

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1553 OF 2015**

Rajratan B. Agarwal,
Owner of M/s. Shri Tradco
Deesen Pvt. Ltd., Mumbai,
Agra Highway, Biladi Phata,
Deopur, Dhule

...Petitioner
(Ori. Accused No. 5)

Versus

1. State of Maharashtra,
Through the Public Prosecutor

2. H. A. Yeole,
Food Safety Officer,
Office of Joint Commissioner (Konkan Division),
Food & Drug Administration, M.S,
E.S.I.S, Hospital Building 4th Floor,
Wagale Estae, Thane (West)

...Respondents
(Original Complainant)

Mr. Sandeep Gorde i/b Mr. Rakesh Reddy for the Petitioner

Mr. S. K. Shinde, G.P & P.P a/w Ms. P. P. Shinde, A.P.P for the Respondents

CORAM : REVATI MOHITE DERE, J.
RESERVED ON : 16th JANUARY, 2017
PRONOUNCED ON : 6th FEBRUARY, 2017

ORDER :

1. Heard learned Counsel for the petitioner and the learned G.P and P.P.

2. Rule. Rule made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned G.P and P.P waives notice on behalf of the respondents.

3. By this petition, the petitioner has impugned the order issuing process, passed by the learned Chief Metropolitan Magistrate, Thane, on 22nd April, 2014, as against him, for the alleged offences punishable under Sections 26(2)(i) and 27(2)(c) r/w 3(zz)(x) r/w Section 59 of the Food Safety and Standards Act, 2006, Rules, Regulations 2011, and as such, seeks quashing and setting aside of the said order and consequently R.C.C No. 254 of 2014 qua him.

4. A few facts as are necessary to decide the petition are as under;
On 26th April, 2013, at about 1:00 p.m., the Food Safety Officer Shri D. B. Kadge visited 'M/s. Satguru Stores', situated at Patil Bhawan, Bhaji Market, Talawpali, Thane (West) alongwith his colleague-Shri S. K. Rathod, Food Safety Officer, and an independent panch witness-Shri Vivek Bhagwan Bacchav. According to Shri D. B. Kadge, he found Mohan

Mulani, vendor of 'M/s. Satguru Stores', in the shop, doing the business of stocking and selling of food articles in the said premises. Sunil Asra (original accused No.2) is stated to be the owner of M/s. Satguru Stores. According to Shri Kadge, he disclosed his identity and the identity of the persons present with him and the intention of the visit i.e. of inspection and drawing of samples under the Food Safety and Standards Act, 2006.

According to Shri Kadge, during his inspection, he found that Mohan Mulani (original accused No. 1) had stocked for selling, in packed condition, Maize Starch Powder. Accordingly, Shri Kadge seized 800 gms of Maize Starch Powder for test and analysis, from a sealed plastic bag of 50 kgs. For drawing samples for test and analysis, Shri Kadge issued necessary notice to Mohan Mulani. Shri Kadge drew samples and adopted the necessary procedure of drawing samples under the Food Safety and Standards Act, 2006. A panchanama was also drawn of the seized articles. Thereafter, one part of the sample was sent to Food Analyst, State Public Health Laboratory, Pune.

On 13th June, 2013, the report of the sample of Maize Starch Powder from the Food Analyst was received. According to the report of the Food Analyst, State Public Health Laboratory, Pune, the sample of Maize Starch Powder had moisture content of 13.98%, which was more than the prescribed/permissible limit. It was opined that the sample did not conform to the standards of “Corn Flour (Maize Starch)” as per the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 and that the sample was unfit for human consumption.

Accordingly, the designated Officer addressed a letter dated 17th March, 2013 to M/s. Satguru Stores asking for the details and the source of the product seized. On 7th October, 2013, M/s. Satguru Stores replied to the aforesaid letter annexing invoice of M/s. R. J. Traders from where the aforesaid seized product was purchased. Thereafter, the designated officer addressed a letter dated 14th October, 2013 to M/s. R. J. Traders seeking details and the source of the product seized. Smt. Shantiben Navin Satra – the owner of M/s. R. J. Traders, vide letter dated 14th November, 2013 informed that they had purchased the seized product from M/s. Shah R. B. & Company, Kalyan (West). M/s. R. J.

