

Malkhan Singh Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Mar-30-2011

Judge : Shri Kant Tripathi, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482 ; Prevention of Food Adulteration Act - Section 7/16

Appeal No. : APPLICATION U/S 482 No. - 4326 of 1999

Appellant : Malkhan Singh

Respondent : State of U.P. and Others

Advocate for Def. : Govt. Advocate

Advocate for Pet/Ap. : Sudhir Shandilya; Vivek Shandilya, Advs

Judgement :

1. Heard Mr Sudama Ji Shandilya for the applicant and Mr. N.D. Rai, learned AGA for the respondent no.1 and perused the record.

2. The instant petition under section 482 of the Code of Criminal Procedure (in short 'the Code') has been filed for quashing the proceedings of criminal case no. 1830 of 1994, State vs. Hukum Singh (now Malkhan Singh), pending under section 7/16 of Prevention of Food Adulteration Act (in short 'the Act') in the court of First Additional Chief Judicial Magistrate, Jhansi and also for quashing the order dated 21.8.1999 passed in the said case.

3. It appears that on 15.9.1993 at about 7.30 A.M., the food inspector took a sample of milk from a person, who told his name Hukum Singh son of Prabhu Dayal Yadav, resident of Paura, police station Sipri Bazar, district Jhansi. The sample of the milk was sent to Public Analyst for analysis, who found the sample adulterated as the fat contents were deficit. Consequently, the food inspector, after obtaining sanction as required by section 20 of the Act, launched the complaint against the aforesaid Hukum Singh, who appeared before the Magistrate and pleaded that he was not the person from whom the sample was taken and according to him the sample was taken from Malkhan Singh son of Mansa Ram Yadav resident of village Pohra, police station Sipri Bazar, district Jhansi (the petitioner) but he instead of disclosing his name and address disclosed his name as Hukum Singh with other details as aforesaid. Thereafter the learned Magistrate summoned the food inspector, who testified the allegations of Hukum Singh and stated very specifically in the court that in fact the person from whom the sample was taken was the petitioner Malkhan Singh. The learned Magistrate, therefore, issued process to the petitioner vide his order dated 21.8.1999.

4. Mr. Sudama Ji Shandilya submitted that the learned Magistrate was not competent to issue process to the petitioner as there was no sanction for prosecution of the applicant, as required by section 20 of the Act. The sanction was obtained for prosecution of Hukum Singh, therefore, on that basis of that sanction it was not open to the Magistrate to issue process to the applicant. Mr. Shandilya further submitted that there was no evidence that the sample was taken from the petitioner and not from Hukum Singh.

5. So far as the question, whether or not sample was taken from the petitioner Malkhan Singh, who pretended himself as Hukum Singh, is concerned, is a question of fact which can not be examined in a petition under section 482 of the Code. The Magistrate seems to have proceeded on the basis of the application moved by Hukum Singh and the statement of the food inspector, therefore, the summoning order passed against the petitioner is based on relevant materials/evidence and as such it can not be quashed on the ground raised by the petitioner.

6. Necessity of the sanction as required by section 20 of the Act is in regard to launching of prosecution in respect of an offence punishable under the Act. No sanction is required so far as launching of prosecution against any specific person is concerned. This is evident from a bare perusal of section 20 of the Act, which reads:

"(1) No prosecution for an offence under this Act, not being an offence under section 14 or section 14A, shall be instituted except by, or with the written consent of, the Central Government or the State Government or a person authorised in this behalf, by general or special order, by the Central Government or the State Government.

Provided that a prosecution for an offence under this Act may be instituted by a purchaser or recognised consumer association referred to in section 12, if he or it produces in court a copy of the report of the public analyst along with the complaint.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under sub-section (1AA) of section 16 shall be cognizable and non-bailable)."

7. The language of sub-section (1) of section 20 of the Act clearly reveals that it inhibits institution of prosecution for an offence under the Act except on fulfilment of one or the other of the two conditions mentioned therein. Either the prosecution should be launched by the Central Government or the State Government or it should be instituted with the written consent of the person or authority authorised therein. If these conditions are fulfilled, the prosecution launched can not be held to be incompetent. The sample taken by the food inspector was found adulterated, consequently he obtained sanction of the Chief Medical Officer for launching the prosecution and accordingly he filed the complaint. If during the trial, the court was of the view that the person against whom the prosecution was instituted was not the person from whom the sample was taken and his name was wrongly disclosed

by the actual person from whom the sample was taken, it was open to the court to issue process to the person, who cheated the food inspector by impersonating himself, therefore, the prosecution of the petitioner can not be quashed only on the ground that the earlier sanction was granted for prosecution of Hukum Singh. It is not necessary that sanction should be obtained in regard to individual accused. If any offence is constituted under the Act and a sanction for launching prosecution in respect of that offence is granted, the question as to whether who is or who is not accused, is to be decided by the court while issuing process.

8. In this view of the matter, the prosecution launched against the petitioner can not be quashed on the aforesaid ground, specially when he is alleged to have defrauded the food inspector and tried his level best to clean away himself from the scenario.

9. I do not find any merit in the petition. It is dismissed. However, in view of the fact that occurrence is of the year 1993, the Magistrate is directed to expeditiously dispose of the case, preferably within six months from the date of production of a certified copy of this order.

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