

It was pointed out that the release of the detenu on parole if an order of detention was contrary to the aforesaid legislative purposes. It was categorically observed by their Lordships of the Supreme Court that there was no scope for entertaining an application for parole by the Court straightaway.

(6) For the foregoing reasons, it is not possible to grant any relief to the petitioner. It is however, open to the petitioner to move the Central Government for appropriate relief. The present petition fails and the same is dismissed.

P.C.G.

Before : A. L. Bahri, J.

SADHU RAM,—Petitioner.

versus

STATE OF HARYANA THROUGH GOVERNMENT FOOD
INSPECTOR, ROHTAK,—Respondent.

Criminal Misc. No. 5021-M of 1988.

November 30, 1989

Constitution of India, 1950—Art. 20(3)—Criminal Procedure Code (II of 1974)—S. 300—Complaint on the basis of report of Public Analyst—Report of Director Central Food Laboratory different—Judicial Magistrate dropping proceedings on first complaint—Fresh complaint on the basis of the report given by the Director—Competency of such complaint.

Held, that there being divergence of opinion regarding analysis of the sample of food item, it is the report of the Director which supercedes the report of the Public Analyst and obviously when initially the complaint was filed by the Food Inspector on the basis of the report of the Public Analyst, there was no occasion for incorporating the details of the report of the Director. Either the original complaint could be amended after the receipt of the report of the Director or a new complaint could be filed incorporating the details of the report of the Director. What the Chief Judicial Magistrate did on the first complaint,—*vide* order dated September 22, 1986 was that he dropped the proceedings till such time the complainant chose to file fresh complaint on the basis of the report

Sadhu Ram v. State of Haryana through Government Food Inspector, Rohtak (A. L. Bahri, J.)

given by the Director Central Food Laboratory. The dropping of the proceedings in the circumstances stated above does not amount to final decision of the case either convicting or acquitting the petitioner of the charge framed in the case. The filing of two complaints for commission of the same offence is not prohibited by any of the provisions of the Code of Criminal Procedure. What is prohibited under Article 20(3) of the Constitution or under Section 300 of the Code of Criminal Procedure is that if a person had been acquitted or convicted by a Court, he cannot be tried again for the same offence. Thus, filing of the second complaint incorporating particulars of the report of the Director Central Food Laboratory against the petitioner was not barred. Further more, its trial was also not barred. The bar as provided under the Constitution or Code of Criminal Procedure, comes into play only when in one of the cases the accused is either acquitted or convicted.

(Para 3)

Petition under section 482 Cr.P.C. praying that the second complaint filed by the Government Food Inspector against the petitioner which is Annexure P3 and the charge framed in pursuance of that complaint which is Annexure P5 may kindly be quashed. It is also prayed that the further proceedings if any, recorded in the complaint may also be quashed.

It is further prayed that further proceedings in the abovesaid case may kindly be stayed till the final disposal of the present petition.

Virinder Singh, Advocate, for the Petitioner.

R. S. Kundu, D.A.G. Haryana, for the Respondent.

JUDGMENT

A. L. Bahri, J.

(1) Sadhu Ram was tried for committing an offence under Section 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act (hereinafter referred to as the Act) for being in possession of 10 Kgs of ground chillies powders, for sale, sample of which was not according to the prescribed standard as per report of the Public Analyst. In the sample, it was found that it contained 11.8 per cent ash and 4.9 per cent ash insoluble in dil hel against the maximum prescribed standard of 8 per cent and 1.3 per cent respectively. The sample also contained grit to the extent of 4.5 per cent and oil soluble red coal tar dye. During

the pendency of the trial at the instance of the petitioner, another sample was sent to the Director, Central Food Laboratory. The said sample did not show the existence of oil soluble red coal tar dye or contaminated discrepant with ash, soluble and *dil hel*. The ash did not contain any grit. However, the sample showed the presence of dead insects and one extraneous iron part clear. After the complainant had led evidence and the accused (petitioner) had made his statement and led defence evidence, in view of the decision of this Court in *Ravi Ghai v. State of Punjab* (1), the Magistrate dropped the proceedings until the complainant Food Inspector choose to file a fresh complaint on the basis of the report of the Director, Central Food Laboratory. This order was passed on September 22, 1986, copy Annexure P/2. Thereafter, the complainant, Food Inspector, filed fresh complaint on December 20, 1986. On this complaint Sadhu Ram, the present petitioner was summoned. An application was filed by Sadhu Ram for quashing the proceedings on the second complaint. The Chief Judicial Magistrate, declined his request,—*vide* order dated January 6, 1988, copy Annexure P/4. On the same day, he framed fresh charge against the petitioner. The petitioner Sadhu Ram filed the present petition under Section 482 of the Code of Criminal Procedure for quashing the proceedings pending in the Court of the Chief Judicial Magistrate, Rohtak.