Traders annexed their license and the invoice of Shah R. B. & Company. Thereafter, the designated officer addressed letters to M/s. Shah R. B. & Company, seeking details and the source of the product seized. Pursuant to the same, M/s. Shah R. B. & Company sent a reply dated 18th February, 2014 stating therein, that they deal in wholesale trade and annexed their license under the Food Safety and Standards Act, 2006 and the invoice of M/s. Shri Tradco Deesen Pvt. Ltd. and stated that the seized product was purchased from the said Company. The petitioner is the owner of the said firm i.e. M/s. Shri Tradco Deesen Pvt. Ltd. Thereafter, the designated officer addressed a letter dated 7th March, 2014 to M/s. Shri Tradco Deesen Pvt. Ltd. seeking details and the source of the seized product. On 21st March, 2014, M/s. Shri Tradco Deesen Pvt. Ltd. replied to the said letter and stated that the seized product was manufactured by them and that the same was meant for “industrial use only”.

On receiving the requisite sanction from the Joint Commissioner (Food), Food and Drug Administration, through the Designated Officer, Food and Drug Administration, Thane, all the accused including the petitioner, came to be prosecuted and a complaint being

R.C.C No. 254 of 2014, came to be filed by Shri Yeole, in the Court of Chief Judicial Magistrate, Thane.

The learned Magistrate was pleased to issue process as against the petitioner and others for the alleged offences punishable under Sections 26(2)(i) and 27(2)(c) r/w 3(zz)(x) punishable under Section 59 of the Food Safety and Standards Act, 2006, Rules, Regulations 2011.

5. Mr. Gorde, learned Counsel for the petitioner submitted that the petitioner was manufacturing Maize Starch Powder, which was only meant for industrial use. He submitted that the petitioner, being a manufacturer of Maize Starch Powder, the parameters of the Food Safety and Standards Act, would not apply to him. He contended that the petitioner had admittedly not sold the Maize Starch Powder directly to M/s. Satguru Stores, a retail shop, from where a sealed bag containing 50 kgs of Maize Starch Powder was seized. According to the learned Counsel, the petitioner had sold the Maize Starch Powder to M/s. Shah R. B. & Company, a licensed trader and industrial supplier, who in turn, sold the said product to M/s. R. J. Traders, and who in turn, sold the same to M/s.

Satguru Stores, a retail shop. He submitted that a perusal of the panchanama shows, that on the packet from which, Maize Starch Powder was seized, it was clearly written, that it was “for industrial use only”. He submitted that the petitioner cannot be held liable for the act, of M/s. Satguru Stores, a retail shop, for storing and selling Maize Starch Powder, which was meant for industrial use. He submitted that the prosecution of the petitioner was clearly an abuse of the process of the Court and that the same ought to be quashed and set-aside.

6. Learned G.P and P.P submitted that the petitioner cannot be absolved of his liability, inasmuch as, the packet which was found in M/s. Satguru Stores, was admittedly manufactured by the petitioner and was being used for human consumption. He relied on the judgment of the Apex Court in the case of ***The State of Tamil Nadu vs. R. Krishnamurthy***¹. He submitted that it has been held in the said case that, “*any article which ordinarily enters into or is used in the composition or preparation of human food is 'food'. It is not necessary that it is intended for human consumption or for preparation of human food. It is also irrelevant that it*

1 AIR 1980 SC 538

is described or exhibited as intended for some other use. It is enough if the article is generally or commonly used for human consumption or in the preparation of human food.”

