

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.306 OF 2018

Pravin Ambalal Patel & Anr.

.... Applicants

versus

State of Maharashtra

... Respondent

.....

- Mr.A.R. Chatuphale, Advocate for the Applicants.
- Mr.R.M. Pethe, Addl.P.P. for the State/Respondent.

**CORAM : R. M. SAVANT &
SARANG V. KOTWAL, JJ.
DATE : 18th APRIL, 2018.**

P.C. :

1. The Applicants have preferred this Application for quashing of the FIR registered at Vartak Nagar Police Station, Thane, vide C.R.No.II-3054/06. The Applicants have also prayed for quashing of the proceedings arising out of the same, which are pending before the learned Chief Judicial Magistrate, vide R.C.C.No.300195/09 u/s 7(i) r/w section 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'said Act') and u/s 420 of the Indian Penal Code.

2. The Applicant No.1 is the son of the Applicant No.2. The Applicant No.2, who is the proprietor of M/s Maheshwari Oil Traders, is having a shop at Vartak Nagar, Thane. The Applicant No.1 is assisting the Applicant No.2 in his business.
3. On 16/06/2006 an FIR vide C.R.No.II-3054/06 was registered at Vartak Nagar Police Station, Thane, as mentioned earlier, at the instance of API Tushar Chavan. According to him, the officers of Vartak Nagar Police Station had received an information that the Applicants were selling adulterated edible oil at their shop. Pursuant to the said information, the officers of the police station arranged to conduct a raid. The police party consisting of Assistant Commissioner of Police Kashinath Kachare, Sr.P.I. B.G.Kulkarni, the First Informant API Tushar Chavan and other staff along with Panchas, went to the shop. At that time, the officers of Food & Drug Administration Authority, Konkan Zone, Thane, Mr.G.V.Bapat, Mr.C.D.Rathod and Dr.K.U. Methekar were also present. According to the First Informant, the raiding party found that the employees of the said shop were

mixing edible oil which amounted to adulteration of the food articles. The Food and Drugs Administration Officers removed samples for analysis and in all 22 containers weighing about 328.5 kg edible oil were seized.

4. Investigation was carried out and charge-sheet bearing No.II-6/07 was filed on 05/04/2007 in the Court of J.M.F.C., 2nd Court, Thane. Apart from the present Applicants, 5 employees of the shop were shown as accused in the said charge-sheet.
5. While this investigation by the police was going on, the Food Inspector Mr.G.V.Bapat, who was present during the raid and who had removed samples, followed the procedure under the said Act. At the time of conducting the raid, Mr. Bapat purchased two samples of 750 gms each. Mr.Bapat gave intimation in the prescribed format to the Applicant No.1. Mr.Bapat issued notice u/s 14-A. The samples were sent to Public Analyst, State Public Health Laboratory, Pune on 17/06/2006. A copy of Form VII and the specimen of seal were separately sent. Mr.Bapat received the letter of Public Analyst on

17/07/2006 with the opinion that the samples did not conform to the standards as per the Rules under the Act. Mr.Bapat thereafter submitted the papers to the Joint Commissioner (Konkan Division), Food & Drug Administration (M.S.) Thane, for obtaining necessary consent u/s 20 of the said Act. In the meantime Mr.Bapat was transferred. He was succeeded by Food Inspector Mr.V.V. Vedpathak. He received the consent order to prosecute the accused on 21/02/2007 and accordingly the complaint was filed on 19/04/2007 by Mr.Vedpathak before the Court of J.M.F.C., Thane, vide R.C.C. No.259/07, which was subsequently renumbered as R.C.C.NO.208/09. The Magistrate took cognizance and issued summons against both the Applicants vide his order dated 19/04/2007.

