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IN THE HIGH COUR OF PUNJAB AND HARYAN
AT CHANDIGARH

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CRM M 23449-2023
Date of decision: 04.07.2023*Gagandeep Kumar**.....Petitioner**versus**State of Punjab through Sandeep Singh, Food Safety Officer, Civil Surgeon, Sangrur**.....Respondent***Coram: Hon'ble Mr. Justice Rajbir Sehrawat**

Present: Mr. Rishav Jain, Advocate for the petitioner

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Rajbir Sehrawat, J. (Oral)

The present petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, praying for setting aside the order dated 01.04.2023 (Annexure P-7) passed by the Judicial Magistrate Ist Class, Dhuri in complaint No. 44 of 2016 dated 04.10.2016 titled as '*State of Punjab vs. Gagandeep Kumar*', vide which the application under Section 311 Cr.P.C. filed by the Additional PP for recalling of the witness (Sandeep Singh, Food Inspector) has been allowed.

It is submitted by counsel for the petitioner that the allegations against the petitioner are qua selling of adulterated milk. Regarding the said incident, FIR No. 140 dated 09.10.2015 was registered against the petitioner under Sections 420, 272, 273 and 120-B of the Indian Penal Code. After filing of the challan, the evidence was started and the Food Inspector was examined as a witness. Thereafter, the Food and Safety Officer, Patiala-I had filed a complaint under Section 42 (5) of the Food Safety and Standards Act, 2006 as well, because the food adulteration is to

be dealt with as a complaint case. Since there were two proceedings going on the same set of facts against the petitioner, the petitioner had moved an application under Section 210 Cr.P.C. for clubbing both the cases together. The said application was allowed by the trial Court and it was ordered that the evidence already led in the FIR case, shall also be read as evidence in the complaint case. However, now the Food Inspector has been permitted to be recalled for further examination, which is totally uncalled for. Rather, the prosecution is trying to fill up the lacunae by recalling the said witness and by proving the facts alleged in the complaint. That course of action is not permissible under law.

Having heard counsel for the petitioner and having perused the case, this Court does not find any substance in the arguments raised by counsel for the petitioner. A perusal of the record shows that the Food Inspector was examined in examination-in-chief on 11.03.2019 in the FIR case. Thereafter, the application; already filed by the petitioner under Section 210 Cr.P.C.; was allowed by the trial Court vide order dated 07.01.2020. This also deserves to be mentioned that the cross examination of the Food Inspector had also not been completed by that time. Thereafter, the prosecution had moved an application under Section 311 Cr.P.C. for recalling of the Food Inspector for his examination in chief to prove the contents of the complaint. There is nothing wrong with the course of action adopted by the trial Court. Since the application under Section 210 Cr.P.C. filed by the petitioner himself was allowed after the examination-in-chief of the Food Inspector, therefore, it is obvious that whatsoever is to be deposed by the Food Inspector in the complaint case, has to be brought on file in the form of consolidated evidence. Only that much has been permitted by the

trial Court. In view of the above said facts, recalling of the witness – Food Inspector, which has been permitted by the trial Court, is essential for the just decision of the case.

Otherwise also, while allowing the application filed by the petitioner under Section 210 Cr.P.C., the trial Court had already ordered that the case shall be further proceeded with from the perspective of the criminal complaint; instead of that of the FIR case. Therefore, the primacy has been accorded to the facts and pleadings in the complaint case; and whatsoever evidence is required to be led in the complaint case, has to be permitted by the Court. The petitioner cannot take advantage of his own action of getting both the cases clubbed together; and now by pleading that whatsoever evidence had not been led in the complaint case before allowing of his application under Section 210 Cr.P.C. cannot be permitted to be led now.

In view of the above, finding not merits in the present petition, the same is dismissed.

(Rajbir Sehrawat)
Judge

July 04, 2023
mohan bimbura

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No