

M.Cr.C.No.5289/2012

(Mukesh Kumar Gupta v. State of M.P. & Ors.)

17/04/2017

Shri Nirmal Kumar Sharma, counsel for the applicant.

Shri B.P.S. Chauhan, Public Prosecutor for the respondent No.1/State.

None for the respondents No.2 & 3.

This petition under Section 482 of CrPC has been filed for quashing the complaint filed by the Food Safety Officer against the applicant for offences under Sections 26, 27 & 51 of the Food Safety and Standards Act, 2006 (in short 'FSS Act 2006').

The necessary facts for the disposal of the present petition in short are that the Food Safety Officer had taken a sample of coriander powder on 15.12.2011 and the said food article was sent for chemical analysis to State Food Testing Laboratory, Bhopal. A report dated 30.12.2011 from the State Food Testing Laboratory, Bhopal was received, according to which, the sample was found to be of sub-standard quality. Accordingly, after completing the formalities, the complaint was filed.

It is submitted by the counsel for the applicant that total ash (on dry) in the coriander powder was found 7.5% whereas the standard prescribed is 7% and since the difference is only 0.5%, therefore, there is a possibility of error of judgment in analysis. Thus, prima facie, no case is made out

M.Cr.C.No.5289/2012

against the applicant warranting his prosecution. It is further submitted by the counsel for the applicant that the State Food Testing Laboratory, Bhopal is not accredited by National Accreditation Board for Testing and Calibration Laboratories or recognized by the Food Authority under Section 43 of FSS Act, 2006, therefore, the report given by the State Food Testing Laboratory, Bhopal is not admissible in law and Chaturbhuj Meena has not been appointed as Food Analyst under Section 45 of FSS Act, 2006.

Per contra, it is submitted by the counsel for the State that so far as the marginal difference of 0.5% is concerned, there is no provision in law which gives benefit to the accused granting exemption from prosecuting in a case if the margin of difference is upto 0.5%, therefore, it will be for the Trial Court to decide this question that whether there was an error of judgment in analysis or not. It is further submitted that so far as accreditation of the Laboratory is concerned, the Food Safety and Standard Authority of India has issued a clarification dated 5th July, 2011 and has clarified that the existing Food Testing Laboratories which are testing food samples under PFA will continue to perform their function of food testing under Section 98 of FSS Act, 2006 till any notification is issued under Section 43 of FSS Act, 2006. The letter dated 5th July, 2011 issued by Food Safety & Standards Authority of India has been placed on record as

M.Cr.C.No.5289/2012

Annexure A-1, which reads as under:-

"No.83-Dir (Enf.)/FSSAI/2011
Food Safety & Standards Authority of India
(A Statutory Regulatory Body of Govt. of India)
Ministry of Health & Family Welfare
3rd Floor, FDA Bhawan, Kotla Road,
New Delhi – 110 002

Dated: 5 July, 2011

To,
Food Safety Commissioners of all States/UTs

Subject: - Clarification on the status of Public
Labs functioning at Centre/State/
UT after the promulgation of FSS
Act, 2006 with effect from 5th
August, 2011.

Section 43 of the FSS Act requires that all food testing under the Act will be done in NABL or any other FSSAI approved accredited lab. State Governments and UT Government have already been advised in this regard and the results of a 'gap analysis' commissioned by FSSAI in respect of the State Labs have been shared for appropriate action for the upgradation of the Labs to accredited standards. However, from the interaction with the State Government it is clear that the process is likely to take some time and the labs will not be able to get accreditation before 5th August, 2011 when the FSS Act will become operational.

The matter has been examined and it is clarified that the existing Public Food Testing Laboratories which are testing food samples under PFA will continue to perform their function of food testing under Section 98 of FSS Act, 2006 till any notification is issued under Section 43 of FSS Act, 2006. The Central Food Laboratories at Kolkata, Pune and Mysore and FRSL, Ghaziabad will function as the referral laboratories.

Yours Sincerely,

M.Cr.C.No.5289/2012

(S.S. Ghonkrokta)
Director
Tele-Fax :011-23220994
E-mail: sghonkrokta@fssai.gov.in"

Thus, it is submitted that in view of the clarificatory letter issued by the Food Safety & Standards Authority of India, the existing Food Testing Laboratories of the State were allowed to continue to perform their function of food testing under Section 98 of FSS Act, 2006 till any notification is issued under Section 43 of FSS Act, 2006 and, therefore, it cannot be said that the report given by the State Food Testing Laboratory, Bhopal is without any authority of law.

Heard the learned counsel for the parties.

From the report given by the Food Analyst, State Food Testing Laboratory, Bhopal, it is clear that total ash (on dry) in the coriander powder was found to be 7.5% whereas the prescribed standard as per the provisions of FSS Act, 2006, Rules and Regulations is 7.0%. Accordingly, it was opined by the Food Analyst that the sample is "sub-standard".

So far as the contention of the counsel for the applicant that Shri Chaturbhuj Meena has not been appointed as a Food Analyst as required under Section 45 of FSS Act, 2006 is concerned, it is clear that a declaration has been made by Chaturbhuj Meena, Food Analyst to the effect that he is duly appointed as Food Analyst under the provisions of FSS Act, 2006 for whole Madhya Pradesh. This

M.Cr.C.No.5289/2012

declaration has been made at the beginning of the report. In view of the declaration that Shri Chaturbhuj Meena has been appointed as Food Analyst, at this stage, there is nothing on record to disbelieve the said certificate/declaration and the applicant can challenge the correctness of this certificate/declaration in the trial.

So far as the recognition and accreditation of the Laboratories, research institutions and referral food laboratories are concerned, it is clear that the Food Safety & Standards Authority of India has issued a letter dated 05th July, 2011 which clarifies that till any notification is issued under Section 43 of FSS Act, 2006, the existing Food Testing Laboratories which are testing food samples under PFA will continue to perform their function of food testing under Section 98 of FSS Act, 2006. Thus, the submission made by the counsel for the applicant that there is nothing on record to show that Shri Chaturbhuj Meena was appointed as Food Analyst under the FSS Act, 2006 and the accreditation of the Food Laboratory under the FSS Act, 2006 has not been granted, is misconceived and is hereby rejected. However, what will be the effect of letter dated 5th July, 2011 is yet to be considered by the Trial Court.

So far as the grant of benefit of marginal difference of 0.5% in dry ash is concerned, suffice it to say that there is no provision in the FSS Act,

M.Cr.C.No.5289/2012

2006, which provides for giving a benefit of doubt to the accused. Whether there was an error of judgment in analysis or not, whether the analysis was done strictly in accordance to the said norms, and whether there is a possibility of error of judgment in analysis are some questions of fact which can be decided by the Trial Court only after recording the evidence. The applicant will have full opportunity to cross-examine the Food Analyst in order to show that there is an error of judgment in analysis. However, being a disputed question of fact, this Court in exercise of powers under Section 482 of CrPC cannot hold that as there was a marginal error of 0.5% in the sample, therefore, it can be because of error of judgment in analysis.

Considering the facts and circumstances of the case, this Court is of the view that the present petition sans merit and is hereby **dismissed**.

The interim order granted on earlier occasion is hereby vacated.

Let a copy of this order be forwarded to the Trial Court. Since, the sample was taken in the year 2011, therefore, the Trial Court is directed to conclude the Trial within one year from the date of receipt of copy of this order.

(ra)

(G.S.Ahluwalia)
Judge