6. It appears that the proceedings filed by Mr.V.V. Vedpathak, vide R.C.C. No.208/09 was pending for quite some time and ultimately vide order dated 25/11/2014, the Chief Judicial Magistrate, Thane, passed the following order;

“I have gone through the record. It is seen that the case is pending since 2009 but the complainant/prosecution failed to secure the presence of the accused/complainant. Moreover, there is no prima facie case made out against the accused and the trial would not be resulted into conviction. It appears that the proceeding become stale and ineffective due to prolonging of trial on account of absence of complainant and it give rise to inference that the charge is groundless, hence the complainant remained absent, inactive and not taking steps for progress of case. In fact in 1984 Cr.L.J. 513(Bom.) & in 1989 Cri.L.J., 381 (Ori) it is held that the non-appearance of the complainant himself is a valid ground for the discharge of the accused. Therefore, in such circumstances the complaint is dismissed the accused is/are acquitted/discharged.

His/their bail bonds stands cancelled.”

7. Even after the order was passed in R.C.C.No.208/09 dismissing the complaint filed by the Food Inspector, the proceedings arising out of the charge-sheet filed by the Police were still pending. The Applicants have preferred the present Application for quashing of the FIR and the proceedings which

are the subject matter of the investigation conducted by the officers of the Vartak Nagar Police Station, Thane, in respect of the same raid conducted on 16/06/2006 at the shop of the present Applicants.

8. We have heard the learned Counsel Mr.Chatuphale for the Applicants and Mr.R.M. Pethe, the learned Addl. P.P. for the State.

9. The learned Counsel for the Applicants submitted that since the learned Chief Judicial Magistrate, Thane, vide his order dated 25/11/2014 passed in R.C.C.No.208/09, had already dismissed the complaint and had acquitted the Applicants, the second prosecution in respect of the same transaction was not permissible. Mr.Chatuphale for the Applicants further submitted that section 20 of the said Act specifically prohibits the court from taking cognizance except on the complaint filed with the written consent of the Central Government or the State Government or by a person authorized

in this behalf by the general or special order by the Central Government or the State Government. Mr.Chatuphale submitted that therefore the learned Chief Judicial Magistrate could not have taken cognizance of the charge-sheet, which included the offence under the said Act.

10. Mr.R.M.Pethe the learned Addl. P.P. did not dispute the factual aspect that both the prosecutions were in respect the same transaction i.e. the raid conducted on 16/06/2016 and that the complaint filed by Food Inspector was dismissed.

11. Having considered the rival submissions, we are of the view that the prosecution, resulting from the investigation conducted by the Police Officers of the Vartak Nagar Police Station, cannot be permitted to go on. The charge-sheet is filed not only u/s 420 of the Indian Penal Code, but also u/s 7(i) and 16 of the Prevention of Food Adulteration Act. Section 20 of the said Act reads thus;

“20. Cognizance and trial of offences -

(1) No prosecution for an offence under this Act, not being an offence under section 14 or section 14-A shall be instituted except by, or with the written consent of, the Central Government or the State Government or a person authorised in this behalf, by general or special order, by the Central Government or the State Government.

Provided that a prosecution for an offence under this Act may be instituted by a purchaser or recognized consumer association referred to in section 12 if he or it produces in Court a copy of the report of the public analyst alongwith the complaint.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try and offence under this Act.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under sub-section (1-AA) of section 16 shall be cognizable and non-bailable.”

12. There is nothing on record and Mr.Pethe the learned Addl. P.P. could not point out anything from record that there was compliance of section 20 of the said Act. In the present case

there was no written consent of the Central Government or the State Government and the charge-sheet was not instituted by a person authorized in this behalf by general or special order by the Central Government or the State Government. The learned Magistrate was not competent to take cognizance of the offence mentioned in the charge-sheet, because section 20 of the Act was not complied with. Since the cognizance itself was bad-in-law, the further proceedings cannot be permitted to go on.

