GAHC010050652022

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : W.P.(Crl.)/12/2022

DHARAMPAL SATYAPAL LTD.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF COMPANIES ACT, 1956 AND HAVING THE REGD. OFFICE AT 98, OKHLA INDUSTRIAL ESTATE, PHASE-3, NEW DELHI ALSO AT M/S DHARAMPAL SATYAPAL LTD., BYLANE II, INDUSTRIAL ESTATE, BAMUNIMAIDAN, GUWAHATI, ASSAM-781021 THROUGH AUTHORIZED SIGNATORY MR. SHANTANU SARMA, S/O. LT. TARAK CHANDRA SARMA, R/O. DISHA ENCLAVE, FLAT NO.5B2, ARUNODAY PATH, CHRISTIANBASTI, GUWAHATI, 781005.

VERSUS

THE STATE OF MAHARASHTRA AND 3 ORS.
THROUGH DIRECTOR GENERAL OF POLICE POLICE HEADQUARTERS, OLD COUNCIL HALL SHAHEED BHAGAT SINGH MARG MUMBAI-400001.

2:SANJAY T SALUNKHE
SENIOR POLICE INSPECTOR CRIME BRANCH
SOLAPUR CITY COMMISIONER OF POLICE OFFICE IIND FLOOR
GANDHI CHOWK
SOLAPUR
MAHARASHTRA.

3:THE COMMISSIONER OF POLICE

KAMRUP (M) AT GUWAHATI
REP. BY THE PUBLIC PROSECOTOR
STATE OF ASSAM.

4:THE OFFICER IN CHARGE
CHANDMARI POLICE STATON POLICE
KAMRUP (M) AT GUWAHATI
REP. BY THE PUBLIC PROSECUTOR

STATE OF ASSAM

For the Petitioner : Dr. A. Saraf,
Senior Advocate.

For the Respondent no.2: Mr. RKD Choudhury,
Advocate.

For the Respondent no.3, 4: Mr. M. Phukan,
P.P., Assam.

:: BEFORE ::
HON'BLE MRS. JUSTICE RUMI KUMARI PHOOKAN

Date of Hearing and Judgment: 16.06.2022.

JUDGEMENT AND ORDER

Heard Dr. A. Saraf, learned senior counsel appearing for the petitioner. Mr. R.K.D. Choudhury, learned counsel appearing for the respondent No.2 and Mr. M. Phukan, learned P.P., Assam, appearing for the respondent Nos.3 & 4.

2. By way of this application under Article 226 of the Constitution of India, the petitioner has challenged the impugned seizure, made by the respondent No.2, contending that the same has been made out without the authority of law and quite illegal and prayer has been made to quash and set aside the seizure memo dated 09.03.2022, in connection with the MIDC P.S. Solapur Case No.802/21.

3. The petitioner herein is a company incorporated under the provisions of

Company Act, 1956, by name Dharampal Satyapal Ltd., having its registered office at New Delhi and manufacturing unit at Bamunimaida Industrial Estate, Guwahati. The petitioner company has been granted license by the competent authority under the Food Safety Standards Act, 2006 (hereinafter referred to as 'the FSS Act'), to manufacture pan-masala, which is classified as a food product and it is a product standardized under the Regulation No.2.11.5 of Food Safety and Standard Regulation. The Rajanigandha pan-masala is a premium product of the petitioner company, manufactured in the factory situated at Bamunimaidam and they are manufacturing and selling pan-masala in accordance with the provisions of the FSS Act.

4. An FIR dated 06.12.2021 was registered as FIR No.802/21, at the MIDC Police Station, Solapur in Maharashtra against one Md. Imran Mohammed Hanif under Section 188/272/273/328 IPC, read with Section 26(2)(i)—(iv)(e) and Section 59 of the FSS Act, for possession of Rajanigandha pan-masala and Scented Tobacco and Baba Nabaratan pan-masala, etc. which are prohibited items of food, in view of the notification issued by the Commissioner of FSS and Drug Administration, Maharashtra, dated 20.07.2019.

5. In course of investigation, the stock of pan-masala, tobacco, recovered from the FIR named accused Md. Imran Mohammed Hanif was seized and he was arrested, subsequent to the FIR. Various notice was served upon the petitioner Company at New Delhi, for production of certain documents under Section 91 of the CrPC and the petitioner immediately responded to the same by detail reply along with the documents. Suddenly on 09.03.2022, respondent No.2, who is the investigating officer of the said case, visited the factory of the petitioner at Bamunimaidam and entered into the premises along with police officials of Chandmari P.S., without any document/search warrant from the Court

of Law and the respondent No.2 forcibly seized the entire machinery and articles from the factory of the petitioner and prepared the seizure list (panchnama) and also sealed the gate of the petitioner company's factory. The seized/finished pan-masala was worth more than one crore and was lying in the production hall, to be sent for packaging. Such pan-masala contains highly hygroscopic substance like katha, which attract moisture and exposure to such moisture has caused huge loss to the articles.

