[2014] 3 S.C.R. 568

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RUPAK KUMAR

v.

STATE OF BIHAR & ANR.

(Criminal Appeal Nos. 541-542 of 2014)

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MARCH 04, 2014

[CHANDRAMAULI KR. PRASAD AND PINAKI CHANDRA GHOSE, JJ.

CODE OF CRIMINAL PROCEDURE, 1973: s.482 -
C *Quashing of criminal proceedings - Food inspector found the articles stored for consumption of prisoners in the jail premises to be adulterated - Case registered against the Superintendent of Jail u/s.16(1)(a) of Prevention of Food Adulteration Act, 1954 - Petition for quashing of issuance of*
D *summons - High Court dismissed the petition - Held: s.7 prohibits a person to manufacture for sale or store, sell or distribute any adulterated food - Contravention of s.7 by any person is punishable u/s.16 - Expression 'store' as used in s.7 and s.16 means storage of adulterated article of food for sale*
E *- Storage of adulterated article other than for sale does not come within the mischief of s.16 of the Act - Therefore, criminal proceedings quashed - Prevention of Food Adulteration Act, 1954 - s.16.*

F **The appellant was posted as Superintendent of District Jail. Food Inspector visited the jail premises and collected samples of various materials including Haldi and Rice. Those articles were stored for consumption of the prisoners. The Public Analyst held these samples to be adulterated. A case was registered against the appellant**
G **under Section 16 of the Prevention of Food Adulteration Act, 1954. The Magistrate took cognizance of offence under Section 16(1)(a) of the Act and directed issuance of process. The revision petitions thereagainst were dismissed. Thereafter, the appellant filed applications**

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under Section 482, Cr.P.C. for quashing of proceedings. The High Court dismissed the applications. Hence, the instant appeals.

Allowing the appeals, the Court

HELD: 1. Section 7 of the Prevention of Food Adulteration Act, 1954 prohibits a person to 'manufacture for sale' or 'store' or 'sell' or 'distribute', inter alia, any adulterated food. Contravention of Section 7 by any person is punishable under Section 16 of the Act. Section 10 of the Act talks about the power of Food Inspector and under this Section, he is empowered to take sample of any article of food from any person selling such article. A conjoint reading of provisions makes it clear that the Food Inspector has the power to take sample of any article of food from any person selling such article under sub-section (1) whereas sub-section (2) confers on him the power to enter and inspect any place where any article of food is manufactured, stored or exposed for sale and take samples of such articles of food for analysis. Section 16 provides for penalties. According to section 16(1), any person, who by himself or by any other person on his behalf, manufactures for sale or stores or sells any adulterated article is liable to be punished. In the instant case, according to the prosecution, the appellant, a Superintendent of Jail, had stored Rice and Haldi and, therefore, his act comes within the mischief of Section 7 and 16 of the Act. In view of the said, what needs to be decided is as to whether the expression 'store' as used in Section 7 and Section 16 of the Act would mean storage simplicitor or storage for sale. Conjoint reading of Section 7, Section 10 and Section 16 of the Act shows that the Act is intended to prohibit and penalise the sale of any adulterated article of food. The term 'store' shall take colour from the context and the collocation in which it occurs in Section 7 and 16 of the Act. Applying the

A **aforesaid principle, 'storage' of an adulterated article of food other than for sale does not come within the mischief of Section 16 of the Act. [Para 6, 7, 9] [572-H; 573-A-B; 574-B-D, H; 575-A-D]**

B *Municipal Corporation of Delhi v. Laxmi Narain Tandon,* **(1976) 1 SCC 546 - relied on.**

2. In the case in hand, it is not the allegation that the appellant had stored adulterated food article (Haldi and Rice) for sale. The allegations made did not constitute any
C **offence and, hence, the prosecution of the appellant for an offence under Section 16(1)(a) of the Act would be an abuse of the process of the Court. The appellant's prosecution in both the cases is quashed. [Para 10, 11] [575-G-H; 576-A-B]**

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Case Law Reference:

(1976) 1 SCC 546	**relied on**	**Para 9**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
E No. 541-542 of 2014.

