

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.41634 of 2014

Arising Out of PS. Case No.-154 Year-2012 Thana- KHAGARIA District- Khagaria

Mohammad Anis Son of Abdul Subhan R/o Village Dalialpur, P.S. Teghra, District Begusarai, the then Incharge Assistant Godown Manager, BSFC Khagaria, P.S. Chitragupt Nagar, District Khagaria at present posted as Assistant Godown Manager, Bhagalpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. Bihar State Food and Civil Supply Corporation Patna through its Managing Director

... .. Opposite Party/s

with

Criminal Miscellaneous No. 44334 of 2014

Arising Out of PS. Case No.-35 Year-2012 Thana- CHAUTHAM District- Khagaria

Anil Kumar Srivastav Son of Late Vidyanand Srivastava Resident of Village-Rasulpur P.S.-Nayagaon District-Saran. The then in-charge Assistant Godown Manager, B.S.F.C.Chautham, P.S.-Chautham, District-Khagaria presently posted as Incharge Assistant Godown Manager, Motihari, District-Motihari.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Bihar State Food and Civil Supply Corporation Patna through its Managing Director.

... .. Opposite Party/s

Appearance :

(In Criminal Miscellaneous No. 41634 of 2014)

For the Petitioner/s : Mr. Bharat Bhushan, Adv
For the State : Mr. Sanjay Kumar Singh (APP)

(In Criminal Miscellaneous No. 44334 of 2014)

For the Petitioner/s : Mr. Bharat Bhushan, Adv
For the State : Mr. Sanjay Kumar Singh (APP)

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 31-01-2018

Heard learned counsel for the parties.

These petitions under Section 482 of the Cr.P.C has



been filed for quashing the order dated 15.07.2014 passed by Judicial Magistrate, 1st Class, in Khagaria (Chitragupta Nagar) P.S. Case No. 154 of 2012 arising out of G.R. No. 607 of 2012 as well as order dated 15.07.2014 passed in Chautham P.S. Case No. 35 of 2012 arising out of G.R. No. 605 of 2012, for the offences punishable under Sections 406, 420, 272 and 409 of the IPC and Sections 51 and 59 of the Food Safety Standard Regulation Act-2011, by which discharge petition filed by the petitioner had been rejected.

Briefly stated, the facts of the case is that District Supply Officer, Khagaria sent a letter dated 28.03.2012 to the Officer-in-Charge, Chitragupta Nagar, Khagaria P.S stating that a complaint was received about the quality of wheat which will be supplied by the PDS. The S.D.O. Khagaria sent the sample of wheat for quality test which was stored at the State Food Corporation at Block Godown to Combined Food & Drug Laboratory Agamkuan, Patna and the report disclosed that the sample of wheat does not conform to the prescribed standard of quality as laid down under F.S.S. Regulation 2011 and on such allegation FIR was lodged against the petitioners who are Assistant Incharge Godown Manager and Assistant Godown Manager.



After completion of investigation, police submitted charge-sheet against two accused persons, who are petitioners in this case for the offence punishable under Sections 409 and 120B of the Indian Penal Code and Section 58 of the Food Safety and Standards Act, against both the petitioners on 25.09.2013.

It has been submitted on behalf of the petitioners, that they are innocent and have been falsely implicated in this case. It has been further submitted that for maintaining the quality of foodgrains of godown, Laboratory Incharge/Laboratory Assistant, have been appointed for this purpose and it was their responsibility and duty to maintain quality of foodgrain. The role of petitioners are for distribution of foodgrains amongst the PDS dealers who maintain the stock register, sale register and to supply the foodgrains under other schemes. It has been further contended that S.D.O, Khagaria, took the sample from the godown whereas, as per the Food and Safety Standard Act-2006, only Food Safety Officer can take sample and can send the sample for analysis in the manner prescribed under the Act. As per Section 41 of the F.S.S. Act-2006, Food Safety Officer may search any place, seize any article of food or adulterant, if there is a reasonable doubt about them being involved in



commission of any offence relating to food. No mandatory provision for search and seizure of foodgrain has been followed. The S.D.O neither prepared seizure list nor delivered the copy of the same to the petitioners and no offence under Sections 409 and 120B of the IPC is made out. In food analyst report dated 06.02.2012, it has been opined that sample of wheat does not conform to the prescribed standard of food laid down under F.S.S Regulation-2011 and hence adulterated and unsafe. However, report does not disclose the specified standard from which it can be said that sample does not conform to the prescribed standards.