6. Challenging the aforesaid search and seizure made by the respondent No.2, present writ petition has been preferred contending that Maharashtra Police has no jurisdiction and power to seize the factory, fix plant and machinery and other articles, whereas petitioner has not contravened any law in Solapur, Maharashtra and whereas the petitioner has due license to produce pan-masala given by the appropriate authority and the company is also not an FIR named accused. It is accordingly contended that seizure of the factory and machinery of the petitioner company defies logic and is illegal and whimsical, without sanction of law.

7. Learned senior counsel for the petitioner Dr. A. Saraf has vehemently urged before this Court that such search and seizure has been made in utter disregard to the prescribed procedure under Section 102 CrPC and police authority has no power to seize such property in view of the provision of Section 30(2) of the FSS Act, which is a special Act. Further it has been submitted that even if Rajanigandha pan-masala, if found in possession of someone in Solapur at Maharashtra, manufactured lawfully in the factory of the petitioner at Guwahati, cannot be stopped and sealed by the investigating officer of Solapur Police Station, as such production was not made in Maharashtra.

8. Reliance has also been placed to the decision of Hon'ble Supreme Court in

Nevada Properties (P) Ltd. vs. State of Maharashtra, reported in *(2019) 20 SCC 119*, wherein it has been held that the expression property appearing in Section 102 CrPC would not include moveable property and under Section 102 CrPC, immovable property cannot be seized and taken into custody. Language of Section 102 of the CrPC does not support the interpretation that the police officer has the power to dispossess a person in occupation and take possession of immovable property in order to seize it.

9. In the light of above, it is contended that seizure of factory of the petitioner company is not required for investigation of an offence arising out of contravention of provision of the FSS Act, in as much as the factory and the machinery at Guwahati are not concerned with distribution, sale or storage of pan-masala in Maharashtra. The arbitrary, illegal and whimsical seizure made by the I.O. reflects the highhandedness and gross abuse of power by Maharashtra Police, contrary to the Rule of Law and in contravention of Article 14 of the Constitution. It is submitted that the petitioner is entitled to compensation along with cost and damage cost to the property due to such illegal seizure.

10. The learned counsel Mr. RKD Choudhury, learned counsel for the respondent No.2 has however fairly submitted that they have no any document or any other order from the Court, allowing such search and seizure by the I.O.

11. Reference has been made to the affidavit they have filed that there is no such illegality while conducting search and seizure, contending that there is nothing to reflect that the petitioner company is manufacturing its product strictly in accordance with the provisions of the Act and Regulations. It is further contended that the product manufactured by the petitioner company is found to be sold and stored in Maharashtra, which is prohibited under the notification issued under Section 30(2)(a) of the FSS Act. Denying all other allegations,

made by the petitioner side, the respondent No.2 pleaded in the affidavit that the seizure has been made with due procedure and there is no illegality on the part of the Maharashtra police to seize the factory premises of the petitioner, although it is outside the jurisdiction of Maharashtra police.

12. The petitioner has filed the affidavit-in-reply to the affidavit-in-opposition filed by the respondent No.2, denying the contention submitting that the petitioner company is manufacturing and selling pan-masala strictly in accordance with the provisions of the FSS Act and Regulations and the notification/order of prohibition issued at Maharashtra cannot lead to any reasonable or logical adverse inference against the lawful manufacturing of Rajanigandha pan-masala in Guwahati. The petitioner cannot exercise any control over sell and purchase after it sales the property to a purchaser. It is stated that there is no prohibition in production and storage/sell of pan-masala in Assam, in accordance with the license issued.

13. Also heard Mr. M. Phukan, learned P.P., Assam appearing for the respondent Nos.3 & 4, who has submitted that they have simply accompanied the respondent No.2 on his request to visit the premises of the petitioner company and they were not responsible for the further conduct of the respondent No.2.

14. I have gone through the documents annexed by the petitioner side.

15. Due consideration is given to the argument advanced by both the parties. Certain basic features required to be decided in the present petition as to-

i. Whether petitioner has requisite documents to run the business of manufacturing pan-masala under the authority of law and has right to resist the execution of search and seizure?

ii. Whether respondent no.2 has power to seize factory, plant and machinery in Guwahati in connection with the FIR that has been registered in Maharashtra, which is not against the present petitioner?

iii. Whether due process of law has been followed by the respondent while conducting search and seizure in the premises of the petitioner?

iv. Whether impugned seizure is arbitrary, illegal and violative of the fundamental right of the petitioner under Article 14 of the Constitution of India?

v. Whether interference is called for into the matter of search and seizure as has been sought for?

