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Court : Jharkhand

Decided On : Dec-10-2002

Reported in : [2003(2)JCR560(Jhr)]

Judge : V.K. Gupta, C.J. and; Ramesh Kumar Merathia, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 16(1); [Constitution of India](#) - Article 226

Appeal No. : WP (Cr) No. 229 of 2002

Appellant : Vivek Garg and ors.

Respondent : State of Jharkhand and ors.

Advocate for Def. : Parmanand Mishra, JC to GA

Advocate for Pet/Ap. : Pandey Neeraj Rai, Adv.; P.D. Agarwal, Adv.

Disposition : Petition allowed

Judgement :

ORDER

1. In this petition filed under Article 226 of the [Constitution of India](#) the prosecution against the petitioners for the offences under Section 16(1)(i)(ii) of the [Prevention of Food Adulteration Act, 1954](#) is sought to be quashed.

2. Mr. Pandey Neeraj Rai, learned counsel appearing for the petitioners has assailed the prosecution on various grounds but we are concerned in this case with only two grounds, namely, the defect in the grant of sanction for prosecution and the fact that the petitioners were not selling mineral water in bottles and, therefore, there was no question of misbranding of the products.

3. Mr. Parmanand Mishra, learned JC to GA has appeared for the respondent-State but has not controverted the submissions of Mr. Rai, Mr. P.D. Agarwal, learned counsel appearing for the Union of India has also not made any submission with respect to the aforesaid two aspects.

4. The prosecution case as finding a mention till column 7 of the complaint is reproduced herein below :

'Brief description of offence : Sale of misbranded Ultra Aqua Mineral Water and opinion of the P.A. Bihar, Patna, Ultra Aqua Mineral Water does not conform to the specification of PFA Rule 32 requiring labeling so it is misbranded as per report No. 2576 dated 9th, November, 1999 is attached for necessary action.'

5. Underneath the complaint the Chief Medical Officer has accorded his sanction In the following terms :--

'Prosecution sanctioned after perusal of the report.'

6. The petitioner's case is, that the petitioners do not sell mineral water in bottles and, therefore, there is no question of labeling as such and that the petitioners sell mineral water in large cans for being consumed by, bulk purchasers. From their premises the respondent had taken mineral water and had themselves put the same, in empty bottles. Therefore, there is no question of labeling of the bottles and hence the question of mis-branding does not arise. These facts have not been controverted or disputed by the respondents in the counter affidavit nor have Mr. Parmanand Mishra or Mr. Agarwal controverted these factual aspects. Actually, Mr. Agarwal's stand is that he merely represents Union of India which is not a contesting respondent in this case. The complaint also does, not mention as to under what circumstances and in which fact situation the respondents purchased

or took water from the petitioners and as to whether the petitioners had been selling the water packet in bottles, thereby giving rise to the charge of misbranding on the bottles. Admittedly, also there is no allegation or accusation that the water was adulterated or contaminated or that it did not conform to any laid down or prescribed specifications. The only allegation is about misbranding of the label on the bottle and it is the uncontroverted case of the petitioners that in fact they never sold the water in bottles but sold it to bulk purchasers in large Jars or Cans.

7. In so far as the sanction aspect is concerned, Mr. Pandey Neeraj, Rai has referred to a judgment of the Supreme Court in the case of A.K. Roy v. State of Punjab, reported in 1987 EFR 1 (SC) wherein, their Lordships on the question of grant of sanction have held that the sanctioning authority has to give his consent in writing when he is satisfied that prima facie case exists in the facts of a particular case and also he should record his reasons for the launching of prosecution in public interest. Mr. Rai has also referred to a Single Bench judgment of Bombay High Court in the case of Gahini Nath Bhim Rao Patekar v. State of Maharashtra, reported in 1987 EFR 603 (Bom). Relying upon the aforesaid Supreme Court judgment, Bombay High Court also held that the requirement for grant of a sanction is fulfilled only if the sanctioning authority duly applies his mind to the facts and circumstances of the case and records his satisfaction that prima facie case did exist warranting accord of sanction. Actually, Bombay High Court has gone to the extent of holding that the reasons as to why the prosecution be not launched in public interest are also required to be recorded while according sanction for such prosecution.

8. In so far as sanction question is concerned, we may or may not agree with the Bombay High Court view with respect to the recording of detailed reasons but following the ratio in A.K. Roy's case (supra) we do hold that the order granting sanction at least prima facie must indicate due application of mind by the sanctioning authority so that the sanction order on the face of it reveals that the sanctioning authority, after such due application of mind granted the sanction and desired that the prosecution in public interest be launched against the accused persons. In the present case, as noticed above, the sanction order appears to be a

mere mechanical exercise of jurisdiction, and apparently it suffers from the vice of non-application of mind.

9. For the foregoing reasons, the petition is allowed and the proceedings in Case No. C-IV 1/2000 against the petitioners are quashed and set aside with all consequences.

10. IA No. 779/2002 filed by Union of India, for the reasons mentioned therein is allowed and the order dated 25.9.2002 in so far as it imposed cost of Rs. 2000/- against the Union of India is recalled. -It is accordingly directed that the amount of costs, if deposited by Union of India in the Advocates Welfare Fund, be refunded to it through Mr. Agarwal against a proper receipt.

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