

CRM-M-61853-2018
DECIDED ON: 15th DECEMBER, 2022

...PETITIONER

...RESPONDENTS

The factual matrix of the case are that the present case was registered at the instance of respondent No.2-complainant alleging that he along-with his family visited the outlet of Big Bazaar, Paras Down Town Mall at Zirakpur and he saw few packets of Golden Harvest Supreme Atta packets of 5 kgs each lying in trolley whereupon 50% discount was offered. It is further alleged that in the trolley there were 7 packets, whereupon date was not mentioned but month of March 2018 was mentioned which were of Batch No.

PHF1403D with MRP Rs.235/- and on 3 packets, date, month, Batch No. and MRP was also not mentioned. The allegation is that he bought one of the packet and alleged that owner of Golden Harvest Supreme, Paras Down Town with a malafide intention by not mentioning the date on the packet of Atta has committed cheating with people/customers and caused undue gain to himself.

Learned counsel for the petitioner contended that the petitioner is not named in the FIR and in fact the same has been registered against the owner of Golden Harvest Supreme Atta. Assertion is that the petitioner is neither the owner of Golden Harvest Supreme Atta nor he could have derived any benefit from the said transaction as he is only an employee in Big Bazaar outlet and the amount so charged from the complainant had gone to the company.

It is asserted that the petitioner is working as a Department Manager at the outlet of Big Bazaar and his primary duty is to handle the food section and the packet of Atta allegedly purchased by the complainant was not expired on 13.06.2018, however, since it had a short self life, therefore, the same was offered for sale on 50% discount on its MRP of Rs.235/-.

Learned State counsel assisted by the counsel for respondent No.2 has vehemently argued that the petitioner was responsible for managing the affairs of Paras Down Town Golden Harvest Supreme Future Retain Limited, who was involved in the sale, purchase and discounts in the ration department. It is asserted that the petitioner was found to be responsible for the affairs of Paras Down Town Golden Harvest Supreme Future Retain Limited and had, on his own, affixed the discount board on the wheat flour packets with the malafide intention to sell the same after expiry of the said produces by erasing the date and year of manufacture from the said packets and that too without any

direction from the company to sell the said product on any discount.

Heard learned counsel for the parties at length and have perused the record with their assistance.

Before proceeding further it would be appetite to have a glance of Section 273 IPC. The same is reproduced hereinbelow:-

“273. Sale of noxious food or drink.—Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

The Supreme Court in the case of **State of Haryana & Ors. Vs. Bhajan Lal & Ors. 1992 Supp (1) SCC 335** the scope of inherent powers of the High Court under Section 482 Cr.P.C. to quash the FIR has been discussed in detail. At the same time, the Apex Court identified the following cases in which FIR/complaint can be quashed:

1. *Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
2. *Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
3. *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
4. *Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

5. *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
6. *Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the 21 proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.*
7. *Where a criminal proceeding is manifestly attended with mala-fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

For constituting an offence under Section 273 IPC certain ingredients are required to be fulfilled before the offence of adulteration can be said to be made out. The ingredients are that somebody selling the food article or drinks which has been rendered noxious or unfit for food/drink with such knowledge or having reasons to believe that the same is noxious food item. Section 273 IPC is only attracted, if it is shown that the adulteration is deliberate, intentional or with the knowledge. In the absence of any such evidence or allegations, the ingredients of offence under Section 273 IPC are not constituted.

In the case, in hand, it is abundantly clear that on the date of occurrence i.e. on 13.06.2018, the packet of Atta allegedly purchased by the complainant bearing Batch No. PHG1403D with MRP Rs.235/- had not expired. The alleged packet of Atta was neither noxious nor was unfit for human consumption, as it was packed on 14.03.2018 having words best before 3 months.

Moreover, Section 5 of IPC clearly stipulates that wherever a

Special Act deals with the provisions in respect of a particular Act that the provisions of the said Special Act would override the general provisions of IPC and the provisions IPC in such a situation, will not be attracted.

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had a fraudulent or dishonest intention at the time of sale. In the instant case, respondent No.2/complainant does not disclose any criminal offence under Section 420 IPC.

As a universal fact the criminal proceedings should not be encouraged when it is found to be *mala-fide* or otherwise an abuse of the process of the Courts. Considering this, there is nothing to show that at the very inception, there was any intention, on behalf of the petitioner to cheat which is also condition precedent for an offence under Section 420 IPC.

In view of discussions made hereinabove, this Court is of the considered view that continuation of this FIR would amount to an abuse of the process of Court and to prevent the same it is just and expedient for this Court to quash the same by exercising the powers under Section 482 Cr.P.C.

Accordingly, the present petition is allowed and FIR No. 225, dated 14.06.2018, under Sections 273 & 420 of the Indian Penal Code, 1860 registered at Police Station Zirakpur, SAS Nagar and all other consequential proceedings arising therefrom, qua the petitioner, are quashed.

(SANDEEP MOUDGIL)
JUDGE

15th DECEMBER, 2022
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>