

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

**CRM-M-35818-2013
Date of Decision- 04.09.2024**

SUBHASH GOEL

.....PETITIONER

VERSUS

STATE OF HARYANA AND ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Salil Bali, Advocate with
Ms. Simmy, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana

SANDEEP MOUDGIL, J

1. The jurisdiction of this court has been invoked under section 482 Cr.P.C. for quashing of impugned complaint dated 05.09.2003, (Annexure P-5), under the Prevention of Food Adulteration Act, 1954 titled as 'State Vs Satya Parkash Gupta' pending before the learned Chief Judicial Magistrate, Rohtak and the summoning order dated 16.03.2007, Annexure P-8, and also the impugned order dated 13.09.2013 dismissing the application to seek discharge of the petitioner.

2. Factual matrix of the case succinctly stated are that complaint under the Prevention of Food Adulteration Act, 1954, (hereinafter referred as 'The Act') was filed before the Court of Chief Judicial Magistrate, Rohtak, on the allegation that the complainant, being a Food Inspector appointed under the Act for all the local areas of Distt. Rohtak inspected the premises

of Sh.Satya Parkash Gupta on 23.6.2023 at 4.00 P.M. at Old Anaj Mandi, Rohtak, having in his possession of 9 plastic jars each of 500 ml of Desi Ghee (Doaba) for public sale contained in the Glass Showcase and demanded a sample of Desi Ghee (Doaba) by giving him notice in writing on Form VI prescribed under the Prevention of Food Adulteration Rules, 1955. 3x500 ml of Desi Ghee (Doaba) was purchased for analysis from Sh.Satya Parkash Gupta for Rs.210/- which was divided into three equal parts (one plastic jar in each part). Each part of the sample was wrapped with Khaki paper on the neck and sealed with the seal of Medical Officer. Each part of the sample was labelled and wrapped in strong thick paper. Each part of the sample was secured by means of strong twice and sealed with the seals of Medical Officer and Food Inspector at the spot under rules. Signature of Sh.Satya Parkash Gupta was obtained in such a manner that both the paper slip and the wrapper on each sealed part of the sample carry a part of his signature. It is further alleged in the complaint that one sealed part of the sample alongwith a memorandum in Form-VII was sent to the Public Analyst Haryana, Chandigarh, for analysis in a sealed box through Railway Parcel vide R.R. No.874253 dated 24.6.2003 and the other two sealed part of the sample alongwith two copies of memo in Form-VII were deposited with the Local Health Authority, Rohtak, on 24.6.2003 vide No. GFI-2003/150 dated 24.6.2003 in a sealed packet. A copy of the memorandum in Form VII and a specimen impression of seals used to seal the sample and box was sent to the Public Analyst Haryana, Chandigarh, separately by registered post vide post office receipt No.3276 dated 24.06.2003. The sample was taken in the presence of the witnesses. It is further alleged in the complaint that according to the certificate of the Public

Analyst Haryana, Chandigarh, the sample does not conform to the prescribed standards laid down for Ghee under item No.A.11.02.21 of the PFA Rules, 1955, thereof in that: The sample gives 26.60 Reichert value against the minimum specified limit of 28 thus an offence under Section 7 of Prevention of Food Adulteration Act, 1954 was made out.

3. Thereafter the learned Chief Judicial Magistrate, Rohtak, vide order dated 16.03.2007, Annexure P-8, summoned the M/s Industrial Progressive (India) Ltd, through its Managing Director Sat Parkash to face trial of the complaint for having committed an offence under Section 7 read with Section 16(1)(a)(ii) of the Act after allowing the application filed by the Satya Parkash Gupta, under Section 20 of the Act.

4. However, the accused – K.D.Singh who was nominee of the company in filed application to seek his discharge from the case on the ground that his nomination was accepted by the Local Health Authority w.e.f. 2.11.2004, hence, on the date of taking the sample he was not nominee of the company, hence, he is liable to be discharged but his application was dismissed by the learned trial Court on the ground that “At this stage, this Court finds it appropriate to maintain that after filing of the present complaint accused Subhash Goel was summoned by this court but K.D.Singh had appeared in the court while maintaining that he was nominee of the manufacturer firm but now he has procured the documents under Right to Information Act, 2005, wherein he has not been shown to be nominee of the company on the date of taking the sample but all these documents are to be proved by adducing evidence and at least at this stage, both the accused cannot be discharged. Hence the application stands dismissed.” Thus, the petitioner has prayed for quashing of the impugned

complaint, Annexure P-5; summoning order dated 16.03.2007, Annexure P-8, and also the order dated 13.09.2013, in the present petition.