Sections 41 and 42 of the Food Safety and Standard Act-2006, lays down the procedure for search, seizure, investigation, prosecution and procedure thereof in which S.D.O., has no power of search and seizure and collection of sample and when the search, seizure and sampling is without jurisdiction whole proceeding arising out of such search, seizure and sampling stands vitiated, which reads as follows:-

"41. Power of search, seizure, investigation, prosecution and procedure thereof.-(1)

Notwithstanding anything contained in sub-section (2) of section 31, the Food Safety Officer may search any place, seize any article of food or adulterant, if there is a reasonable doubt about them being involved



in commission of any offence relating to food, and shall thereafter inform the Designated Officer of the actions taken by him in writing: Provided that no search shall be deemed to be irregular by reason only of the fact that witnesses for the search are not inhabitants of the locality in which the place searched is situated.

(2) Save as in this Act otherwise expressly provided, provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search, seizure, summon, investigation and prosecution, shall apply, as far as may be, to all action taken by the Food Safety Officer under this Act.

42. Procedure for launching prosecution.—(1) The Food Safety Officer shall be responsible for inspection of food business, drawing samples and sending them to Food Analyst for analysis.

(2) The Food Analyst after receiving the sample from the Food Safety Officer shall analyse the sample and send the analysis report mentioning method of sampling and analysis within fourteen days to Designated Officer with a copy to Commissioner of Food Safety.

(3) The Designated Officer after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution.

(4) The Commissioner of Food Safety shall, if he so



deems fit decide, within the period prescribed by the Central Government, as per the gravity of offence, whether the matter be referred to,— (a) a court of ordinary jurisdiction in case of offences punishable with imprisonment for a term up to three years; or (b) a Special Court in case of offences punishable with imprisonment for a term exceeding three years where such Special Court is established and in case no Special Court is established, such cases shall be tried by a Court of ordinary jurisdiction.

(5) The Commissioner of Food Safety shall communicate his decision to the Designated Officer and the concerned Food Safety Officer who shall launch prosecution before courts of ordinary jurisdiction or Special Court, as the case may be; and such communication shall also be sent to the purchaser if the sample was taken under section 40."

A Full Bench of this Court has dealt with such issue of search and seizure by incompetent authorities and effect of such search and seizure is detailed in the case of **Rajan Kumar & Ors vs the State of Bihar** reported in **2016(4) PLJR 1098**, of which para 31 is extracted below:-

"31. In my view, this being the statutory scheme, the very entry by a person, who is not authorized by a statute, would be a rank illegality and contrary to and in conflict with the provisions of the statutory order. The search and seizure by them, not being authorized, would also be without jurisdiction. As noticed above, these are valuable and virtually the only safeguard that is available to a person, especially



when we read the provisions of Section 10C (presumption of guilt) and Section 14 (burden of proof) of the E.C. Act. In my view, the intention of the legislature has been that it is only upon a legally authorized inspection that further proceedings can take place, otherwise the whole scheme would collapse. The whole intention of the legislature to protect the privacy of a businessman would be lost. All and sundry could enter the premises start exercising power of search and seizure and then go and lodge an F.I.R., pursuant to such illegal entry, search and seizure and once F.I.R. is lodged the police would then have power to investigate the same unrestricted. If this be correct, then the very specification of persons and confirmation of authority on them alone would become meaningless because, in any case, ultimately, a person could be prosecuted without restriction. This, in my view, leads to only one conclusion that for a valid prosecution, a valid authorized entry is prerequisite. If there is violation of this statutory safeguards, the trial would necessarily vitiate. If the trial would stand vitiated, then what is the purpose for permitting the trial at all? There being a fundamental defect in the prosecution. It must be nipped at the bud as has been held by the Apex Court in the case of Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and others since reported in AIR 1976 Supreme Court 1947."

In the present case, the search and seizure and lodging of FIR and investigation by police and filing of chargesheet by police has no sanction of law and as such whole proceeding



stands vitiated. As a result this petition succeeds and FIR, chargesheet, order of cognizance and order by which discharge petition filed by petitioners was rejected, is quashed.

Both the petitions stand allowed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
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