

30.04.2024

Item No.14
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

**C.R.R. 931 of 2023
with
CRAN 2 of 2023

Vishal Jaiswal
versus
State of West Bengal & Ors.**

In Re: An Application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973.

Mr. S. S. Sarkar,
Ms. Indrani Chakraborty,
Ms. Sarda Sha,
Ms. Anita Kundu ... For the Petitioner.

Mr. Debasish Roy, Ld. P.P.,
Mr. Saryati Datta ... For the State.

The present revisional application has been preferred against the order refusing to discharge the present petitioner in respect of an application under Section 227 of the Code of Criminal Procedure being filed in connection with reference Case No. E.B./G.R. 23/2023 vide Section 02 (Ultadanga Police Station), E.B. Case No. 157 dated 02.09.2021 by the learned Additional Sessions Judge, 1st Court, Sealdah.

Learned advocate appearing for the petitioner emphasises on the issue that when the Food Safety Officer under the Food Safety and Standards Act, 2006 has been appointed, a police officer cannot have the powers to carry out investigation in respect of the alleged offence which is related to a food item. Learned advocate submits that special procedure has been enacted which will have overriding effect over the general law and the learned advocate is apprehensive of the fact that a Food Safety Officer is one who has requisite qualification for exercising the powers not only derived from

the statute, but also the conditions required for engaging such officer as the subject-matter under the Act involves specialization for collection of food sample and the subsequent processes involved. Learned advocate has also emphasised that different authorities have been created including a Commissioner of Food Safety.

Learned advocate for the petitioner has drawn the attention of the Court to powers of different authorities which have been prescribed both for initiation of the proceedings and for lodging of the prosecution case. It has also been emphasised that after coming into force of the Food Safety and Standards Act, 2006, the same has overriding effect over other Acts concerned. Learned advocate in order to substantiate his argument has relied upon the following judgements :

- (i) ***Ram Nath Versus State of Uttar Pradesh and Others*** reported in **(2024) 3 Supreme Court Cases 502**,
- (ii) ***Jeewan Kumar Raut and another Versus Central Bureau of Investigation*** reported in **(2009) 7 Supreme Court Cases 526** and
- (iii) A judgement of The Gauhati High Court in Case No. : W.P. (Cr1.)/12/2022.

In paragraph 30 of ***Ram Nath's*** case (supra), it has been categorically stated as follows :

“30. *The decision of this Court in Swami Achyutanand Tirth [Swami Achyutanand Tirth v. Union of India, (2014) 13 SCC 314 : (2014) 5 SCC (Cri) 647] does not deal with this contingency at all. In State of Maharashtra [State of Maharashtra v. Sayyed Hassan Sayyed Subhan, (2019) 18*

SCC 145 : (2020) 3 SCC (Cri) 592] , the question of the effect of Section 97 FSSA did not arise for consideration of this Court. The Court dealt with simultaneous prosecutions and concluded that there could be simultaneous prosecutions, but conviction and sentence can be only in one. This proposition is based on what is incorporated in Section 26 of the GC Act. We have no manner of doubt that by virtue of Section 89 FSSA, Section 59 will override the provisions of Sections 272 and 273IPC. Therefore, there will not be any question of simultaneous prosecution under both the statutes.”

There is no dispute regarding the proposition. However, one has to appreciate in a particular case where the prosecution has been lodged only under the Indian Penal Code. The present is a case where the officers of the Enforcement Branch initiated case under Sections 120B/420/269/272 of the Indian Penal Code. The provisions of Sections 269 and 272 of the Indian Penal Code state as follows :

“269. Negligent act likely to spread infection of disease dangerous to life.—Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.”

“272. Adulteration of food or drink intended for sale.—Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold 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 subject-matter of the case and the allegations are in respect of seizure of certain pulses. It was found that they

were adulterated with 'talcum powder'. To that effect, seizure was also made and samples were sent to the concerned laboratories of the Central Government. Without deliberating further on the issue, it would be worthwhile to state that the Enforcement Branch Officers were earlier authorised under the Prevention of Food Adulteration Act, 1954. The subsequent Act of 2006 i.e. the Food Safety and Standards Act, 2006 has taken away such right and has entrusted the same to Food Safety Officers who are qualified individuals having expertise in the subject. However, one has to appreciate that although the Act was brought into force, but the existence of the provisions of Sections 269 and 272 of the Indian Penal Code were neither repealed nor they were struck down. The Enforcement Branch Officers are empowered to investigate offences under the Indian Penal Code including food items. The present case also reflects that the police authorities did not claim to have implicated the present petitioner in respect of any offence under the Food Safety and Standards Act, 2006.

Learned advocate for the petitioner has emphasised on Sections 4 and 5 of the Code of Criminal Procedure. However, the said provisions are not applicable in the present case and could have been applicable only when the police authorities had exceeded their jurisdiction of filing any case under the relevant provisions of the Special Act of 2006.

So far as the provisions of Indian Penal Code are concerned, there is no bar under the law for the police authorities to investigate whether the provisions were

adhered to or the collection of the sample was in accordance with law or not, which had the possibility or probability of prejudicing the present petitioner, is a question of fact to be decided in course of trial.

Having considered that the present proceedings have only been initiated under the provisions of the Indian Penal Code, I am of the view that no interference can be made in respect of continuance of the proceedings before the learned Additional Sessions Judge, 1st Court, Sealdah. Accordingly, the learned trial court is directed to continue with the trial of the case as it has been informed that charges have already been framed in connection with the instant case.

Accordingly, the revisional application being CRR 931 of 2023 along with CRAN 2 of 2023 is dismissed.

All concerned parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)