

*Before Nirmaljit Kaur, J.*

**RAKESH KUMAR,—Petitioner**

*versus*

**STATE OF HARYANA,—Respondent**

**Crl. Misc. No. M-36005 of 2009**

26th April, 2011

*Indian Penal Code, 1860—Ss. 272 & 420—Prevention of Food Adulteration Act, 1954—Ss. 16 & 20—Allegation against petitioner of storing artificial ghee for sale—Ss. 16 and 20 of 1954 Act take care of an offence in case of selling of adulterated, misbranded food articles—Unreasonable to add S. 420 IPC when said allegation stands covered by provisions of 1954 Act—Moreover offence u/s 272 IPC is not a cognizable offence and cannot be investigated by police—Petition allowed, FIR registered u/ss 420 & 272 IPC and all subsequent proceedings arising out of same quashed.*

*Held*, that the allegation in the FIR was that the petitioner had stored artificial ghee for selling in the market. Thus, it is evident that allegations in the complaint are similar and there are specific provisions in Prevention of Food Adulteration Act, 1854 to deal with the said allegation. The said Act is self contained and competent to deal with it. It is, therefore, not appropriate to proceed with FIR under Section 420 IPC.

(Para 11)

*Further held*, that in terms of Section 415 IPC, the ingredients required to constitute an offence of cheating are that whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

(Para 12)

*Further held.* that Sections 16 and 20 of the Prevention of Food Adulteration Act, 1954 take care of an offence, in case of selling of adulterated, misbranded food articles which is injurious to health. Thus, it would be unreasonable to add Section 420 IPC when the said allegation stand covered by the Sections under the Prevention of Food Adulteration Act, 1954. Moreover, the offence under Section 272 IPC is admittedly not a cognizable offence. Such offences cannot be investigated by the police.

(Para 17)

Rajesh Garg, *Advocate for the petitioner.*

Sidharth Sarup, D.A.G., Haryana *for the respondent-State.*

**NIRMALJIT KAUR, J.**

(1) This is a petition under Section 482 Cr. P.C. for quashing of FIR No. 204 dated 18th July, 2009 registered under Sections 420 and 272 IPC at Police Station Sector 10-A, Gurgaon, District Gurgaon and all subsequent proceedings arising out of the same.

(2) While praying for quashing of the FIR, learned counsel for the petitioner submitted that the FIR, if accepted, in its entirety, then also, same does not disclose any offence, far less any cognizable offence committed by the petitioner as none of the persons has complained to the police that he was cheated by the petitioner by selling the fictitious/fake Ghee nor anyone complained that he has seen the petitioner to sell the artificial ghee to anyone.

(3) Secondly, if it is accepted that the petitioner had prepared the fictitious Desi ghee, then also, he could not have been prosecuted for the offence under Section 420 IPC in view of the expressed provisions contained in the Prevention of Food Adulteration Act, 1954 relating to the offences under the said Act.

(4) Thirdly, the offence under Section 272 IPC is a non cognizable offence and the police could not investigate the same as the punishment prescribed for the aforesaid offences is two years.

(5) Lastly, the complaint under the Prevention of Food Adulteration Act, 1954 (Annexure P-2) has also been filed.

(6) Reliance has been placed on the judgments of this Court rendered in the case titled as **Jatinder Kumar Jain versus State of Punjab (1)**, **Harinderpal Singh versus State of Punjab (2)**, **Piyara Singh and ors. versus The State of Haryana (3)**, **Baljinder Singh versus State of Punjab (4)**, judgment of Karnataka High Court rendered in the case titled as **Syed Kaleem versus M/s Mysore Lakshmi Beedi Works and another (5)**, judgment of Madhya Pradesh High Court rendered in the case titled as **Municipal Corporation, Gwalior through Food Inspector versus Lurindamal (6)** judgment of Calcutta High Court titled as **Zahir Ahmed versus Azam Khan (7)** to contend that the FIR is not maintainable, in view of the special provisions of the Prevention of Food Adulteration Act.