5. It is contended by the learned counsel for the petitioner that the petitioner was the Managing Director the year 2003 of the Company manufacturing Ghee. The company, being involved in a lot of manufacturing process and other activities, used to appoint nominees, who were responsible for the day to day activities of manufacturing plan as required under The Act and intimation regarding appointment of nominees were used to be sent to the District Health Officer, Faridabad, which is evident from Annexures P-1 (Colly.) to Annexure P-4 (Colly.). According to Annexure P-3, one Mr.K.D.Singh, Chemist (Quality Control) was appointed as a nominee on 30.10.2001 and an intimation in this regard was received in the office of District Health Officer, Faridabad, on 04.12.2001 but its acknowledgement was not given. In 2004, the office of District Health Officer, Faridabad, requested the Company to send another intimation letter so that acknowledgement may be given to the Company in prescribed proforma. However, in the year 2003, a complaint dated 5.9.2003, Annexure P-5, was filed by the Government Food Inspector, District Rohtak, under the Prevention of Food Adulteration Act, 1954, against one Satya Parkash Gupta, Distributor of Doaba Desi Ghee, Old Anaj Mandi, Rohtak and according to the allegations in the complaint, Desi Ghee was recovered from the said Satya Parkash Gupta and during the process of recovery, samples of Desi Ghee were taken in the form of original product and not as a representative sample. The complaint stated that the said Satya Parkash Gupta was distributor of Doaba Desi Ghee but the Govt. Food Inspector did

not ask about the name, address and other details of the manufacturer of the desi ghee allegedly recovered which shows his negligence towards his duty.

6. It is also contended that the nomination of K.D.Singh, as per RTI information, has been accepted from 2004 and not 2001, which is against the provisions of the Act because necessary information regarding nominee was forwarded to the office of District Health Officer from time to time and in 2001 also, vide Annexure P-3, Mr.K.D.Singh was appointed as the nominee of the Company in the year 2001. It is lapse on the part of the office of District Health Officer that they did not update their official record and against asked the Company in 2004 to forward nomination.

7. He further argues that the Reichert value in different States differs because in the State of Haryana, it is from 26 to 28 and in the State of Rajasthan, it is 26. The company procured milk from the vendors of Rajasthan and Haryana and thus the Reichert value @ 26.60 is perfectly within the prescribed limits and there is no shortcoming of any kind in the sample of allegedly recovered Ghee. Further, the alleged recovery took place on 23.06.2003 and the application seeking summoning of the petitioner was filed by Satya Parkash Gupta on 6.10.2006, i.e., after a lapse of 3 years and 4 months as such the summoning order dated 16.03.2007 is hit by the provisions of Section 468 of Cr.P.C. because cognizance cannot be taken by a Court after the lapse of period of limitation. As such, the impugned complaint, summoning order and order dismissing discharge application are liable to be quashed being wholly illegal and erroneous.

8. On the other hand, the learned counsel for the State has submitted that the complaint has been filed by the Government Food Inspector as the sample did not meet with the prescribed requirements under

the Act and the Analyst report has also proved this very fact. The petitioner's Company is the manufacturer of the desi ghee (Doaba) as such summoning of the petitioner by the learned trial Court is justified and accordingly, the order of dismissal of discharge application filed by the nominee of the petitioner's Company – Mr.K.D.Singh is also just and proper order.