(2) After hearing the arguments of counsel for the parties, the following question of law was noticed and the matter was referred to the Division Bench as it was thought that the decision in *Ravi Ghai's* case (*supra*) needed reconsideration; the detailed reasons were given in the order dated September 5, 1988 :—

“Whether the particulars of adulterated food-stuff, as found by the Director, Central Food Laboratory, are required to be incorporated in the complaint filed by the Food Inspector initially on the basis of report of the Public Analyst which stands superceded by the report of the Director, Central Food Laboratory.”

The Division Bench on August 23, 1989 answered the question as under :—

“As the report of the Director, Central Food Laboratory supersedes that of the Public Analyst, it follows that if the prosecution of the person from whom the sample had

Sadhu Ram v. State of Haryana through Government Food Inspector, Rohtak (A. L. Bahri, J.)

been taken is to be launched on the basis of the report of the Director, Central Food Laboratory, then such report must form part of the complaint of the local Health Authority and this may be done either by amending the original complaint to incorporate therein the report of the Director, Central Food Laboratory or by the withdrawal of the original complaint and the filing of a fresh complaint based upon such report of the Director, Central Food Laboratory."

(3) I have again heard the counsel for the parties. Now, it has been argued on behalf of the petitioner that the second complaint filed against the petitioner could not proceed in view of the provisions of Article 20(3) of the Constitution and Section 300 of the Code of Criminal Procedure. The further contention is that the order of the Magistrate dropping the proceedings at the final stage i.e. after framing of the charge amounts to discharge of the accused which further amounts to acquittal of the accused. That being the position, the petitioner having once been tried and acquitted cannot be tried again. I have given due consideration to this argument, however, the same has not appealed in the facts and circumstances of the case in hand. As has been held by the Division Bench, as mentioned above, there being divergence of opinion regarding analysis of the sample of food item, it is the report of the Director which supercedes the report of the Public Analyst and obviously when initially the complaint was filed by the Food Inspector on the basis of the report of the Public Analyst, there was no occasion for incorporating the details of the report of the Director. Either the original complaint could be amended after the receipt of the report of the Director or a new complaint could be filed incorporating the details of the report of the Director. What the Chief Judicial Magistrate did on the first complaint,—*vide* order dated September 22, 1986 was that he dropped the proceedings till such time the complainant chose to file fresh complaint on the basis of the report given by the Director, Central Food Laboratory. The dropping of the proceedings in the circumstances stated above does not amount to final decision of the case either convicting or acquitting the petitioner of the charge framed in the case. After passing the said order the file was ordered to be consigned to the record room. It only indicates that without final decision on the said complaint the same was ordered to be consigned to the record room. With the filing of the fresh complaint, it cannot be said that the

previous complaint stood finally disposed of. The filing of two complaints for commission of the same offence is not prohibited by any of the provisions of the Code of Criminal Procedure. What is prohibited under Article 20(3) of the Constitution or under Section 300 of the Code of Criminal Procedure is that if a person had been acquitted or convicted by a Court, he cannot be tried again for the same offence. In the facts and circumstances of the case in hand, it cannot be said that the petitioner was either acquitted or convicted by order dated September 22, 1986 passed by the Chief Judicial Magistrate, copy Annexure P/2. Thus, filing of the second complaint incorporating particulars of the report of the Director, Central Food Laboratory against the petitioner was not barred. Further more, its trial was also not barred. The bar as provided under the Constitution or Code of Criminal Procedure, comes into play only when in one of the cases the accused is either acquitted or convicted.

(4) The learned counsel appearing on behalf of the State argued that the order passed by the Chief Judicial Magistrate declining request of the petitioner to drop the present proceedings was not challenged by filing a Revision Petition before the Sessions Court and has become final. It is not necessary to comment on this point any further as the power of the High Court under Section 482 of the Code of Criminal Procedure is vast enough to pass appropriate orders in the interest of justice.

(5) As already noticed above, two courses were open to the Food Inspector either to amend the first complaint to incorporate particulars of the report of the Director, Central Food Laboratory and to get the charge amended and finalize the proceedings or to withdraw the said complaint and file the fresh one on the basis of the report of the Director, Central Food Laboratory. In the present case, second course was adopted which was permissible in law.

(6) Finding no merit in the petition, the same is dismissed.

S.C.K.