

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 31.08.2017

Order Passed on : 15.09/2017

W.P.(CR). No. 119 of 2016

1. Ramesh Sharma, S/o. Late Shri Jagdish Sharma, Aged About 43 Years, R/o. Ward No. 5, P.O. Ratanpur, Thana -Ratanpur, Distt -Bilaspur (Chhattisgarh)
2. Smt. Jhula Bai, W/o Shri Puni Das Manikpuri, Aged About 50 Years, President, Vridheshwarnath Mahila Swa Sahayata Samuh, Ward No. 5, Ratanpur, Distt. Bilaspur (Chhattisgarh)
3. Smt. Savita Bai, W/o. Rajesh Sharma, Aged About 48 Years, Secretary, Vridheshwarnath Mahila Swa Sahayata Samuh, Ward No. 5, Ratanpur, Distt. Bilaspur (Chhattisgarh)
4. Smt. Anjani Soni, W/o. Raj Kumar Soni, Aged About 35 Years, Member, Vridheshwarnath Mahila Swa Sahayata Samuh, Ward No. 5, Ratanpur, Distt. Bilaspur (Chhattisgarh)
5. Smt. Madhu Soni, W/o. Diharan Soni, Aged About 32 Years, Member Vridheshwarnath Mahila Swa Sahayata Samuh, Ward No. 5, Ratanpur, Distt. Bilaspur (Chhattisgarh)
6. Smt Bahora Bai, W/o. Rajendra, Aged About 35 Years, Member, Vridheshwarnath Mahila Swa Sahayata Samuh, Ward No. 5, Ratanpur, Distt Bilaspur (Chhattisgarh)
7. Smt Indira Bai, W/o. Raj Kumar Yadav, Aged About 50 Years, Member, Ward No. 5, Ratanpur, Distt. Bilaspur (Chhattisgarh)
8. Smt Phool Bai, Aged About 70 Years, (Member of Mahila Swa Sahayata Samuh), Ward No. 5, Ratanpur, Distt. Bilaspur (Chhattisgarh)
9. Smt. Basanti Bai, W/o. Dinesh Pahariya, Aged About 27 Years, (Member Of Mahila Swa Sahayata Samuh), Ward No. 5, Ratanpur, Distt. Bilaspur (Chhattisgarh)
10. Smt Usha Sharma, W/o. Rakesh Sharma, Aged About 46 Years, Member, Vridheshwarnath Mahila Swa Sahayata Samuh, Ward No. 5, Ratanpur, Distt Bilaspur (Chhattisgarh)
11. Smt Usha Sharma, W/o. Rakesh Sharma, Aged About 46 Years, Member, Vridheshwarnath Mahila Swa Sahayata Samuh, Ward No. 5, Ratanpur, Distt Bilaspur (Chhattisgarh)
12. Smt Khor Baharin, W/o. Shiv Shankar Yadav, Aged About 60 Years, (Member Of Mahila Swa Sahayata Samuh), Ward No. 5, Ratanpur, Distt. Bilaspur (Chhattisgarh)

13. Smt Pooja Yadav, W/o. Anil Yadav, Aged About 23 Years, Member, Vridheshwarnath Mahila Swa Sahayata Samuh, Ward No. 5, Ratanpur, Distt. Bilaspur (Chhattisgarh)
14. Smt. Lalita, Aged About 26 Years, (Member of Mahila Swa Sahayata Samuh), Ward No. 5, Ratanpur, Distt. Bilaspur (Chhattisgarh)

---- Petitioners

Versus

1. State Of Chhattisgarh, Through : Its Secretary, Department of Food Safety Standard, Mantralaya, Mahanadi Bhawan, Block 1, Fourth Floor, New Raipur (Chhattisgarh) 492002
2. The Secretary, Ministry of Women and Child Development Department, Mantralaya, Mahanadi Bhawan, Block 1, Fourth Floor, New Raipur (Chhattisgarh) 492002
3. Deputy Director, Food and Durg Administration Bilaspur, Purana Bus Stand, District Bilaspur (Chhattisgarh)
4. The Food Safety Officer, Food and Durg Administration Bilaspur, Purana Bus Stand, District - Bilaspur (Chhattisgarh) 495001
5. Dr. R.K. Shukla, Food and Safety Officer, Food and Safety Administrative Department, Bilaspur, Purana Bus Stand, Bilaspur (Chhattisgarh)

-----Respondents

For Petitioners	: Dr. N.K. Shukla, Sr. Advocate with Mr. Vivek Verma, Advocate
For Respondents/State	: Mr. Anil S. Pandey, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV ORDER

15/09/2017

1. This petition under Article 226 of the Constitution of India has been brought with prayer for issuance of suitable writ against the respondents.
2. It is submitted by the counsel for the petitioners that petitioner No. 2 to 14 are the members and office bearers of Vridheshwarnath

