

**IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH**

DATED THIS THE 28TH DAY OF JUNE, 2018

BEFORE

THE HON'BLE DR.JUSTICE H.B.PRABHAKARA SASTRY

W.P.No.102964/2018(GM-POLICE)

C/W

W.P.No.102965/2018 (GM-POLICE)

IN W.P.No.102964/2018

BETWEEN:

M/S BARAFWALA COLD STORAGE AND
AGRO PROCESSOR,
BY ITS PARTNER,
SHRI.MOHAMMED HUSAIN INAYAT HUSAIN BARAFWALA,
AGED ABOUT 54 YEARS, OCC: PARTNER,
BARAFWALA COLD STORAGE AND AGRO PROCESSOR,
R/O 10TH HIGH STREET, CAMP, BELAGAVI.

... PETITIONER

(BY SRI.V.M.SHEELVANT, ADV.)

AND:

1. THE STATE OF KARNATAKA,
PSI, MAL MARUTI POLICE STATION, BELAGAVI,
REP.BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH DHARWAD.
2. COMMISSIONER OF POLICE,
BELAGAVI.

... RESPONDENTS

(BY SRI.PRAVEEN K.UPPAR, HCGP)

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF
THE CONTITUTION OF INDIA R/W SECTION 482 OF CR.P.C.
PRAYING TO i) QUASH THE SEIZURE OF THE MEAT FROM
PETITIONER'S INDUSTRIAL AREA, AUTO NAGAR, BELAGAVI,

: 2 :

SUBJECTED TO P.F.NO.29/2018 DATED 28.02.2018 ON THE FILE OF JMFC-II COURT, BELAGAVI, PURSUANT TO THE REGISTRATION OF MAL MARUTI POLICE STATION CRIME NO.45/2018 PRODUCED AT ANNEXURE-J AND ii) DIRECT THE RESPONDENTS NOT TO INTERFERE WITH THE DAY TO DAY BUSINESS OF THE PETITIONER FIRM AND REMOVE THE SURVELLIANCE KEPT ON THE PETITIONER'S PREMISES SITUATED IN PLOT NO.1322 IN KANBARGI INDUSTRIAL AREA, AUTO NAGAR, BELAGAVI.

IN W.P.No.102965/2018

BETWEEN:

M/S BARAFWALA FOODS,
BY ITS PARTNER,
SHRI.SHAKIR INAYAT HUSAIN BARAFWALA,
AGED ABOUT 56 YEARS, OCC: PARTNER,
BARAFWALA FOOD,
R/O 10TH HIGH STREET, CAMP, BELAGAVI.

... PETITIONER

(BY SRI.V.M.SHEELVANT, ADV.)

AND:

1. THE STATE OF KARNATAKA,
PSI, MAL MARUTI POLICE STATION, BELAGAVI,
REP.BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH DHARWAD.
2. COMMISSIONER OF POLICE,
BELAGAVI.

... RESPONDENTS

(BY SRI.PRAVEEN K.UPPAR, HCGP)

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONTITUTION OF INDIA R/W SECTION 482 OF CR.P.C. PRAYING TO i) QUASH THE SEIZURE OF THE MEAT FROM PETITIONER'S FIRM SITUATED IN PLOT NO.1325/A IN KANBARGI INDUSTRIAL AREA, AUTO NAGAR, BELAGAVI, SUBJECTED TO P.F.NO.29/2018 DATED 28.02.2018 ON THE FILE OF JMFC-II COURT, BELAGAVI, PURSUANT TO THE REGISTRATION OF MAL MARUTI POLICE STATION CRIME NO.45/2018 PRODUCED AT ANNEXURE-J AND ii) DIRECT THE RESPONDENTS NOT TO

: 3 :

INTERFERE WITH THE DAY TO DAY BUSINESS OF THE PETITIONER FIRM AND REMOVE THE SURVEILLANCE KEPT ON THE PETITIONER'S PREMISES SITUATED IN PLOT NO.1325/A IN KANBARGI INDUSTRIAL AREA, AUTO NAGAR, BELAGAVI.

THESE PETITIONS COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

COMMON ORDER

In both these writ petitions, the petitioner's establishment has challenged the alleged seizure of meat from the petitioner's firm and subjecting the same to P.F.No.29/2018 dated 28.02.2018 on the file of JMFC-II Court, Belagavi pursuant to the registration of Mal Maruti Police Station crime No.45/2018. The petitioners have also sought for a direction to the respondents not to interfere with their day to day business of the petitioners.

