

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO. 940/2019

Shri Tapaskumar Dutta Roy,
Aged about, 63 years, Occ. Service,
R/o Plot No. 73,
Hivri Nagar, Nagpur-08.

.... **Applicant**

- **Versus** -

State of Maharashtra,
through Food Safety Officer,
Food & Drug Administration (M.S.),
Bhandara.

.... **Non-applicant
(Respondent)**

Mr C. V. Kale, Advocate for the applicant.
Mr N. R. Rode, APP for the State/non-applicant

**CORAM : ROHIT B. DEO, J.
DATED : 20TH JANUARY, 2021.**

ORAL JUDGMENT

Heard.

2. With consent, the application is finally heard at the admission stage.

3. The applicant was working at the relevant time as Warehouse Manager with Central Warehousing Corporation, Gondia and superannuated on 31.12.2016.

4. The applicant is arraigned as accused 5 in Regular Criminal Case No. 129/2013 instituted by Mr. Pravin Ajabrao Umap, Food Safety Officer, Food and Drug Administration, Bhandara (M.S.) alleging commission of offence under Section 3(1) (zz) (ix), Section 26(1), 26(2)(i), 27(2)(c) punishable under Section 59 of the Food Safety and Standards Act 2006 also 31 (1) R/w Rule 2.1.2 of Food Safety & Standards (Licensing & Registration of Food businesses) Regulation 2011 punishable under Section 63 of Food Safety and Standards Act, 2006.

5. The submission of the learned counsel Mr C. V. Kale is that even if, the entire complaint is taken at face value, no offence is made out against the applicant/accused 5. The submission is well merited.

6. The allegation in the complaint is that on 15-9-2012, the premises of Gurukrupa Adiwashi Prathamik & Madhyamaik Ashramsala, Thana, Tah. Amgaon, Dist. Gondia was visited by the Food Safety Officer and sample of rice was collected for analysis.

7. It is the contention of the Food Safety Officer that the sample was analysed and was found contaminated with “few cobwebs, insects and wheat whole” and, therefore, unsafe for human consumption.

8. In the entire complaint, there is not even single averment as would explain, much less justify, dragging the applicant/accused 5 in the prosecution.

9. Learned Additional Public Prosecutor Mr Nitin Rode would submit that the rice which was stored at Ashram School, and the sample which failed to meet the safety standards, was sourced from the warehouse of which the applicant/accused 5 was the Manager and, therefore, there is a case to proceed against the applicant/accused 5. The submission is noted only for rejection.

10. As observed supra, there is not even a whisper in the complaint linking the applicant with the alleged deficiency in the sample collected. It is common knowledge that the rice stored in the Government Warehouse is sourced from various suppliers and the Officer in-charge of the Warehouse may not be necessarily responsible

for the failure of the sample to meet the safety standards. In any event, in the absence of averment in the complaint explaining the complicity of the petitioner/accused 5 in the alleged crime, continuation of the proceedings shall amount to an abuse of process of law. In the absence of necessary averments, the prosecution shall be an empty and ritualistic formality and the applicant cannot be compelled to undergo the trauma and rigmarole on the trial as ritual.

11. Regular Criminal Case 129/2013 is quashed to the extent of applicant/accused 5.

12. The application is allowed in the aforestated terms.

JUDGE

wasnik

Avinash
Wasnik

Digitally signed
by Avinash
Wasnik
Date:
2021.01.21
14:38:54
+0530