

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.54370 of 2013

Arising out of Complaint Case No.-44 (M) Year-2005 GOVERNMENT OFFICIAL COMP.
District- Patna

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M/s Nestle India Ltd. represented through its authorized representative Prabin Chandra Das, S/o Late U.C. Das, Erstwhile Manager, Sales, Who was appointed as the nominee of Nestle India Limited, Kolkata Branch, Then 7 Hare Street, Kolkata 700001, Now DLF IT Park, Tower-C, 12th Floor, 8 Major Arterial Road, Block-AF, New Town, Rajarhat, P.S. Raherhat, Kolkata-700156.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Mr. S. Kumar, Field Inspector, Patna, c/o- Civil Surgeon-cum-Chief Medical Officer, Patna

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Advocate Mr. Jayanta Ray Chaudhury, Advocate Mr. Binay Kumar, Advocate
For the Opposite Party/s :		Mr. Awadhesh Kr.Singh(APP)

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 22-03-2018

This is an application filed under Section 482 Cr.P.C. by M/s Nestle India Limited, a Company registered under the Companies Act of 1956 and they are challenging their prosecution launched in Complaint Case No. 44(M)/2005 (State Vs. Managing Director and others) for offences under the Prevention of Food Adulteration Act, 1955.

The primary ground of challenge is that for prosecuting the Company, a juristic person, its Managing Director and officers, necessary sanction under Section 20 of the



Food Adulteration Act for prosecuting for an offence under Section 16(1)(a) has not been taken.

Learned Senior Counsel representing the applicants invites my attention to the Sanction Order (Annexure-4) available at Page 26 of the brief which goes to show that it is an order passed by one Dr. C.B.P. Singh, Civil Surgeon-cum-Chief Medical Officer, Patna in exercise of the powers conferred upon him under Section 20(1) of the Prevention of Food Adulteration Act and the notification issued indicated therein granting sanction to prosecute one Sri Badri Saw and others, son of Narayan Saw.

Learned counsel argues that in this sanction order there is no permission or sanction granted to prosecute M/s Nestle India Limited through its officers. That apart, he argues that the sanction order in the name of Badri Saw and others is not maintainable and illegal in view of the law laid down by this Court in a catena of orders passed, produced before me, namely, Krishna Lal Sah and Anr. Vs. State of Bihar Cr. Misc. No. 29224 of 2003 dated 05.05.2004 and S.L.A. No. 16 of 2004 (The State of Bihar Vs. P.K. Sinha @ Pradum Kumar Sinha and others) decided on 15.04.2004 to say that the prosecution based on such a sanction which is unsustainable under law is liable to



be quashed.

Even though learned counsel representing the prosecution refuted the aforesaid contention and argued that in a proceedings under Section 482 these questions cannot be looked into and, therefore, indulgence into the matter be not made, I am of the considered view that it is a well settled principle of law that in a proceedings under Section 482 if the proceedings initiated in the criminal case is not permissible under law for violation of statutory rules or regulation, interference can be made in a proceedings under Section 482. In this regard reference can be made to the following judgments:-

- (1). Gian Singh Vs. State of Punjab and another-
(2012) 10 SCC 303
- (2). Minu Kumari and another Vs. State of Bihar
and others (2006) 4 SCC 359
- (3). Taramani Parakh Vs. State of Madhya Pradesh
and others (2015) 11 SCC 260
- (4). HMT Watches Limited Vs. M.A. Abida and
another (2015) 11 SCC 776

In the present case, it is seen that the order (Annexure-4) is a sanction order under Section 20(1) of the Food Adulteration Act given by the competent authority for



prosecution of one Sri Badri Saw and others. In the cases of P.K. Sinha decided by this Court on 15.04.2004 and Sri Krishna Lal Sah decided on 05.05.2004 identical orders of sanction granted in the name of one person and referring to the others has been quashed by holding that the same is not permissible. In the present case also similar legal and factual question arises. That apart, in this case the prosecution is of M/s Nestle India Limited, a juristic person and a Company registered under the Companies Act, 1956 and for prosecuting a juristic person the officers incharge for carrying out the affairs of the Company have to be prosecuted and for the same there has to be a separate permission for prosecuting the officers of the Company. In the permission granted, as is evident from Annexure-4, there is nothing to indicate that the juristic person Nestle India Limited is to be prosecuted through its authorized or competent officers.

That being so, I have no hesitation in holding that the sanction for prosecution Annexure-4 does not meet the requirement of law and the entire proceedings (Complaint Case No. 44(M) of 2005, pending before the Court of learned Sub Divisional Judicial Magistrate, Patna Sadar) initiated against the applicant M/s Nestle India Limited and its officers being not permissible under law and in contravention to the statutory



provisions has to be and is accordingly quashed. The application stands allowed and disposed of.

(Rajendra Menon, CJ)

P.K.P./-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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