13. The provisions of the said Act prescribe special procedures for drawing the samples and sending them to Public Analyst for initiation of proceedings. As per section 5 of the Code of Criminal Procedure, a special form of procedure is specifically saved from the general investigation and initiation of prosecution provided u/s 4 of the Cr.P.C. Section 10 of the said Act prescribes powers of the Food Inspectors, which in some respect, are overlapping with the powers of the police officers viz. entering and inspecting any place. During such entry and inspection, the Food Inspectors are required to follow provisions

of Cr.P.C. relating to the search or inspection of a place by police officers, executing the search warrant issued under that Code. However, taking of samples of the suspected adulterated food article and sending the said sample for analysis to the Public Analyst, is a special power conferred on the Food Inspectors. Section 11 of the said Act provides for the procedure which is required to be followed by Food Inspectors. They are specifically conferred powers in that behalf. Section 20 of the said Act further provides as to how cognizance of the offence can be taken and as to how the trials are to be conducted. The prosecution can be instituted by the Central Government, State Government or a person authorized in this behalf by either of these Governments. In some cases as mentioned in section 20 of the Act, even a purchaser after following the conditions, can institute the prosecution. Section 16-A provides that the offences under sub-section (1) of section 16 are to be tried in a summary way by Judicial Magistrate First Class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate.

14. While trying a case under the said Act, there is no bar for the learned Magistrate to try the offenders for commission of offences under the Indian Penal Code. This view is taken by a Division Bench of this Court in the case of ***Rajiv Kumar Gupta & Ors. Vs. The State of Maharashtra, 2006 Cri.L.J. 581***. It is specifically stated in the paragraph No.26 of the said judgment that there was no bar under the Food Adulteration Act, and the said Rules made therein for the concerned authorities under the Act to prosecute the guilty person for the offences under the IPC along with the provision of the special statutes based on the same averments . All such authorities have jurisdiction to launch a prosecution by invoking various provisions of the IPC along with the provisions of other special statutes.

15. Taking into account the above provisions and the corresponding law, it was open for the complainant Mr.V.V. Vedpathak who was the Food Inspector, launching prosecution vide R.C.C. No.208/09 to prosecute offenders for IPC offences. If the IPC offences required trial following the procedure of

summons case or warrant case, the Judicial Magistrate First Class is empowered to follow that procedure. This combined prosecution for the offences under Food Adulteration Act and the Indian Penal Code is not barred as held by the Division Bench of this Court in the case of Rajiv Kumar Gupta (supra).

16. Considering these aspects, in the present case anomalous situation has arisen; because on one hand the Applicants are discharged (the Chief Judicial Magistrate, Thane has recorded acquittal/discharge in R.C.C. No.208/2009). On the same set of facts and based on the same transaction, the other case resulting from charge-sheet filed by the police, is pending. The case instituted on the basis of police report mentions 3 Food Inspectors namely Mr.G.V.Bapat, Mr.C.D. Rathod and Dr.K.U. Methekar, who were present during the raid, as the prosecution witnesses. The prosecution in this case based on the police report cannot reach to its logical conclusion unless the evidence of Food Inspectors and the report of Public Analyst is produced before the trial Court. But this evidence was

the basis of the prosecution lodged by the Food Inspector vide R.C.C. No.208/09, in which the prosecution is not surviving as of today. We are of the opinion that in the peculiar facts of the instant case, the prosecution launched on the basis of police report cannot be permitted. The only recourse available to proceed against the Applicants was to challenge the order dated 25/11/2014 passed by Chief Judicial Magistrate in R.C.C. No.208/09. Since the said order is not set aside, as of today it has attained finality and therefore the Applicants cannot be made to face the prosecution arising from the police report in respect of the same transaction and on the basis of the same allegations.

17. In the facts of the instant case, the charge under section 420 of the Indian Penal Code cannot be proved unless it is proved that the food articles were adulterated. The prosecution launched by the Food Inspector under the said Act has resulted in dismissal of the complaint by a competent Court. The trial Court in that case has observed that he was drawing

the inference that the charge was groundless. If the prosecuting agency was serious about their case, the final order passed by the Chief Judicial Magistrate, Thane, in R.C.C.No.208/2009 should have been challenged.

18. In this view of the matter, the Application must succeed and is allowed in terms of prayer clause (a) qua the Applicants.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)