

Criminal misc. petition no. 174 of 2002

Sanjay Sharma
.....Applicant.

Vs.

State of Uttaranchal & another.
.....Opposite Parties.

Hon'ble Irshad Hussain, J.

This is a petition under section 482 of the Code of Criminal Procedure (hereinafter for short 'Code') for quashing of the charge-sheet dated 16.07.2000 and criminal proceedings of session trial no.51 of 2002, State Vs. Arjun Singh and another pending in the court of Sessions Judge, Pauri Garhwal, so far as it relates to the petitioner.

The facts relevant are that on 12.05.1999 food inspector N.S. Rawat took a sample of milk from the container being taken in truck no. UP 06, 0939 belonging to M/S Garhwal Dugdh Utpadak Shakari Samiti Ltd., Srinagar, Garhwal and the sample was according to rules sent to public analyst for chemical examination who reported that the sample was adulterated and it also contained prohibited chemical urea. On completion of the investigation charge sheet was submitted against the two accused, one of whom is the petitioner. The petitioner had tested and certified the milk as unadulterated and fit for sale.

Heard Sri Lokendra Dobhal, learned counsel for the petitioner and the learned A.G.A. and considered the record and legal aspects of the case. The submission of the learned counsel for the petitioner was that petitioner has in fact been made scape-goat in order to protect one Sumer Kala who was the incharge of the testing laboratory of the milk

society and was also looking after the marketing and distribution of the commodity and that this was the reason why he was named as one of the accused in the F.I.R. No doubt the said person was nominated as an accused in the F.I.R. but after investigation it was found that the petitioner had on the relevant date tested as fit milk for sale and was accordingly chargesheeted. The managing director of the milk society Sri A.K. Negi gave statement to this effect and prima facie in view of the evidence collected during the investigation there was no illegality in submitting the chargesheet against the petitioner also.

It was next argued that for the purposes of provision of Section 17(2) of the Prevention of Food Adulteration Act 1954, aforesaid Sri Sumer Kala was the person to be prosecuted and not the petitioner. In support of the contention attention was drawn to the statement of Sri A.K. Negi. That question had to be considered at the trial by the learned Judge if the evidence is led to this effect and any application is moved under section 319 of the Cri.P.C. on behalf of the prosecution. But as the facts of the case stand, at this stage the petitioner cannot be absolved of his responsibility for the offence punishable under section 272 of the I.P.C. for which he had been charged in the trial.

Learned counsel for the petitioner also pressed into service two reported decisions in support of the argument that Sri Sumer Kala was the proper person to be prosecuted in view of section 17(2) of the Prevention of Food Adulteration Act. The decisions relied upon are R.Banerjee and others Vs. H.D. Dube and other, 1992 (29), ACC, 386 and O.P. Joshi and others Vs. State of U.P. and others, 2001 (42) ACC, 1115. As mentioned earlier, even if Sri Sumer Kala may fall within the category as enumerated under section 17(2) of the Act, the prima facie culpability of the petitioner is writ large on the facts of the case and therefore, these decisions are also of no avail to the cause of the petitioner. In the case of **State of Haryana and others Vs. Bhajan Lall and others, 1992, Criminal Law Journal, 527**, it has

been held that power of quashing a criminal proceeding should be exercised sparingly and with circumspection. Considering the facts of the case, the instant case does not fall in the category in which such a power could legally be exercised and therefore, the petition being without force is liable to be dismissed.

Petition is dismissed accordingly.

(Irshad Hussain, J.)

29.11.02./B.