



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 8th OF APRIL, 2025

MISC. CRIMINAL CASE No. 46662 of 2022

NEELKAMAL SHARMA AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Sanjay Kumar Bahirani and Shri Harshad Bahrani – Advocates for applicants.

Shri Mohit Shivhare – Public Prosecutor for respondent/State.

ORDER

This application, under Section 482 of Cr.P.C., has been filed for quashment of FIR in Crime No.73/2022 registered at Police Station Umri, District Bind (M.P.) for offence punishable under Sections 420, 272, 273, 34 of IPC.

2. The facts necessary for disposal of the present application, in short, are that on 19.04.2022 at about 01:30 pm, police force as well Food Safety Officer, went to Neelkamal Dairy for inspection. Harikamal Sharma was present in the dairy and he informed that his brother Neelkamal Sharma is the proprietor. He could not produce the licence but informed that the licence is with his brother. In the basement of the house storage of milk was being done. Three bags of white powder (75 kg.) and one plastic drum containing 32 liters of semi-prepared milk



were recovered. In another room, two tanks containing 41 kg. Ghee were also recovered. In the premises, 15 empty packets of Vanaspati Ghee of one liter each were found and one tanker which was parked outside the dairy was found containing 3200 liters of adulterated milk and 300 liters of milk stored in two drums was found. Accordingly, the samples were collected and the remaining articles were seized. The market value of the seized articles was Rs.25,280/-. *Prima facie*, it was found that owner of the dairy had been manufacturing synthetic milk and by selling the same was playing fraud and cheating innocent purchasers and accordingly, offence was registered under Sections 420, 272, 273, 34 of IPC.

3. Challenging the registration of FIR, it is submitted by counsel for applicant that after Food Safety and Standards Act, 2006 (In short FSSA) came into force the provisions of FSSA would override the provisions of IPC and thus it is submitted that registration of FIR for offence under Sections 420, 272, 273, 34 of IPC is bad in law and relied upon the judgments passed by the Supreme Court in the case of **Ram Nath Vs. State of Uttar Pradesh and Others** reported in (2024) 3 SCC 502, **Sushil Kumar Gupta Vs. State of West Bengal** decided on 22.03.2024 in **Criminal Appeal No.1798/2024** and the judgment passed by co-ordinate Bench of this Court in the case of **Rajkumar Tinkar Vs. The State of Madhya Pradesh** decided on 03.04.2024 in **M.Cr.C. No.2159/2012**.

4. *Per contra*, counsel for the State has supported the registration of FIR and relied upon the judgment passed by the Supreme Court in the case of **Manik Hiru Jhangiani Vs. State of M.P.** decided on 14-12-2023 passed in **Cr.A. No. 3864 of 2023**.

5. Heard learned counsel for parties.

6. So far as the judgment relied upon by the State in the case of **Manik Hiru Jhangiani (supra)** is concerned, it is distinguishable on facts. In that case,



offence was registered under Section 7/16 of Prevention of Food Adulteration Act and the sample was collected on 29.08.2010 and by that time FSSA had already come into existence. Thus, the question was as to whether the registration of offence and trial of the accused under Section 7/16 of Prevention of Food Adulteration Act, 1954 in spite of the fact that FSSA had already come into existence is correct or not?

7. So far as the judgments relied upon by applicants in the case of **Ram Nath (supra)**, **Sushil Kumar Gupta (supra)** and **Rajkumar Tinkar (supra)** are concerned, this Court is of considered opinion that they too are distinguishable on facts and circumstances of case.

8. Section 89 of FSSA reads as under:

89. Overriding effect of this Act over all other food related laws.—

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Thus, it is clear that the provisions of FSSA shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the FSSA.

9. The Supreme Court while considering the facts and circumstances of the case had held that Section 89 of FSSA will have overriding effect even if offence under Sections 272, 273 of IPC are made out. In paragraph 29 of the judgment passed by the Supreme Court in the case of **Ram Nath (supra)** it is specifically mentioned that *“In this case, we are concerned only with Sections 272 and 273 IPC. When the offences under Sections 272 and 273 IPC are made out, even the offence under Section 59 FSSA will be attracted. In fact, the offence under Section 59 FSSA is more stringent.”*



10. Section 272 and 273 of IPC read as under:

272. Adulteration of food or drink intended for sale.—

Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

273. Sale of noxious food or drink.—

Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

11. In the case of **Sushil Kumar Gupta (supra)** also, the Supreme Court has dealt with Sections 272 and 273 of IPC only and accordingly, held that there cannot be simultaneous prosecution under both the statutes.

12. In the present case, offence has been registered under Sections 420, 272, 273, 34 of IPC. From the report of Food Analyst, it was found that the sample of milk which was described as Ghol (solution) was adulterant under Section 3(1)(a) of FSSA. Furthermore, white powder which was seized from the premises of applicants was found to be as Malto-Dextrin which can be used as an adulterant in milk and milk products. Thus, it is clear that in the name of pure milk, applicants were selling adulterated goods. It is not the case of applicants that applicants were selling adulterated milk by making it clear to the general public that it is adulterated milk. Selling adulterated milk by projecting that it is pure milk will certainly invite ingredients of cheating.



13. This Court in the case of **Rohit Jain Vs. The State of Madhya Pradesh** decided on **23.02.2024** in **M.Cr.C. No.14294/2021 (Principal Seat)** has held as under:

6. The moot question for consideration is as to whether when an eatable product is found to be adulterated, then whether an offence under Section 420 of IPC would also be made out or not?

