initially, the complaint came to be lodged under the provisions of the Act of 1954 as well as under the provisions of Section 272 of the Indian Penal Code. Consequently, the investigation has been carried out by the police and accordingly, charge-sheet was submitted before the Court. If the directions given by the revisional Court in Criminal Revision No.12 of 2009 are complied with by the respondent-Food Inspector, Latur, the Magistrate is bound to dispose of the case in accordance with law by considering the case under Section 16 of the Act of 1954 from the stage of

framing of the charge against the petitioner/accused. In view of above discussion, I proceed to pass the following order :

ORDER

- (I) Criminal Writ Petition is hereby partly allowed;
- (II) The order passed below Exh.119 dated 15th March 2012 in R.C.C.No.298 of 2009 by the Chief Judicial Magistrate, Latur and the judgment and order passed by Additional Sessions Judge, Latur in Criminal Revision No.47 of 2012 are hereby quashed and set aside;
- (III) The learned Magistrate may proceed with the case for the offence punishable under Section 7 (i) read with Section 2 (ia)(a), Section 7 (i) read with Section 2 (ia) (c) and Section 7 (i) read with Section 2 (ia) (h) read with Section 16 of the Act of 1954, from the stage of framing of the charge against the petitioner/accused, in compliance with the directions given by the Sessions Court in Criminal Revision No.12 of 2009 dated 9th December 2009.
- (IV) Criminal Writ Petition is accordingly disposed of.

(V.K. JADHAV, J.)

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