Mahila Swa Sahayata Samuh, in which specifically only a woman can be a member. As per the policy of the State government, Mahila Swa Sahayata Samuh have been selected for providing ready to eat food to all the Anganbadi centers in the State and the same work was assigned to the Vridheshwarnath Mahila Swa Sahayata Samuh. Petitioner No.1, is not a member of the Samuh, he is only a landlord who has provided his accommodation for the business conducted by this Mahila Swa Sahayata Samuh and has no connection with the business run by this Mahila Swa Sahayata Samuh. It is submitted that, a notice was served to the petitioner No.1 in Form V-A, prescribed under Rule 2.4.4(3) of the Food Safety and Standard Rule, 2011 (*hereinafter referred to as the "Rules, 2011"*), which is meant to be served on Food Business Operator. Thereafter a raid was conducted on the premises of the petitioner No.1, in absence of the members of Mahila Swa Sahayata Samuh i.e. the petitioner No.2 to 14 on 04.09.2012 and samples of ready to eat food were taken by the Food Safety Officer for the purpose of analyzing the samples by Panchnama dated 04.09.2012. The said samples were analyzed and the report given by the food analyst has held the sample of ready to eat food as sub-standard. Thereafter, a complaint was filed before the Judicial Magistrate First Class, Kota, Bilaspur in which cognizance has been taken by the learned Judicial Magistrate First Class, Kota. Hence this petition.

3. It is submitted by the counsel for the petitioners that Food Business as defined in Section 3(n) and Food Business Operator as defined under 3(o) of the Food Safety and Standards Act, 2006 (*hereinafter*

referred to as the "Act of 2006") has no connection with petitioner No.1. It were the petitioners No.2 to 14, who were in food business and they themselves were the operator of the business. Hence, the notice in Form V-A as provided under Rule 2.4.4(3) of the Rules 2011 was never served on any of the members of the Mahila Swa Sahayata Samuh.

4. Earlier a W.P.(Cr.) No.1836/2012 was filed by Vridheshwarnath Mahila Swa Sahayata Samuh, in which the petitioner No.1 was one of the respondent. Order dated 01.11.2012 was passed in this petition, making this observation that if show cause notice is intended to be issued to the petitioner society, notice must be issued to the concerned society before taking any action prejudicial to the petitioner society, affording proper opportunity of hearing to the petitioner society to put forward its case in fair play in action, is a pre-condition before passing the adverse order prejudicing the interest of the petitioner.
5. It is submitted that no notice was ever served to the office bearers or any of the members of the Mahila Swa Sahayata Samuh in compliance with the order passed by this Court in W.P.(Cr.) No.1836/2012. It is submitted that provisions under Section 42 of the Act of 2006 has not been complied with, before launching prosecution against the petitioners and that prosecution launched against the petitioners is time barred under Section 77 of the Act of 2006. It is submitted that it is a requirement under Rule 3.1 of the Rules 2011 case is referred to the designated officer to adjudicate whether any prosecution has to be launched against the persons

concerned or not? No such adjudication has taken place in this case and no order has been passed under Rule 3.1.2 of the Rules, 2011 by any adjudicating officer sanctioning the prosecution of the petitioners, hence, the case of prosecution against the petitioners has been brought without complying with mandatory procedure laid down in the law enacted and also against such person, who is not at all connected with the concerned food business. It is also submitted that the food samples was taken on 04.09.2012 and the complaint has been filed on 03.09.2015. Petitioners have a right to get sample analyzed under Rule 2.4.5 of the Rules, 2011. As the self life of food sample had expired, thus petitioners have been deprived of their valuable rights. On these grounds, prayer for quashment of criminal proceeding is made.

6. Counsel for the State respondent has submitted that respondent No.1 has never objected to the sampling procedure and participated in the process on his own free will, by accepting the notice served on him and also accepted the price of the samples given by the Food Safety Officer on the spot vide panchnama dated 04.09.2012 (R/1). Section 52 of the Act, 2006 provides that any person who whether by himself or by any other person on his behalf manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is sub-standard or misbranded, shall be liable to punishment. Hence, petitioner No.1 is equally liable to be penalized along with the rest of the members of Mahila Swa Sahayata Samuh, as it can be presumed that the petitioner No.1 was engaged in the business of manufacture of

ready to eat food on behalf of Mahila Swa Sahayata Samuh. Similarly, petitioner No.1 is also liable to be prosecuted as per the provisions of Section 59 of the Act of 2006. The role of the petitioner No.1 as it appears to be that of controller/manager in the manufacturing process, hence for these reasons, the case is maintainable against the petitioners.

7. In reply, the counsel for the petitioners submits that panchnama (Annexure R/1) dated 04.09.2012, which is relied upon does not mention the petitioner No.1 as representative/manager or controller of the business of Mahila Swa Sahayata Samuh. The only fact mentioned in the Panchnama is this, that petitioner No.1 was present and gave information to the Food Safety Officer, on this basis, it can not be assumed that petitioner No.1 was the food business operator.
8. I have heard the learned counsel for the both the parties and perused all the documents placed on record.
9. Prosecution has been launched against all the petitioners for offence under Section 26 (2) (i) and 26 (2) (ii) i.e. the manufacturing, storing, sell or distribute any article of food which is unsafe, misbranded or sub-standard or contains extraneous matter by any food business operator is punishable and the complaint was filed on 03.09.2015. Cognizance was taken by the Court below on 11.02.2016 and notices were issued to the petitioners for their appearance before the Court. The sanction order by Commissioner Food Safety and Controller, Food and Drugs Administration, Chhattisgarh dated 02.09.2015 is annexed as Annexure R-5