From the Judgment & Order dated 3.1.2011 of the High Court of Patna in CRLM No. 15471 and 15527 of 2010.

Nagendra Rai, Shantanu Sagar, Smarhar Singh, Gopi
F Raman (for T. Mahipal) for the Appellant.

Chandan Kumar (for Gopal Singh), Samil Ali Khan for the Respondents.

The Judgment of the Court was delivered by

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CHANDRAMAULI KR. PRASAD, J. 1. The petitioner is aggrieved by the order whereby his prayer for quashing the order taking cognizance under Section 16(1)(a) of the Prevention of Food Adulteration Act and issuing process has
H been declined.

2. Short facts giving rise to the present special leave petitions are that when the petitioner was posted as the Superintendent of District Jail, Bihar Sharif, the Food Inspector visited the jail premises and collected samples of various materials including Haldi and Rice. Those articles were stored for consumption of the prisoners. The samples so collected were sent for examination and analysis and, according to the report of the Public Analyst, Haldi and Rice were not found in conformity with the prescribed standard and, therefore, held to be adulterated. Accordingly, two separate prosecution reports were submitted alleging commission of an offence under Section 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act'). The learned Chief Judicial Magistrate took cognizance of the offence under Section 16(1)(a) of the Act and by order dated 18th of March, 2006 directed for issuance of process in both the cases. The petitioner assailed both the orders in separate revision applications filed before the Sessions Judge; but both were dismissed. Thereafter, the petitioner preferred two separate applications, being Criminal Miscellaneous No. 15527 of 2010 and Criminal Miscellaneous No. 15471 of 2010 under Section 482 of the Code of Criminal Procedure before the High Court. The High Court, by the orders impugned in the present special leave petitions, has dismissed both the criminal miscellaneous applications. It is in these circumstances the petitioner has filed the present special leave petitions.

3. Leave granted.

4. Mr. Nagendra Rai, senior counsel appearing on behalf of the appellant raises a very short point. He submits that the appellant at the relevant time was the Superintendent of Jail and food items which have been found to be adulterated were not stored for sale but were meant for consumption of the inmates. He submits that according to the prosecution report, these food items were not stored for sale and, therefore, the allegations made do not come within the mischief of Section

A 16(1)(a) of the Act.

5. We have bestowed our consideration to the submission advanced and we find substance in the same. Section 7 of the Act, inter alia, prohibits manufacture and sale of certain articles of food, the same reads as follows:

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> **"Section 7. Prohibitions of manufacture, sale, etc. of certain articles of food.** – No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute-
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> (i) any adulterated food;
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> (ii) any misbranded food;
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> (iii) any article of food for the sale of which a licence D is prescribed, except in accordance with the conditions of the licence;
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> (iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority in E the interest of public health;
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> (v) any article of food in contravention of any other provision of this Act or of any rule made thereunder; or
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> F (vi) any adulterant.
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> Explanation-For the purposes of this section, a person shall be deemed to store any adulterated food or misbranded food or any article of food referred to in clause (iii) or clause (iv) or clause (v) if he stores such food for G the manufacture therefrom of any article of food for sale."

6. From a plain reading of the aforesaid provision, it is evident that Section 7 prohibits a person to 'manufacture for sale' or 'store' or 'sell' or 'distribute', inter alia, any adulterated H food. Contravention of Section 7 by any person is punishable

under Section 16 of the Act. Section 10 of the Act talks about the power of Food Inspector and under this Section, he is empowered to take sample of any article of food from any person selling such article. It is apt to reproduce Section 10(1) and 10(2), which read as follows:

"**Section 10. Powers of food inspectors.** - (1) A Food Inspector shall have power-

(a) to take samples of any article of food from-

(i) any person selling such article;

(ii) any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee;

(iii) a consignee after delivery of any such article to him; and

(b) to send such sample for analysis to the public analyst for the local area within which such sample has been taken;

(c) with the previous approval of the Local (Health) Authority having jurisdiction in the local area concerned, or with the previous approval of the Food (Health) Authority, to prohibit the sale of any article of food in the interest of public health.

