

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.54273 of 2013

Arising Out of PS.Case No. -275 Year- 2012 Thana -FATUHA District- PATNA

=====

1. Madhu Sudan Prasad, S/O Jhagaru Prasad, resident of village- Paharpur, P.S. Chandi, District Nalanda (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Umesh Kumar Singh, Advocate

For the Opposite Party/s : Mr. Shyam Kumar Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 10-05-2017

1. The petitioner is aggrieved by the order dated 12.11.2013 passed by the Additional Sessions Judge XIV-cum-Special Judge, Food Safety Act, Patna, in Special Case No.10 A of 2012 by which he has refused to release 25 tins *Ghee* allegedly seized by the Food Safety Officer.

2. Heard learned counsel for the petitioner and the learned APP for the State.

3. From the impugned order, it appears that the learned Court below has rejected the petition mainly on the ground that the seized *Ghee*, on examination, was found to be sub-standard. The report of the Food Analyst is annexed as Annexure-5 in which it has been mentioned that the sample of *Ghee* does not confirm the prescribed specification under item no.2.1.10 (2 of FSSR-2011) and,



hence, it is substandard.

4. Learned court below has mentioned in the impugned order that in terms of Section 38(4) of the Food Safety and Standards Act, 2006, if the Food Safety Officer is satisfied that such articles of food is so deteriorated that it is unfit for human consumption, he may after giving notice in writing to the food business operator, cause the same to be destroyed. The Food Analyst has mentioned in the report that the seized *Ghee* is substandard but it is not mentioned that it is unfit for human consumption.

5. Counsel for the petitioner has read out Section 3(zx) of the Food Safety and Standards Act, 2006, in which “sub-standard” has been defined in following terms:

“3(zx) “sub-standard”, an article of food shall be deemed to be sub-standard if it does not meet the specified standards but not so as to render the article of food unsafe;”

6. In such circumstances, since *Ghee* is perishable item, there is only two options available to the Court below; first, either to release the same if it is fit for human consumption or to direct the Food Safety Officer after giving notice in writing to the food business operator to get it destroyed in terms of Section 38(4) of the Food Safety and Standards Act, 2006.

7. It has been submitted that *Ghee* has been kept in



Fatuha Police Station since 2012 after its seizure.

8. In view of such, this application is disposed off with direction to the Court below to seek report from the Food Safety Officer whether the seized *Ghee* is fit for human consumption and in the event, report is received that it is unfit for human consumption, he will direct the Food Safety Officer to take appropriate steps in terms of Section 38(4) of the Food Safety and Standards Act, 2006, for destroying the *Ghee*. In the event, seized *Ghee* is found fit for human consumption, the Court below will release the same in favour of the petitioner to its own satisfaction on such terms and conditions as it may think fit and proper.

9. The Court below will pass final order in matter within a period of three months from the date of receipt/production of a copy of this order in terms of the direction/observation made above by this Court.

10. This application is, accordingly, disposed off.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	18-05-2017
Transmission Date	18-05-2017