7. The said aspect has been taken note of by this Court by order dated 01.04.2021 passed in the case of Manish Gupta Vs. State of M.P. in M.Cr.C. No.11462/2021 (Gwalior Bench) and has held as under:-

“In the present case, it is not the case of the applicant that any penalty has already been imposed on him. Further, the offence has also been registered under Sections 420 and 272 of IPC. It is not the case of the applicant that he had already displayed in his shop that adulterated or substandard milk is sold. It is the defence of the applicant that the milk was not kept for the purpose of sale but it was a sapreta after manufacturing of milk products. According to the FIR, he is running a Milk Dairy. The applicant has not produced any licence to show that he is competent to produce any milk product. Further, it would be a defence of the applicant that the sample which has been collected, was not a milk but it was a sapreta and it was not meant for sale. Further, the applicant has not clarified as to why he had kept the sapreta in his shop, specifically when according to him, the same was not meant for sale. Further, it is not the case of the prosecution as well the applicant that it was displayed by the applicant that the so-called milk/sapreta was not meant for sale. Selling any adulterated or substandard product to the innocent customers by projecting that the said product is a pure and safe for human consumption, would certainly be an offence under Section 420 of IPC.”

So far as the offence under Section 272 of IPC is concerned, the defence of the applicant that the milk was not kept for sale, cannot be accepted at this stage. If the milk/sapreta was not meant for sale, then he should not have kept the same in the shop and should have kept somewhere



else or should have destroyed. Prima facie, it is clear that the sample of milk which has been collected by the Officer, was meant for sale, and it was not sapreta as claimed by applicant.

So far as the contention of the Counsel for the applicant that since the Act, 2006 is a complete Act in itself which provides for separate procedure for penalty is concerned, the Counsel for the applicant could not point out any provision of the Act, 2006 which bars the applicability of provisions of General Criminal Law or IPC.

The Act, 2006 merely provides for penalties for contravening the provisions of the Act, 2006, whereas the offence under Sections 420 and 272 of IPC are different from the provisions of the Act, 2006. In absence of any bar under the Act, 2006, this Court is of the considered opinion that the Police is well within its right to resort to the provisions of IPC.

The Supreme Court in the case of State of Madhya Pradesh vs. Rameshwar and Others, reported in (2009) 11 SCC 424 has held as under:-

"48. Mr. Tankha's submissions, which were echoed by Mr. Jain, that the M.P. Cooperative Societies Act, 1960 was a complete Code in itself and the remedy of the prosecuting agency lay not under the criminal process but within the ambit of Sections 74 to 76 thereof, cannot also be accepted, in view of the fact that there is no bar under the M.P. Co-operative Societies Act, 1960, to take resort to the provisions of the general criminal law, particularly when charges under the Prevention of Corruption Act, 1988, are involved.

49. The judgments referred to by Mr. Tankha regarding the tendency to convert civil disputes into criminal cases to pressurize the accused, are unimpeachable, but the same will not apply to the facts of this case where a conspiracy to cheat the Bank is alleged."

Where the innocent consumers are being cheated by selling adulterated or substandard or unfit eatables, then this Court is of the considered opinion that the prosecution of the applicant for offence



under Sections 420 and 272 of IPC is permissible. It is not the case of the applicant that he has already been punished under the Act, 2006. Thus, the bar as contained under Section 26 of General Clauses Act would not apply.

Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that no case is made out for quashing the FIR in Crime No.13/2021 registered at Police Station Bairad, District Shivpuri for offence under Sections 420, 272 of IPC and under Sections 51, 26(2)(ii) of the Act, 2006. Accordingly, the application fails and is hereby **dismissed.**”

8. In the considered opinion of this Court, the present case is duly covered by the order passed by this Court in the case of Manish Gupta (*supra*).

14. Thus, it is clear that when a person sells adulterated product by projecting it to be pure one, then it is a clear case where he is cheating innocent purchasers. Therefore, the Police might not be correct in registering the offence under Sections 272 and 273 of IPC in the light of the judgment passed by Supreme Court in the case of **Ram Nath (*supra*)** but has rightly registered the offence under Section 420 of IPC.

15. Furthermore, except Section 89 of FSSA, counsel for applicants could not point out any other provision of law which prohibits the application of provisions of IPC. Thus, it is clear that any other provision concerning the food related law would get eclipsed by the provisions of FSSA but the counsel for applicants could not point out any provision which completely rules out the applicability of provisions of IPC including under Section 420 of IPC.

16. The Supreme Court in the case of **State of Madhya Pradesh Vs. Rameshwar and Others**, reported in (2009) 11 SCC 424 has held as under:-

"48. Mr. Tankha's submissions, which were echoed by Mr. Jain, that the M.P. Co-operative Societies Act, 1960 was a complete Code in itself and the remedy of the prosecuting agency lay not under the criminal process but within the ambit of Sections 74 to 76 thereof,



cannot also be accepted, in view of the fact that there is no bar under the M.P. Co-operative Societies Act, 1960, to take resort to the provisions of the general criminal law, particularly when charges under the Prevention of Corruption Act, 1988, are involved.

49. The judgments referred to by Mr. Tankha regarding the tendency to convert civil disputes into criminal cases to pressurize the accused, are unimpeachable, but the same will not apply to the facts of this case where a conspiracy to cheat the Bank is alleged."

17. Even otherwise, it cannot be said that the recovery of adulterant milk produce as well as powder which can be used as adulterant has not resulted in a commission of any offence. Even otherwise, the applicants can also be prosecuted under FSSA.

18. Under these circumstances, FIR in question cannot be quashed. If the Trial Court comes to a conclusion that applicants have committed offence requiring imposition of penalty or punishment under FSSA, then it can also frame charges for the said offence.

19. Considering the totality of facts and circumstances of the case, this Court is of considered opinion that no case is made out warranting interference. Application fails and is hereby *dismissed*.

(G.S. Ahluwalia)
Judge