2. The summary of the alleged facts which lead the petitioners to file these writ petitions as could be gathered from the materials placed before this Court is that, on 26.02.2018, the Police Sub-Inspector of Mal Maruti Police Station, Belagavi (respondent No.1) registered a case against three companies in his station

: 4 :

crime No.45/2018 for the offences punishable under Sections 420 and 429 of the Indian Penal Code, 1860 (henceforth for brevity referred to as "IPC"), Sections 4, 8, 9 and 11 of the Karnataka Prevention of Cow Slaughter and Cattle Preservation Act, 1964, and Section 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960 on the complaint filed by one Joshine Antony, who is said to be Honorary Animal Welfare Officer. The Investigating Officer during the course of investigation issued notices under Section 91 of the Code of Criminal Procedure, 1973 (henceforth for brevity referred to as "Cr.P.C.") calling upon the petitioner's firm herein to furnish all the concerned documents. It is the further allegation of the petitioners that the respondent-authority illegally seized the meat from their firm and subjected the same to property form No.29/2018 dated 28.02.2018 in the Court of the learned JMFC-II at Belagavi.

3. It is the contention as well as the argument of the learned counsel for the petitioners that the offences

: 5 :

alleged in the complaint are prima facie not made out. In view of the fact that no activity of killing or maiming any animal or slaughtering of any animal was admittedly being undertaken in the establishment of the petitioners and the establishment of the petitioners being only a cold storage unit meant for procuring the packed food articles/items, none of the provisions of Karnataka Prevention of Cow Slaughter and Cattle Preservation Act, 1964 so also the provisions of Prevention of Cruelty to Animals Act, 1960 was applicable to their establishment. Since the complaint is regarding the standard or quality of the stored food in the premises of the petitioners, the appropriate Act would be the Food Safety and Standards Act, 2006 (henceforth for brevity referred as "Food Safety Act"). The authorities who can exercise the powers or initiate action under the said Act shall be only the 'designated authority' under the Food Safety Act. As such, the complainant-police in no manner had any authority to initiate any action or investigation for the alleged crime shown in the complaint.

: 6 :

The learned counsel for the petitioners further submitted that, in view of the fact that the Food Safety Act specifically empowers only a special Court designated under it for trying the cases falling under the Food Safety Act, the learned Magistrate had no power to entertain the property form submitted by the police, without ascertaining its jurisdiction.

4. The learned Government Pleader who has taken notice for the respondents and appearing for the respondents in his argument submitted that, even though the provisions of Karnataka Prevention of Cow Slaughter and Cattle Preservation Act, 1964 so also the Cruelty to Animals Act, 1960 may not be strictly applicable in the case on hand, still it cannot be ruled out that Section 420 and 429 of IPC are applicable. The Investigating Officer is proceeding with his investigation and has issued notices to the accused including the present petitioners herein under Section 91 of Cr.P.C. and thereafter, has seized the business premises and the goods stored therein.

: 7 :

5. The police have initiated action in the matter based on a complaint said to have been filed by one Joshine Antony, who claims himself to be a Honorary Animal Welfare Officer from Animal Welfare Board of India. In his complaint giving the details of three cold storages (business establishments) said to have been situated in Kanbargi Industrial Area, Belagavi, he has alleged that those cold storage units are procuring beef from illegal slaughter houses in an around Belagavi and process them in their units and send it for export. Those cold storages are functioning without any licence under the Food Safety Act and without maintaining any industrial safety. He has further alleged in the complaint that the meat stored in those cold storages is not fit for consumption by the public as they have not procured from reliable/legal slaughter houses. Thus, they are cheating the public and the government by sending contaminated, unhygienic meat to foreign countries. The said complaint was registered by the complainant-police for the offences

punishable under Sections 420 and 429 of IPC and under Sections 4, 8, 9 and 11 of the Karnataka Prevention of Cow Slaughter and Cattle Preservation Act, 1964, and Section 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960.