7. Heard learned Counsel for the parties. At the outset, it may be noted that the matter was adjourned from time to time at the request of the learned Prosecutor for want of instructions and hence was heard in piecemeal and was reserved for orders on 25th October, 2016. After the order was reserved, it was noticed that the petitioner had filed wrong complaint in the aforesaid petition and hence, the matter was required to be placed for directions. Certain points also required clarification. Again, parties sought time and hence, there was some delay. After the learned Counsel gave their clarification on certain points, the matter was reserved for orders on 16th January, 2017.

8. Certain admitted facts may be noted. The petitioner had the license to manufacture 'Maize Starch Powder' for industrial purpose; that the petitioner's company-M/s. Shri Tradco Deesen Pvt. Ltd. sold the said Maize Starch Powder to M/s. Shah R. B. & Company, a trader and an

industrial supplier and that M/s. Shah R. B. & Company had the requisite license under the Food Safety and Standards Act, 2006 to deal with the same; that M/s. Shah R. B. & Company sold the said product to M/s. R. J. Traders, who in turn sold the same to M/s. Satguru Stores, a retail store, where the said product was seized, as it was allegedly being sold for human consumption. The question that arises for consideration is, whether in the aforesaid facts, the petitioner can be held liable?

9. As is evident from the aforesaid, the petitioner under the license to manufacture Maize Starch Powder, sold it to M/s. Shah R. B. & Company, a licensed trader and an industrial supplier. The Maize Starch Powder which was sold by the petitioner company clearly shows that the said product was meant for 'industrial use only'. It appears that thereafter, the said packet was sold by M/s. Shah R. B. & Company to M/s. R. J. Traders, who in turn, sold the same to M/s. Satguru Stores, a retail store, from where the packet containing Maize Starch Powder was seized. It appears from the panchanama, that when the Maize Starch Powder was seized, what was clearly written on the same was '*for industrial use only*'. The exact words as reproduced in the panchanama are as under :

*“2) Maize Starch Powder – 800 maize starch powder demanded and purchased from a machine sealed HDPL bag inside plastic bag of 50 kg. Maize Starch Powder ready for sale and purchased for analysis. The printing description on the bag is as, “ Maize Starch Powder, Batch No. 158, Date of packing 18/04/2013, picture, Shri Mfg. By. SHRI TRADCO DEESEN PVT. LTD. DHULE 424 005, (Maharashtra), PH.02562 – 26190230, 2433583, **FOR INDUSTRIAL USE ONLY**, USE NO. HOOS. Email. Shritradcodeesan@gmail.com. Other side No printing. Paper slip used – THN100014, 0962.”*

(emphasis supplied)

Infact, admittedly, it is not the prosecution's case, that the petitioner had sold the seized product directly to M/s. Satguru Stores, a retail store. It is also not the prosecution's case, that the petitioner was in breach of the license, to manufacture Maize Starch Powder. The petitioner, cannot be attributed with any criminal intent, in the facts of this case. The 50 kg sealed bag found containing 'Maize Starch Powder', manufactured by the petitioner company, clearly disclosed that the same was *'for industrial use only'* and the same was clearly printed on the bag.

11. Under these circumstances, the petitioner cannot be held liable for the alleged offences, for which process has been issued against him. The judgment relied upon by the learned G.P and P.P in the case of ***The State of***

Tamil Nadu vs. R. Krishnamurthy (supra) is clearly distinguishable, inasmuch as, in that case, gingelly oil mixed with 15% of groundnut oil was being sold as gingelly oil by the vendor. It is under those circumstances that the Apex Court observed that, “*it is enough if the article is generally or commonly used for human consumption or in the preparation of human food.*” The facts in the present case are clearly distinguishable.

12. In the peculiar facts of this case, continuation of the proceedings will clearly be an abuse of the process qua the petitioner. Accordingly, the petition is allowed. The impugned order dated 22nd April, 2014 issuing process qua the petitioner is quashed and set-aside and consequently, the proceeding being R.C.C No. 254 of 2014, pending before the learned Chief Metropolitan Magistrate, Thane is also quashed and set-aside qua the petitioner.

13. Rule is made absolute in the aforesaid terms.

REVATI MOHITE DERE, J.