

**Jitendra Kumar Vs. State of Bihar**

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**Court :** Patna

**Decided On :** Nov-29-2007

**Judge :** Rekha Kumari, J.

**Appellant :** Jitendra Kumar

**Respondent :** State of Bihar

**Disposition :** Application allowed

**Judgement :**

**Rekha Kumari, J.**

1. This application under Section 482 of the Code of Criminal Procedure, 1973 is directed against the order dated 16.7.2003 passed by the Chief Judicial Magistrate, Nalanda at Biharsharif in official complaint case No. 1004 of 2003 whereby he took cognizance of the offence under Section 16(1)(a) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the said Act) and directed to issue summons against the petitioner and also against the order dated 27.12.2005 passed by the 1st Additional Sessions Judge, Nalanda in Criminal Revision No. 249 of 2004 whereby the revision filed against the order of the Chief Judicial Magistrate was dismissed.

2. The case of the complainant opposite party No. 2, the Food Inspector, Nalanda at Bihartsharif is that on 13.2.2003 he visited the jail premises, Biharsharif and

took sample of food articles including milk powder from there and sent the sample of milk powder to the public analyst and the sample was found by the public analyst to be adulterated due to loss milk fat content in respect to prescribed limit of variability and presence of sugar.

3. After receipt of the report of the public analyst the complainant obtained sanction for prosecution from the Civil Surgeon-cum-Chief Medical Officer, Nalanda and filed a complaint which was received on 16.7.2003 by the learned Chief Judicial Magistrate, who after perusing the same passed the impugned order.

4. Learned Counsel for the petitioner submitted that no offence under Section 16(1)(a) of the Act is made out in this case. No copy of the report of the analyst was sent to the petitioner and, therefore, there was violation of the mandatory provision of Section 13(2) of the Act causing prejudice to the petitioner. Therefore, the impugned order cannot be sustained. In support of his contentions, learned Counsel relied on the decision of this Court in the case of Sharawan Kumar v. State of Bihar reported in 1997 (1) PLJR, 453. He also submitted that the petitioner was Superintendent of Jail and so sanction for prosecution under Section 187 Cr.P.C. was necessary and as no sanction was obtained, the cognizance taken against the petitioner cannot stand.

Learned Counsel for Opposite Party No. 2 (complainant) supported the order. He also filed a counter affidavit.

5. As regards the first submission of the learned Counsel for the petitioner, it is evident from Section 16(1)(a) of the Act that only when a person manufactures for sale or stores, distributes for sale or sells any adulterated food, he can be made liable under this provision. But in this case the milk powder was stored in the jail premises for consumption of the jail inmates and not for sale to public. Therefore, there is substance in the submissions of the learned Counsel that no offence under Section 16(1)(a) of the Act is made out in this case.

6. Then as provided under Section 13(2) of the Act, after institution of the prosecution against any person, a copy of the report of the result of the analysis

must be forwarded. This is a mandatory provision. Though, there is no time limit within which the copy has to be forwarded to the accused but, as held by this Court in the above decision, the copy must be forwarded without unreasonable delay so that no prejudice is caused to the accused to get the same examined by an expert. But, in this case, though counter affidavit has been filed, there is nothing to show that copy of the report of the public analyst was ever sent to this petitioner. Therefore, in this case there has been violation of a mandatory provision causing prejudice to the petitioner. The impugned order, therefore, cannot be allowed to stand on this ground also.

7. Apart from this, the petitioner admittedly was the Jail Superintendent at the time of the alleged occurrence. He has also been made accused in this case in his official capacity as Superintendent of Jail. It is not disputed that the Jail Superintendent is a public servant and he cannot be removed from his office save by or with the sanction of the State Government. Therefore, it is also necessary to obtain sanction under Section 187 Cr.P.C. against the petitioner before passing the impugned order and as this has not been done, the impugned order against the petitioner is bad in law.

8. In view of the discussions made above, this application is allowed and the impugned order as against the petitioner, is hereby quashed.

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