9. As regards nomination, he has referred to the reply filed on behalf of the State by the Food Safety Officer, Rohtak, and has contended that none of the intimations, if any forwarded by the petitioner Company, bears the signature of Local Health Authority Faridabad and as such these nominations cannot be said to be valid nominations. Section 17(2) of the Prevention of Food Adulteration Act, 1954, permits only Directors or Managers, who are employed for mainly managerial or supervisory purposes and nomination of any other employee would not come within the definition of Director or Manager, irrespective of their duty or responsibility is legally not valid. The resolution dated 03.12.2001 was allegedly passed by Board of Directors of M/s Industrial Progressive (India) Ltd. Vide which Sh.K.D.Singh, Chemist (Quality Control), Milk Plant, Palwal (Faridabad) was nominated as nominee under Section 17(2) of the Prevention of Food Adulteration Act, 1954, as Incharge and responsible person for the conduct of the business of the said Company but the nomination on Form-VIII which is mandatory does not bear any reference number and date of dispatch regarding acceptance of nomination by K.D.Singh (alleged nominee of the Company) and also does not bear any signature of Local Health Authority, Faridabad and cannot be said to be a valid nomination unless the same is

accepted by person concerned, i.e., Sh.K.D.Singh (the alleged nominee) and in this view of the matter, the present petition is liable to be dismissed.

10. Heard learned counsel for the respective parties and gone through the record.

11. On perusal of the case file, it has revealed that the allegation in the Complaint filed under Section 7 of the Act is that desi Ghee (Doaba) recovered from the premises of Sh.Satya Parkash Gupta on 23.06.2003 at 4.00 P.M. at Old Anaj Mandi, Rohtak, did not conform to the prescribed standards laid down for Ghee under item No.A.1.02.21 of the Prevention of Food Adulteration Rules, 1955 because the Reichert value was found to be 26.60 as against minimum specified limit of 28. During the course of trial, K.D.Singh sought information under the RTI Act and then it revealed that the Ghee was manufactured by the Company named Industrial Progressive (India) Ltd., Faridabad, and petitioner is its Managing Director and accordingly, the learned trial Court summoned the petitioner also to face trial of the complaint filed by the Government Food Inspector, Rohtak. However, after summoning of the petitioner as accused by the learned trial Court, co-accused K.D.Singh moved an application seeking his discharge from the case, which has been dismissed by the learned trial Court vide order dated 13.09.2013 which is also under challenge in this petition.

12. The main contention of the petitioner is that co-accused K.D.Singh is the nominee of the Company, being Chemist (Quality Control) as such he was looking after the business and that there is no short coming in the sample because in the State of Haryana, the prescribed limit for Ghee is between 26 to 28. A perusal of the Resolution goes to show that the same does not bear any Reference No. and date of passing of the resolution and

there is no date also from which the nomination of co-accused K.D.Singh commences. Further, the nomination of co-accused, having been approved in the meeting held on 30.10.2001 at C-653, New Friends Colony, New Delhi, also does not bear any Reference No. and date, thus, it appears that these documents have been fabricated subsequently to create defence.

13. As far as the argument that there is no short-coming in the sample, it is necessary to point out that the petitioner has not refer to any document/notification about the prescribed specifications of Reichert value for Ghee between 26 to 28 for the State of Haryana and 26 for the State of Rajasthan in his petition nor has produced any such notification before this Court during the course of argument. Thus, the argument raised on his behalf cannot be accepted in the absence of any relevant material.

14. The arguments which have been raised on behalf of the petitioner before this Court today are disputed facts and cannot be examined in the proceedings under Section 482 Cr.P.C. and can be adjudicated upon during trial where both the parties are open to adduce their respective evidence.

15. In “***R.P. Kapur Versus State of Punjab; AIR 1960 SC 866,***” the Apex Court has discussed the scope of section 482 Cr.P.C., relevant portion whereof read as follows:-

"6. It is no more res integra that exercise of power under [Section 482](#) CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under [Section 482](#) CrPC is to prevent the abuse of

process of any Court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the Court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under [Section 482](#) CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding.

16. Also the scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in [State of Haryana v. Bhajan Lal](#) (1992 Supp (1) 335). A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated by this Court are as follows:

"(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 proceedings and/or where there is a specific provision in the Code or 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."

17. In view of the above discussed facts and the settled law discussed in R.P.Kapur(supra) and Bhajan Lal's case(supra) , this Court is of the considered view that the present petition fails and is hereby dismissed for want of any substance and merit therein.

18. The trial Court is advised to proceed with the complaint, Annexure P-5, in accordance with law expeditiously and nothing as observed and discussed hereinabove shall be constructed as an expression of opinion by the trial Court while deciding the complaint on merits.

04.09.2024
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable :Yes/No