6. For more clarification, all those sections for which the complaint has been registered by the police in the case have been reproduced here below:

Sections 420 and 429 of IPC:

Section 420: 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 of either description for a term which may extend to seven years, and shall also be liable to fine.*

Section 429: Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees.- *Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal*

of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Sections 4, 8, 9 and 11 of the Karnataka Prevention of Cow Slaughter and Cattle Preservation Act, 1964:

Section 4: Prohibition of slaughter of cow or calf of she-buffalo.- *Notwithstanding any law, custom, or usage to the contrary, no person shall slaughter or cause to be slaughtered, or offer or cause to be offered for slaughter or otherwise intentionally kill or offer or cause to be offered for killing any cow or calf of she-buffalo.*

Section 8: Restriction on transport of animal or cow for slaughter.- *No person shall transport or offer for transport or cause to be transported any animal or cow from any place within the State to any place outside the State, for the purpose of its slaughter in contravention of the provisions of this Act or with the knowledge that it will be or is likely to be, so slaughtered.*

Section 9: Prohibition of sale, purchase or disposal of cow or calf of she-buffalo for slaughter.- *No person shall purchase, sell or otherwise dispose of or offer to purchase, sell or otherwise dispose of or cause to be purchased, sold or otherwise disposed of, cows, or calves of she-buffaloes for slaughter or*

knowing or having reason to believe that such cattle shall be slaughtered.

Section 11: Penalties.- *Whoever contravenes any of the provisions of this Act shall, on conviction, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.*

Section 11(1)(a) of the Prevention of Cruelty to Animals Act, 1960:

Section 11(1)(d) Treating animals cruelty.- *conveys or carries, whether in or upon any vehicle or not, any animal in such a manner or position as to subject it to unnecessary pain or suffering;*

7. A reading of Sections 4, 8, 9 and 11 of the Karnataka Prevention of Cow Slaughter and Cattle Preservation Act, 1964 shows that:

In order to attract Section 4 of the said Act, any activity of alleged slaughter or cause to be slaughtered, or offer or cause to be offered for slaughter or otherwise intentionally kill or offer or cause to be offered for killing any cow or calf of she-buffalo is required.

To attract Section 8 of the said Act, actual transportation of any animal or cow from any place within

the State to outside the State, for the purpose of its slaughter is required to be established.

To attract Section 9 of the same Act, the alleged transaction or sale or purchase of cows or calves of she-buffaloes for slaughter is required to be established.

Similarly, in order to establish an offence under Section 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960, conveying or carrying in or upon any vehicle or, any animal in such a manner or position as to subject it to unnecessary pain or suffering is required to be established.

3. In the instant case, the entire complaint is confined only to the procuring of the meat from the alleged illegal slaughter homes and storing the meat which are said to be contaminated and unhygienic for consumption by the public and lastly, the alleged export of contaminated, unhygienic meat. Since none of these allegations made in the complaint are in no way directly connected to the petitioner's firm involving in the activity

of slaughtering of cow or calf of buffalo or transporting those live animal from one place to another place or even selling or disposing of those live animal for the purpose of slaughter, the question of attracting any one of the provisions of law more particularly, Sections 4, 8 9 and 11 the Karnataka Prevention of Cow Slaughter and Cattle Preservation Act, 1964 or Section 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960 does not arise. It appears that merely because the complainant in his complaint had requested the respondent-police to register his complaint for those alleged offences, the respondent-police without ascertaining as to whether the allegations made in the complaint would attract those offences, have blindly registered the complaint for those alleged offences.

9. The complaint under challenge also shows that the same has been registered for the offences punishable under Sections 420 and 429 of IPC. A reading of those two provisions of law, which have been reproduced above shows that, in order to attract Sections 420 of IPC, an act

of cheating by dishonestly inducing a person 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 is essential. In the instant case, admittedly, the alleged cheating was not in any form or making alteration or destroying any valuable security in any manner. It is only the goods in the form of food items alleged to be of sub-standard or contaminated. Even if those goods said to have been exported to foreign countries and those goods being sub-standard or contaminated in their quality, still it is not Section 420 of IPC which would be attracted in the case, but there is a separate law and offences to attract in those situations. It is in that situation, the Food Safety Act and its provision comes into picture. As such, not only Section 420 of IPC but also Section 429 of the same Code would not attract in the case on hand. In such a situation, it is not known as to how the respondent-police without even ascertaining

as to which particular law would attract for the illegalities or irregularities or offences alleged in the complaint would attract, have blindly registered a complaint for those sections stated by the complainant himself in his complaint.

10. A perusal of the Food and Safety and Standards Act, 2006 go to show that, Section 31 of the said Act speaks about the licence and registration of a food business. According to the petitioners, they have obtained necessary licence for their business under the said Act.