(7) Learned counsel for the respondent-State, however, submitted that the complaint was filed under the Food Adulteration Act, whereas, the FIR was registered under Section 420 IPC. The said FIR was registered as the petitioner was likely to sell the adulterated ghee under the name of Gemini Vanaspati written upon it.

(8) Head.

(9) It is admitted that along with the registration of the present FIR on 18th July, 2009, a complaint under the Prevention of Food Adulteration Act, 1954 (Annexure P-2) is also pending in the Court of Chief Judicial Magistrate, Gurgaon on the basis of same set of allegation as the FIR. The allegations in the complaint are as under :—

- (a) the sample does not conform to the prescribed standard as laid down for ghee under the Prevention of Food Adulteration Rules, 1955.
- (b) the accused has contravened Rule 50 of the Prevention of Food Adulteration Rules, 1955 as he was found selling without licence.

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(1) 2008 (2) FAC 437  
(2) 2007 (4) R.C.R. (Criminal) 534  
(3) 2002 (3) R.C.R. (Criminal) 290  
(4) 2002 (3) R.C.R. (Criminal) 292  
(5) 1993 CrI. L.J. 232  
(6) 2007 (5) R.C.R. (Criminal) 717  
(7) 1996 CrI. L.J. 290

- (c) he has committed the offence under Section 7 of the Prevention of Food Adulteration Act, 1954 as he has kept the said articles of Food store for sale and was selling it.

(10) The provisions of Prevention of Food Adulteration Act, 1954 are self contained and sufficient to punish a person committing offence under the said Act. Section 16 of the Prevention of Food Adulteration Act, 1954, which prescribes penalty for violation of the provisions of Prevention of Food Adulteration Act, 1954 is sufficient to take care of the alleged allegation in the FIR. Section 16(1)(a) (i) and (1A) of the Prevention of Food Adulteration Act, 1954 reads as under :

“16. Penalties.—[(1) Subject to the provisions of sub-section (1A) 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 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 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) XXX                      XXX                      XXX

- (b-g) XXX                      XXX                      XXX

he shall, in addition to the penalty to which he may be liable under the provisions of section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine which shall not be less than one thousand rupees.

Provided that —

[(1A) If any person whether by himself or by any other person on his behalf, imports into India or manufactures for sale; or stores, sells or distributes,—

- (i) any article of food which is adulterated within the meaning of any of the sub-clauses (e) to (l) (both inclusive) of clause (ia) of section 2 ; or

- (ii) any adulterant which is injurious to health, he shall, in addition to the penalty to which he may be liable under the provisions of section 6, be punishable with imprisonment for a term which shall not be less than one year but which may extend to six years and with fine which shall not be less than two thousand rupees.”

(11) Coming to the present case, the allegation in the FIR was that the petitioner had stored artificial ghee for selling the market. Thus, it is evident from the above that allegations in the complaint are similar and there are specific provisions in Prevention of Food Adulteration Act, 1954 to deal with the said allegation. The said Act is self contained and competent to deal with it. It is, therefore, not appropriate to proceed with FIR under Section 420 IPC.

(12) Even otherwise, in terms of Section 415 I.P.C., the ingredients required to constitute an offence of cheating are that whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat.”

(13) No such intention or inducement is made out from the perusal of the FIR.

(14) The Single Bench of Karnataka High Court in the case of **Syed Kaleem** (*supra*), held in para 8 as under :—

- “8. As regards the framing of a charge under Section 420 of IPC., it has to be stated that in view of sections 78 and 79 of the said Act providing penalty for applying false trade descriptions etc., and selling goods to which a false Trade Mark or false trade description is applied, a charge under Section 420 of IPC becomes wholly inapt.

Section 420 of IPC reads thus :

“Cheating and dishonestly inducing delivery of property,—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment or either description for a term which may extend to seven years and shall also be liable to fine.”