mentioning all the details of the sampling etc. and the report of the analyst. It is also mentioned that registered notices sent to all the members of Vridheshwarnath Mahila Swa Sahayata Samuh has returned unserved as the said Samuh was no longer in existence. Thereafter, extending the period of limitation from one year to three years, the sanction order was passed against the petitioners, in which the petitioner No.1 has been held responsible under Section 52 and 59 of the Act of 2006. As there is specific order for extension of limitation period passed by competent authority, the complaint can not be said to have been filed beyond limitation.

10. Section 73 of the Act, 2006 provides that offences, which are not triable by special Court, shall be tried in a summary manner by Judicial Magistrate First Class.
11. The first objection of the petitioners is that no notice was served on them in compliance with the order passed by this Court in W.P.(Cr.) No.1836/2012 dated 01.11.2012. It is mentioned in the sanction order passed by the Commissioner, Food Safety and Controller dated 02.09.2015 that the registered notice were sent to all the members of the Vridheshwarnath Mahila Swa- Sahayata Samuh, which returned unserved as this Samuh was no longer in existence, hence it appears effort was made to serve notice upon petitioners, the members of the said Samuh. Regarding objection raised by the petitioner No.1 that service of notice on the members of the Samuh was mandatory as per rules 2.4.1 of Rules, 2011, it is true that petitioner No.1 never objected when the notice was served upon him and samples were lifted in his presence by the Food Safety

Officer. Claim made by the petitioner No.1 that he is not a food business operator is ground of defence, which has to be established by adducing evidence by the petitioners before the trial Court. The Food Business Operator as defined under Section 3(o) of the Act, 2011, is as under :-

“Section 3(o) - “food business operator” in relation to food business means a person by whom the business is carried on or owned and is responsible for ensuring the compliance of this Act, rules and regulations made thereunder;”.

12. In the present case, Vridheshwarnath Mahila Swa Sahayata Samuh was assigned the job of supplying ready to eat food and the food business was being operated in the accommodation under the ownership of petitioner No.1, at the present stage such finding can not be given in this respect that petitioner No.1 was not engaged in the food business or had nothing to do with the assignment given to the Samuh, it is matter of evidence, hence on the basis of this objection, interference with the proceedings is uncalled for.
13. Another objection raised that complaint has been filed without adjudication, hence not maintainable, is considered. A designated officer appointed under Section 36 of the Act of 2006 has authority to adjudicate under Chapter -10 of the Act, 2006. Under Section 68 of the Act of 2006, the designated officer has jurisdiction to adjudicate and impose penalty for which he shall have the powers of a civil Court and the proceedings before him shall be regarded as judicial proceeding within the meaning of Section 193 and 228 of the Indian Penal Code. The power of adjudication authority are

clarified in Rule 3.1.1 and 3.1.2 of Rules, 2011. Rule 3.1.1, which makes it clear that when the designated officer decides that such contravention is not punishable with imprisonment but only fine under the provisions of the Act, he shall cause and authorize the Food Safety Officer to file with the Adjudicating Officer an application for adjudication of the offence alleged.

14. Reading of Rule 3.1.1 and 3.1.2 of Rules 2011, makes it clear that adjudicating officer has authority to adjudicate and penalize for the offence committed by any person in contravention of the provisions of the Act 2006, which are punishable with fine. Section 73 of the Act of 2006 specifies that offence not triable by a Special Court shall be tried in summary by the Judicial Magistrate of First Class or by a Metropolitan Magistrate as the case may be. Section 74 of the Act, 2006 provides that State Government may by notification in official gazette constitute special Court in concurrence with the Chief Justice of High Court. It is evident that no special Court have been established under this provisions, hence in such case, the Judicial Magistrate First Class shall have the jurisdiction to try the offence, which are punishable with imprisonment under the Act of 2006 for which no sanction or no adjudication is required.
15. Dealing with another objection raised by the petitioners that petitioners have deprived of their right to get the food analyzed, rule 2.4.5 of the Rules, 2011 are relevant provisions. Rule 2.4.5 of the Rules, 2011 provides that in case a food business operator or the person concerned desires to have fourth part of samples analyzed, he shall request the Food Safety Officer in writing to send the

sample to any NABL accredited/FSSAI notified laboratory for analysis under intimation to the Designated Officer on which the Food Safety Officer shall send the sample to such laboratory under the intimation to the designated officer. There is no provisions under the Act 2006 providing for right of the Food Business Operator or persons concerned to get the food analyzed in any other manner.

16. On reading of rule 2.4.5 of Rules, 2011, it is clear that persons, who are accused in the case had that right available to them soon after sample was taken from their premises, which they have not availed, hence, the grounds raised that valuable right of the petitioners has been defeated by the respondents seems to be groundless.
17. After due consideration and on the basis of the reasons aforementioned, this petition seems to be devoid of substances and hence it is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge