

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-29875-2013 (O&M)

Date of Decision:17.05.2018

M/s Gupta Traders

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Mr. R.K. Doon, A.A.G. Haryana.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has prayed for the following relief:

“It is, therefore, respectfully prayed that the present petition be allowed and order dated 11.05.2012 (Annexure P-8) passed by the Court of learned Chief Judicial Magistrate, Rohtak, vide which the present petitioner has been summoned to face trial under Section 20-A of the Prevention of Food Adulteration Act in criminal complaint No.173 dated 02.06.2003 (Annexure P-1) titled as 'State versus Sandeep Kumar' as well as order dated 26.7.2013 (Annexure P-11) passed by the Court of learned Chief Judicial Magistrate, Rohtak, whereby the application dated 23.11.2012 (Annexure P-9) moved by the petitioner for impleading manufacture of Soyabean Oil i.e. Geepee Ceval Proteins & Investment Pvt. Ltd situated at Bundi, Rajasthan, has been declined, be quashed, in view of the facts and circumstances of the case.”

2. In respect of alleged adulterated Soyabean Oil, an investigation was undertaken by the competent authority and oil was subjected to report of the public analyst on 17.4.2003. Public Analyst Haryana, Chandigarh formed an opinion which reads as under:

“And am of the opinion that:-

The sample does not conform to the prescribed standards laid down for Refined Soyabean Oil under items Number A.17.13 and A.17.15 of the PFA Rules 1955 thereof in that : Saponification Value and Iodine Value falls below the minimum specified limits of 189 and 120 respectively. Singed this 17th Day of April 2003

Sd/- 17/4/03

(Signature)

*Public Analyst Haryana
Chandigarh”*

Based on the aforesaid report, a complaint was lodged under the Prevention of Food Adulteration Act, 1954 (for short “PFA Act”) against one Sh.Sandeep Kumar. Thereafter, summoning proceedings were ordered on 2.6.2003. Consequently, an application was made for impleading Kumar Book Depot and General Stores, Sampla through proprietor Sh. Mukesh Kumar as a co-accused and it was allowed on 3.7.2009. Pursuant to the application filed by one Sh. Sandeep Kumar on 4.7.2008, one Sh. Mukesh Kumar Proprietor of Kumar Book Depot and General Stores, Sampla was summoned as a co-accused for 09.10.2009. Thereafter, he has filed an application to implead the petitioner as co-accused on 24.02.2012 and it was allowed on 11.5.2012 (Annexure P-8). When the petitioner was summoned as co-accused, he had filed an application for impleading the manufacture of Soyabean Oil i.e. Gee PEE Ceval Proteins & Investment Pvt. Ltd situated at Bundi, Rajasthan as co-accused and petitioner's application was rejected on 26.7.2013 (Annexure P-11). Hence, the present petition.

3. Learned counsel for the petitioner submitted that (Annexure P-8) dated 11.5.2012 in respect of allowing of Sh. Mukesh Kumar's

application to implead the petitioner as co-accused is concerned, it is not in accordance with Section 20-A of PFA Act. He further submitted that ingredients of Section 20-A of the PFA Act has not been complied by the Chief Judicial Magistrate, Rohtak while allowing the application filed by one Shri Mukesh Kumar to implead the petitioner with reference to no objection given by one Shri Om Kumar Government Food Inspector, Rohtak on the impleading application. Further Annexure P-8 dated 11.5.2012 insofar as impleading petitioner as co-accused is concerned, consequential proceedings undertaken by the Chief Judicial Magistrate, Rohtak, stands vitiated. In support of his contention, learned counsel for the petitioner relied on the following decisions: (i) **Omparkash Shivprakash v. K.I. Kuriakose**; 1999 AIR (SC) 3870 (see: Para-6); (ii) **Bipul Sarma v. State of Assam**; 2015(35) R.C.R. (Criminal) 133 (see: Paras 12 and 13); (iii) **Gujarat Co-operative Milk Marketing Federation Limited v. State of Haryana**; 2002 (2) CLJ (Criminal) 72 and (iv) **Shyam Sunder Aggarwal and another v. State of Haryana**; 2015 (5) Law Herald 3886 (see: Para-14). It was further submitted that in the aforesaid decisions, Courts have time and again held that under Section 20-A of the PFA Act, competent court is required to examine two things namely satisfaction and evidence before allowing application filed under Section 20-A of the PFA Act. He further submitted that from the zimni orders read with order dated 11.5.2012 (Annexure P-8), it is evident that both the ingredients of Section 20-A of PFA Act are not forthcoming. Thus, competent Court has not complied Section 20-A of PFA Act in respect of order dated 11.5.2012. Hence, impugned Action are liable to be set aside.