Explanation-For the purposes of sub-clause (iii) of clause (a), "consignee" does not include a person who purchases or receives any article of food for his own consumption.

(2) Any food inspector may enter and inspect any place where any article of food is manufactured, or stored for sale, or stored for the manufacture of any other article of food for sale, or exposed or exhibited for sale or where

A any adulterant is manufactured or kept, and take samples of such article of food or adulterant for analysis:

Provided that no sample of any article of food, being primary food, shall be taken under this sub-section if it is not intended for sale as such food."

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7. A conjoint reading of the aforesaid provisions makes it clear that the Food Inspector has the power to take sample of any article of food from any person selling such article under sub-section (1) whereas sub-section (2) confers on him the C power to enter and inspect any place where any article of food is manufactured, stored or exposed for sale and take samples of such articles of food for analysis. Section 16 provides for penalties. Section 16(1)(a)(i) and 16(1)(a)(ii), which are relevant for the purpose read as follows:

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"**Section 16. Penalties.** -(1) Subject to the provisions of sub-section (IA) if any person-

(a) whether by himself or by any other person on his behalf, imports into India or manufactures for sale or stores, sells E or distributes any article of food—

(i) which is adulterated within the meaning of sub-clause (m) of clause (ia) of section 2 or misbranded within the meaning of clause (ix) of that section or F the sale of which is prohibited under any provision of this Act or any rule made thereunder or by an order of the Food (Health) Authority;

(ii) other than an article of food referred to in sub-clause (i), in contravention of any of the provisions of this G Act or of any rule made thereunder ; or

xxx xxx xxx"

8. According to this section any person, who by himself or H by any other person on his behalf, manufactures for sale or

stores or sells any adulterated article is liable to be punished. A

9. In the present case, according to the prosecution, the appellant, a Superintendent of Jail, had stored Rice and Haldi and, therefore, his act comes within the mischief of Section 7 and 16 of the Act. In view of the aforesaid, what needs to be decided is as to whether the expression 'store' as used in Section 7 and Section 16 of the Act would mean storage simplicitor or storage for sale. We have referred to the provisions of Section 7, Section 10 and Section 16 of the Act and from their conjoint reading, it will appear that the Act is intended to prohibit and penalise the sale of any adulterated article of food. In our opinion, the term 'store' shall take colour from the context and the collocation in which it occurs in Section 7 and 16 of the Act. Applying the aforesaid principle, we are of the opinion, that 'storage' of an adulterated article of food other than for sale does not come within the mischief of Section 16 of the Act. In view of the authoritative pronouncement of this Court in the case of *Municipal Corporation of Delhi v. Laxmi Narain Tandon,* (1976) 1 SCC 546, this submission does not need further elaboration. In the said case it has been held as follows: B C D E

> "**14**. From a conjoint reading of the above referred provisions, it will be clear that the broad scheme of the Act is to prohibit and penalise the sale, or import, manufacture, storage or distribution for sale of any adulterated article of food. The terms "store" and "distribute" take their colour from the context and the collocation of words in which they occur in Sections 7 and 16. "Storage" or "distribution" of an adulterated article of food for a purpose other than for sale does not fall within the mischief of this section....." F G

10. In the case in hand, it is not the allegation that the appellant had stored Haldi and Rice for sale. Therefore, in our opinion, the allegations made do not constitute any offence H

A and, hence, the prosecution of the appellant for an offence under Section 16(1)(a) of the Act shall be an abuse of the process of the Court.

11. In the result we allow these appeals, set aside the B impugned orders and quash the appellant's prosecution in both the cases.

D.G. Appeals allowed.