Section 32 of the said Act mandates that it is only Designated Officer who can look into the allegations made against any establishment doing any activity in food items after obtaining licence under Section 31 of the said Act. In which event, for any complaint regarding failure to comply with any regulations, the Designated Officer under Section 32 of the said Act is the authority to take appropriate

action including issuance of notices to the alleged violator of the regulations.

Sections 33 and 34 of the said Act, though empowers issuance of prohibition orders, but they keep the police at a distance from them.

Section 36 of the said Act speaks about Designated Officer and his functions, which also includes under Section 36(3)(d) to make recommendations to the Commissioner of Food Safety for sanction to launch prosecution in case of contraventions punishable with imprisonment. Section 36(3)(e) speaks about sanction or launch of prosecutions in cases of contraventions punishable with fine.

Thus, under the Food Safety and Standards Act, it is the Designated Officer and the Commissioner who are empowered to launch prosecution for the contravention of the provisions of law whether they are punishable with fine or imprisonment.

Sections 37 and 38 of the said Act speaks about the Food Safety Officer and his powers. It shows that, any power to take a sample or seize any food article which appears to the Food Safety Officer to be in contravention of the Food Safety Act or the regulations made there under vests exclusively with the Food Safety Officer.

Section 41 of the said Act specifically speaks about power of search, seizure, investigation, prosecution and procedure thereof. The said section clearly mentions that it is the Food Safety Officer who can search any place, seize any article of food or adulterant, if there is a reasonable doubt about them being involved in commission of any offence relating to food. It is thereafter he is required to inform the Designated Officer of the actions taken by him in writing.

Section 42 of the said Act speaks about the procedure for launching prosecution. The said section again says that the said responsibility of launching prosecution would be of the Food Safety Officer in which

regard, he can take reference to and rely upon the report submitted to him by the food analyst to whom the samples were sent for analysis.

In Section 42(4) of the same Act, it is the Commissioner of Food Safety who so deems fit, decide, within the period prescribed by the Central Government and as per the gravity of offence, whether the matter be referred to a Court of ordinary jurisdiction or a special Court. It is thereafter, the criminal action/prosecution against an alleged violator of the licence or regulations under the Food Safety and Standards Act commences.

11. Admittedly, in the case on hand, the provisions of Food Safety and Standards Act, 2006 was completely kept away. The authorities under the said Act were also neither involved nor intimated before proceeding to seize the goods from the petitioner's establishments.

12. Assuming that the complaint registered in the instant case apart from the offence punishable under the

special Act like, the Karnataka Prevention of Cow Slaughter and Cattle Preservation Act, 1964 and the provisions of the Prevention of Cruelty to Animals Act, 1960, also includes the provisions under IPC, but as already observed above, the alleged offense shown to have been attracted in the instant case being only Section 420 and 429 of IPC, those two sections in the light of alleged facts in the complaint would not be attracted. As such, the respondent-police cannot take shelter under the false pretext that the alleged search and seizure of the business premises of the petitioners was in the process of investigation for the alleged offences under Sections 420 and 429 of IPC.

13. Thus, to summarise the above, it is clear that even though respondent-police are said to have received a complaint from the complainant Sri.Joshine Antony, but without applying their mind as to the provisions of law and the offences, which would be attracted for the commission of the alleged offending acts mentioned in the

complaint, the respondent-police have blindly registered a case for the alleged offences mentioned by the complainant himself in his complaint.

14. The analysis made above would clearly go to show that the said action of the police in attracting those provisions of law, as the violation of law and offences committed by the petitioners have shown to be not applicable. Consequently, the alleged seizure of the meat from the business premises of the petitioners herein and subjecting them to P.F.No.29/2018 in the Court below also would not hold good. At the same time, it also cannot be ignored of the fact that the alleged search and seizure of the business premises of the petitioners are said to have been made by the respondent-police in their station crime No.45/2018 subsequent to which the seized properties are shown to have been subjected to property form before the learned JMFC-II, Belagavi. This Court in this order is not passing any order of quashing of criminal proceedings before the learned Magistrate Court. In the circumstance,

: 20 :

when the alleged seized goods of the present petitioners are subjected to property form in the said Magistrate Court, which is ceased of the matter, the proper/legal recourse now open to the present petitioners would be to make necessary application before the said learned Magistrate for the release of the said property for the interim custody of the petitioners, in which event, the said learned Magistrate Court would invariably go through the observations made by this Court in this order.

With the above observation, both the writ petitions stand disposed of.

**Sd/-
JUDGE**

MBS/-