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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-6325-2014
Date of decision: 29.01.2024

Arun Kumar Garg
...Petitioner

Versus

State of Haryana
...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Digvijay Singh, Advocate
for the petitioners.

Ms. Geeta Sharma, DAG, Haryana

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioner has approached this Court by way of filing the present petition under Section 482 Code of Criminal Procedure,1973 (hereinafter ‘Cr.P.C.’) for quashing of FIR No. 300 dated 27.07.2009 under Sections 272, 273 and 420 of the IPC registered at Police Station Samalkha, District Panipat (Annexure P-2) and all consequential proceedings including Final Report presented under Section 173 of the Cr.P.C (Annexure P-3), order framing charges dated 20.07.2012 (Annexure P-7), the chargesheet (Annexure P-8) along with order dated 13.09.2013 passed by learned Additional Sessions Judge Panipat (Annexure P-9) vide which revision petition filed by the petitioner challenging framing of charges was dismissed.

FACTUAL BACKGROUND

2. Briefly, the facts are that the petitioner is the owner of a duly registered firm namely M/s Arun Brothers which manufactures products like

‘gur’ and ‘shakkar.’ An FIR was registered on complaint lodged by Naresh Kumar, then Inspector/SHO Police Station Model Town, Panipat against the said firm on the grounds that it was indulging in production of sub-standard gur for sale, without requisite license or permit. It was also alleged that the firm was causing wrongful loss to the general public by using prohibited chemicals like sulphur, sheera and colours in manufacture of the said products. The petitioner being a partner of the said firm was arrested and samples of ‘gur’ were taken. On completion of the investigation, final report under Section 173 of the Cr.P.C(Annexure P-3) was presented on 25.09.2009 before the learned trial Court. The Government Food Inspector, Panipat has also filed private complaint dated 29.10.2009 vide criminal case No. 1634/09 (CIS No. 74/13) for offences under Prevention of Food Adulteration Act, 1954 (hereinafter ‘PFA Act’) on the same set of accusations (Annexure P-4).

3. The petitioner was summoned as an accused for commission of offence under Section 7 of the PFA Act vide order dated 29.10.2009 (Annexure P-5). In the complaint case, learned Chief Judicial Magistrate, Panipat, served notice of accusation on the petitioner vide order dated 23.01.2013 (Annexure P-6). The petitioner’s application for discharge was rejected by the learned trial Court vide order dated 20.07.2012 and charges were framed under Sections 272, 273 and 420 of the IPC vide order dated 20.07.2012 (Annexure P-7). Aggrieved by the same, the petitioner filed a revision petition before the learned Additional Sessions Judge, Panipat which was dismissed vide order dated 13.09.2013 (Annexure P-9).

4. Learned counsel for the petitioner *inter alia* contends that the PFA Act is a special statute and therefore the investigation conducted by the

respondent is void *ab initio*. Offences under PFA Act do not fall within the mandate of the police and as such it has no authority to investigate the same. A special procedure has been prescribed by the PFA Act to investigate offences that fall in its ambit which includes procurement of a report of public analyst which is further assailable before the Central Food Laboratory and provision of IPC and Cr.P.C. will have no application here. The PFA Act dictates that the offences falling in its purview must be tried summarily, however, a written consent of the appropriate authority is a pre-requisite for the same. Offences that fall within the ambit of a special statute cannot be investigated merely by registering a case under the IPC. He further contends that the impugned proceedings are in violation of the fundamental rights of the petitioner as enshrined under Articles 14, 19(1)(g) and 21 of the Constitution of India.

5. Per contra, learned State counsel contends that the registration of FIR was justified as the FIR and the private complaint have been registered with respect to two separate incidents. Further, prima facie case is made out against the petitioner and it would be in the interest of justice to let the trial reach its natural conclusion.

6. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner has already been acquitted vide order dated 15.07.2015 (Annexure P-11) passed by the learned Chief Judicial Magistrate, Panipat in the private complaint dated 29.10.2009 filed by the Government Food Inspector, Panipat and as such, satisfies the test laid down by the Constitution bench of the Hon'ble Supreme Court in Assistant Collector of the Customs, Bombay and another v. L.R. Melwani and another AIR 1970 SC 962, that if the accused has been absolved of all guilt after a lawful trial before a

competent Court, that verdict shall remain binding on his prosecutor. Speaking through Justice K.S. Hegde, the following was observed:

*“9. The issue estoppel rule is but a facet of the doctrine of autre fois acquit. In **Sambasivan v. Public Prosecutor, Federation of Malaya, 1950 AC 458** at p. 479, Lord MacDermott enunciated the said rule thus:*

"The effect of a verdict of acquittal pronounced by a competent Court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. The maxim "Res judicata pro veritate accipitur" is no less applicable to criminal than to civil proceedings. Here, the appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and was precluded from taking any step to challenge it at the second trial. And the appellant was no less entitled to rely on his acquittal in so far as it might be relevant in his defence. That it was not conclusive of his innocence on the firearm charge is plain, but it undoubtedly reduced in some degree the weight of the case against him, for at the first trial the facts proved in support of one charge were clearly relevant to the other having regard to the circumstances in which the ammunition and revolver were found and the fact that they fitted each other."

7. Furthermore, the PFA Act is a special statute and it is trite law that if a special enactment lays down the provisions regarding procedure that must be adopted for investigation and adjudication of an offence that falls in its purview, general provisions of the IPC or the Cr.P.C. will not be attracted. A two Judge bench of the Hon'ble Supreme Court in **Jeewan Kumar Raut and another v.**

Central Bureau of Investigation (2009) 7 SCC 526, speaking through Justice S.B. Sinha, the following was observed:

“20. It is a well-settled principle of law that if a special statute lays down procedures, the ones laid down under the general statutes shall not be followed. In a situation of this nature, the respondent could carry out investigations in exercise of its authorisation under Section 13(3)(iv) of TOHO. While doing so, it could exercise such powers which are otherwise vested in it. But, as it could not file a police report but a complaint petition only; Sub-section (2) of Section 167 of the Code may not be applicable. The provisions of the Code, thus, for all intent and purport, would apply only to an extent till conflict arises between the provisions of the Code and TOHO and as soon as the area of conflict reaches, TOHO shall prevail over the Code. ”

A two Judge bench of the Hon’ble Supreme Court in **Union of India vs. Ashok Kumar Sharma and others 2021 CriLJ 2006**, speaking through Justice K.M. Joseph held as follows:

“28. Section 4(2) of the CrPC, 1973 declares that all offences under any law other than the IPC shall be investigated, inquired into and tried and otherwise dealt with according to the CrPC. This is however, subject to any enactment for the time being in force which provides otherwise in the matter of, the manner or place of investigation inter alia in regard to offences under any law other than the IPC. The purport of Section 5 is this:

If any special law or local law for the time being in force contemplates any special jurisdiction or power or any special form of procedure prescribed, unless there is something to the contrary, to be found, it is the provisions of the special law or the local law which would prevail.”

8. Consequently, the present petition is allowed and FIR No. 300 dated 27.07.2009 under Sections 272, 273 and 420 of the IPC registered at Police Station Samalkha, District Panipat (Annexure P-2) and all subsequent proceedings arising therefrom are quashed qua the petitioner.
9. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

January 29, 2024
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No