Though there is an element of cheating in falsely applying to his goods the Trade mark of another person or Company it cannot be said that such an act by itself would attract section 420 IPC. When there are specific provisions in the Trade and Merchandise Marks Act which is a self contained Act to punish the persons committing offences under the said Act, it would be improper to resort to Section 420 of IPC, altogether ignoring those provisions. It is not possible to make out from the impugned order how and on what material a charge was ordered to be framed against the accused for an offence under Section 420 of IPC.”

(15) Similar view was held by Hon'ble the Supreme Court in the case of **G. Sagar Suri versus State of U.P.**, (8) in para 13 as under :—

14. We agree with the submission of the appellants that the whole attempt of the complainant is evidently to rope in all the members of the family particularly who are the parents of the Managing Director of Ganga Automobiles Ltd. in the instant criminal case without regard to their role or participation in the alleged offences with a sole purpose of getting the loan due to the Finance Company by browbeating and tyrannizing the appellants of criminal prosecution. A criminal complaint under section 138 of the Negotiable Instruments Act is already pending against the appellants and other accused. They would suffer the consequences if offence under Section 138 is proved against them. In any case there is no occasion for the complainant to prosecute the appellants under Sections 406/420 IPC and in

his doing so it is clearly an abuse of the process of law and prosecution against the appellants for those offences is liable to be quashed, which we do.”

(16) This Court in the case of **Piyara Singh and ors.** (*supra*) while coming to the conclusion that charge under Section 420 IPC is unjustified in view of allegations being covered by sections 78 and 79 of the Trade and Merchandise Marks Act, 1958 observed as under :—

“6. On receipt of the report from the police, the offence made out from the complaint was non-cognizable and the Magistrate passed second order re-directing further investigation in the offence under Section 420 IPC, by the police by holding, as already reproduced above, that “perusal of the report shows that the offence of cheating was committed which is cognizable offence.” This was the judicial finding and as such further inquiry under Section 156(3) Cr. P.C. was not called for, whether an offence under section 420 IPC is also attracted on the allegations which cover the commission of offence under Section 78 and 79 of the Act. It is suffice to mention that earlier to the inclusion of offences under Sections 78 and 79 in the Act, section 482 of IPC as it then stood, covered the commission of such offence. Section 482 IPC stands deleted from the Indian Penal Code because of availability of punishment for such offences under Section 78 and 79 of the Act. It would, thus, be unreasonable to add Section 420 IPC as well for the same very allegations which are covered by Sections 78 and 79 of the Act. It is also observed in **Syed Kaleem versus M/s Mysore Lakshmi Beedi Works and another**, 1993 CrL.J. 232, as under :—

“In view of Sections 78 and 79 of the Trade and Merchandise Marks Act, 1958 providing penalty for applying false trade descriptions etc. and selling goods to which a false trade mark or false trade description is applied, as alleged in the relevant case before us, a charge under Section 420 IPC becomes wholly inapt.”

(17) Similarly, Sections 16 and 20 of the Prevention of Food Adulteration Act, 1954 takes care of an offence, in case of selling of adulterated, misbranded food articles which is injurious to health. Thus, it would be un-reasonable to add Section 420 IPC when the said allegation stands covered by the Sections under the Prevention of Food Adulteration Act, 1954 as also held in various judicial pronouncements discussed above. Moreover, the offence under Section 272 IPC is admittedly not a cognizable offence. Such offences cannot be investigated by the police.

(18) Moreover, in the present case, the complaint under the Prevention of Food Adulteration Act, 1954 (Annexure P-2) has already been filed.

(19) As such, the present petition is allowed and FIR No. 204 dated 18th July, 2009 registered under Sections 420 and 272 IPC at Police Station Sector 10-A, Gurgaon, District Gurgaon and all subsequent proceedings arising out of the same are hereby quashed being totally unjustified.

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***R.N.R.***