4. Per contra, learned State counsel while resisting the petitioner's

contention submitted that in the Annexure P-7 application for impleading petitioner under Section 20-A of PFA Act in para-3, specific details have been given. Having regard to para-3, there is compliance to Section 20-A of the PFA Act. Therefore, there is no infirmity in the order dated 11.5.2012 and consequential orders. Thus, petitioner has not made out a case so as to interfere with the orders dated 11.5.2012 and 26.7.2013 (Annexure P-8 and P-11).

5. Heard the learned counsel for the parties.

6. Crux of the matter in the present petition is whether Chief Judicial Magistrate, Rohtak has decided the application of Shri Mukesh Kumar under Section 20-A of the PFA Act dated 24.2.2012 (Annexure P-7) read with order dated 11.5.2012 (Annexure P-8) allowing the application of Sh. Mukesh Kumar are in terms of Section 20-A of PFA Act or not?

7. Before advertng to the contentions of the parties, it is appropriate to reproduce Section 20-A of PFA Act which is as under:

“20-A Power of Court to implead manufacturer, etc.- Where at any time during the trial of any offence under this Act alleged to have been committed by any person, not being the manufacturer, distributor or dealer of any article of food, the Court is satisfied on the evidence adduced before it, that such manufacturer, distributor or dealer is also concerned with that offence, then, the Court may, notwithstanding anything contained in (sub-section (3) of Section 319 of the Code of Criminal Procedure, 1973 (2 of 1974) or in Section 20 proceed against him as though a prosecution had been instituted against him under section 20.”

Reading of the above provision, it is crystal clear that if an application is submitted under Section 20-A of PFA Act, competent Court is required to consider two ingredients of Section 20-A of PFA Act namely

satisfaction of the Court and appreciation of evidence. Both the ingredients are not forthcoming from Annexure P-8 and even perusal of the zimini orders vide page 5 to 8, it is evident that Chief Judicial Magistrate, Rohtak, has not considered the application for impleading the co-accused in terms of Section 20-A of the PFA act. In other words, ingredients relating to satisfaction of the Court and appreciation of evidence are not forthcoming. From the aforesaid cited decisions, it is crystal clear that for the purpose of entertaining application under Section 20-A of the PFA Act, competent court is required to record satisfied on the evidence. Thus, the present case is squarely covered by the aforesaid decisions cited by the learned counsel for the petitioner.

8. Contention of the learned counsel for the respondent that in Annexure P-7 (Para-3) is suffice to allow the application for impleading the petitioner as co-accused cannot be accepted for the reasons that Chief Judicial Magistrate, Rohtak in his order dated 11.5.2012 has not stated anything in relation to para-3 of the application. What has been ordered is as follows:

“No objection has been given by Om Kumar, GFI complainant on the application for impleading M/s Gupta Traders, Anaj Mandi, Sampla as co-accused. Heard. In view of the no objection, the application for impleading M/s Gupta Traders, Anaj Mandi, Sampla as co-accused is allowed. Now, notice to M/s Gupta Traders, Anaj Mandi, Sampla be issued for 8.6.2012.”

Except no objection given by Om Kumar, GFI complainant nothing is stated as to whether Court is satisfied on the evidence and evidence has been taken into consideration. Court cannot relied only on the application with no objection. Thus, it is a clear case of non compliance of

Section 20-A of the PFA Act. Accordingly, order dated 11.5.2012 (Annexure P-8) and consequential orders are set aside qua the petitioner only. Petition stands allowed.

17.05.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**