16. The petitioner herein has produced Annexure-P1 the certificate of incorporation of the petitioner company under the Register of Companies NCT, Delhi dated 13.03.2002, Annexure-2 is the licence issued to the petitioner company under FSS Act, 2006 for manufacturing pan-masala which is valid up to 26.08.2022 (renewed from time to time) with details terms and conditions, one of the conditions reveals that they can buy and sale any such products from or to licence registered vendors and maintained record thereof. Those uncontroverted documents issued by the competent authority supported the contention of the petitioner that they have duly authorized to manufacture, sale of pan-masala. On the other hand, there is no such standing prohibition for manufacturing such pan-masala in the State of Assam under the competent authority.

17. The FIR has been registered on the basis of the prohibition issued by the

Commissioner of Food and Safety, in Maharashtra by way of notification dated 20.07.2019. It transpires that such a notification that was issued under Section 30(2) by the Commissioner (FSS) for a period of one year and that being so, the validity of which has already been expired in July, 2020 but the FIR has been registered on 06.12.2021. Validity of such FIR itself is a questionable, whereas on the basis of such FIR the I/O has continued his investigation. Going by the FIR itself, it reveals that one Md. Imran Mohammad Hanif alleged to have stock certain food items (pan-masala) which is prohibited in the State of Maharashtra and during investigation his godown has been sealed in order to avoid sale of such prohibited materials. The police officials who lodged the FIR, has not indicated the involvement of any other person in the business of said accused person (not even the present petitioner).

18. The Investigating Officer while carrying the investigation came to the premises of the informant which is a manufacturing unit of pan-masala without obtaining any order of the court and no document whatsoever has been produced at the time of such search and seizure to the persons in occupation of the aforesaid manufacturing unit, neither the respondent has been able to produce the same before this Court while filing the affidavit in this case. That being so, it is crystal clear that the respondent no.2 has acted of his own without any authorization. He has also failed to brought on record as to how he assumed jurisdiction to seize the articles from the premises of the petitioner, there being no any document to show that the FIR named accused has direct dealings with the present petitioner. Also nothing has been brought on record about compliance of Section 102 that he has duly informed the concerned court about such necessity of seizure.

19. On the other hand, dealing of such article like pan-masala etc. is covered

under the special law of FSS Act and which has an overriding effect on the provision of the CrPC. In *Christy Fried Gram Industry v. State of Karnataka, 2016 Crl. LJ 482,* it has been held that for initiation of proceedings regarding manufacture and supply of food to general public are regulated under FSS Act in complete mechanism is provided under the said Act to deal with the cases concerned with the food related laws. Section 29 of the said Act specifies the authorities responsible for enforcement of the Act and Section 30 specifies the Commissioner of Food and Safety as a competent authority to implement the provision of the Act effectively.

20. The provision of Section 41 and 42 of the FSS Act, make special provision as regard how investigation needs to be carried out whenever there is a reasonable doubt about commission of the offence relating to food item by the authority. Section 41 prescribes that Food and Safety Officer have the power to search and seizure of food articles and Section 42 prescribes that the Food and Safety Officer is responsible for inspection of food business, drawing samples and sending the same to the food analyst for analysis and thereafter can launch the prosecution in appropriate case. The above provision clearly indicates that only the Food Inspector can carry out such investigation, inquiry and can launch prosecution to determine the article whether same is adulterated. Further, in view of the provision of Section 4(2) of CrPC, all offences under any other law shall be dealt with in accordance with the enactment regulating the manner of investigation and trial etc. and as such the FSS being a complete statute, has an overriding effect as Special Act to deal with such food items.

21. In view of the above legal proposition, it can be held that the investigation so far carried by the I/O particularly, so far as regard the present petitioner is beyond the jurisdiction under law. He was also not bothered to apprise the court

of the competent jurisdiction in Guwahati seeking permission for such search and seizure nor any intimation was forwarded, which has vitiated entire search and seizure and liable to be interfered into.

22. The petitioner herein without there being any criminal culpability has been thrown to utter hardship and inconvenience by seizure of building as well as the article valued more than crores of rupees thereby the petitioner has been compelled to run a legal battle consuming time, energy and heavy cost while continuing such litigation before the High Court. Although, initially the petitioner was allowed interim relief at the time of filing of this petition, but being not satisfied with the order, the petitioner carried the matter to the appellate court wherein the appellate court allowed the petitioner to take possession of the manufactured goods subject to giving bank guarantee of rupees one crore. The fundamental rights of the petitioner to carry out the lawful business has been hampered for such illegal conduct on the part of the investigating officer.

23. All the points formulated above answered accordingly. Impugned seizure list dated 09.03.2022 prepared by the respondent no.2 is hereby quashed and set aside with a direction to release all the seized article to the petitioner forthwith, if not released yet. The Bank Guarantee is to be revoked immediately.

Petition is allowed with cost of Rs.2 lakhs to be paid by the respondent no.2 to the petitioner company, with a liberty to the petitioner to prefer claim damages before the appropriate forum.

JUDGE

Comparing Assistant