IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.240

CRM-M-27205-2016 (O&M)
Date of decision : 26.09.2018

Rajiv Kumar Malhotra ..... Petitioner

VERSUS

State of Haryana ..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. M.K. Garg, Advocate, for the petitioner.

Mr. Satish Saini, DAG, Haryana.

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SUDHIR MITTAL, J.

FIR No.67 dated 11.02.2016 came to be registered against the petitioner at Police Station, Yamuna Nagar City, District Yamuna Nagar, under Sections 420, 272 and 273 IPC and Sections 7 and 10 of the Essential Commodities Act, 1955.

The allegations in the FIR state that in a raid conducted on the godown of the petitioner on 11.02.2016, the stock of 4060 quintals of sugar was discovered, part of which was lying open and was in damaged condition. This amounted to a violation of State Government Notification dated 25.03.2010, whereby a wholesaler cannot stock more than 600 quintals of sugar without licence.

Three samples of the sugar stock were sent for analysis to the Food Analyst Haryana at Chandigarh. He prepared a report dated 01.03.2016, finding the samples to be conforming to the provisions of the Food Safety and Standards Act, 2006 and regulations made thereunder.

Through the present petition, the petitioner seeks quashing of the aforementioned FIR. The submission made on his behalf is that the Essential Commodities Act, 1955 (hereinafter referred to as 'the Act') is a Central Legislation. In exercise of the powers conferred upon the Central Government by the said Act, the Ministry of Consumer Affairs, Food and Public Distribution, issued an order dated 15.02.2002, removing the requirement of a permit or licence for stocking sugar and some other food items. It was, further stated in the said order that in case a State Government desires to impose any control in respect of the food items mentioned in the said order in exercise of delegated powers vested in it, it could do so after procuring the concurrence of the Central Government. The order dated 15.02.2002, was kept in abeyance for certain periods from 09.03.2009 till 30.11.2011. Thereafter, the said order is in force. Order dated 25.03.2010, issued by the Government of Haryana imposing a limit of 600 quintals for stocking of sugar could apply to the petitioner only if the prior concurrence of the Central Government had been obtained. In this case, the prior concurrence of the Central Government was not obtained and therefore, the said order could not apply. Consequently, the petitioner had not committed any violation of either Section 7 or Section 10 of the Act. The registration of an FIR under the aforementioned provisions was an abuse of the process of law. It is also submitted that report dated 01.03.2016 of the Food Analyst, Haryana, clearly establishes that the sugar stocked by the petitioner was fit for human consumption and thus, Sections 272 and 273 IPC are also not attracted. The petitioner has not cheated anyone and the ingredients of

Section 420 IPC are not attracted from a bare perusal of the contents of the FIR. Thus, the FIR was liable to be quashed in its entirety.

In the reply filed by the District Food Civil Supplies & Consumer Affairs Controller, report dated 01.03.2016, issued by the Food Analyst Haryana, is not denied. It is also not denied that after passing order dated 25.03.2010, no concurrence of the Central Government was taken. It is only stated that the Central Government has delegated powers to the State Government to restrict the limit of stocks being held and in exercise of such powers order dated 25.03.2010, had been passed. It is, further stated that the order has been passed in compliance with direction issued by the Central Government to State Governments to seek guidance from it regarding the limit of stocks.

It is, thus, apparent that during the currency of order of the Central Government, the Government of Haryana could not have imposed any limit on stocking of sugar without obtaining the concurrence of the Central Government. The State Government has admitted that concurrence of the Central Government was not obtained while passing order dated 25.03.2010, and thus, the limit of 600 quintals imposed vide the said order did not have the sanction of law. Consequently, the petitioner was not guilty of violation of any orders passed under the Act and could not be prosecuted either under Sections 7 or 10 of the Act. The report dated 01.03.2016, clearly establishes that the sugar being stocked by the petitioner was neither of bad quality nor was being stocked improperly and it complied with the provisions of the Food Safety and Standards Act, 2006. Thus, it can also not be said that the petitioner was selling adulterated or noxious food stuff. Ingredients of the offence of cheating are not at all made out from the contents of the FIR and thus, the registration of the aforementioned FIR amounts to abuse of the process of law. The same is thus, liable to be quashed.

The petition is accordingly allowed and FIR No.67 dated 11.02.2016, registered at Police Station, Yamuna Nagar City, District Yamuna Nagar, under Sections 420, 272 and 273 IPC and Sections 7 and 10 of the Essential Commodities Act, 1955, alongwith all consequential proceedings having arisen therefrom, is quashed qua the petitioner.

(SUDHIR MITTAL)
JUDGE

26.09.2018
Ramandeep Singh

Whether speaking / reasoned Yes / No

Whether Reportable Yes/ No