

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) 4/2020 CrIM(4/2020)

ZYDUS WELLNESS LIMITED

...Petitioner(s)/appellant(s)

Through: Mr. Varut Kumar Gupta, Advocate

Vs.

UNION TERRITORY OF J AND K AND ANR.
(HEALTH AND MEDICAL EDUCATION
DEPARTMENT)

...Respondent(s)

Through: Mr. Mubashir Majid Malik, Dy. AG
Mr. Zahid Qais Noor, GA

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

27.12.2024

01. The petitioner has challenged the proceedings emanating against him on a complaint filed by the respondents alleging commission of offences under Section 26(2) (ii) of Food Safety and Standards Act 2006, hereinafter referred to as FSS Act-2006, punishable under Section 51 & 59 (I) of FSS Act-2006 which is stated to be pending before the Court of learned Judicial Magistrate 1st Class (Munsiff) Qazigund.

02. It is alleged in the impugned compliant that on 11.03.2024 complainant- Food Safety Officer, Qazigund, during the routine inspection visited the premises of accused No.1-Tawkeer Ahmad Khanday (Food Business Operator) situated at Qazigund. The complainant is stated to have collected the sample of a food article namely "Yummy Nutrilite Spread" and after completing the requisite formalities the sample was sent for analysis to the Food Analyst Kashmir. Vide report dated 26.03.2014, the Food Analyst, Kashmir declared the sample as of Standard quality.

However, the Designated Officer Food Safety Anantnag decided to send

the 2nd part of the sample to the Referral Laboratory at Kolkata for its comprehensive analysis. The Director Food Referral laboratory, Kolkata vide its report dated 11.07.2014 declared the sample as Unsafe and Sub-Standard quality.

03. During investigation of the case, accused Tawkeer Ahmad Khanday was found to be the Proprietor of M/s: Khanday Kiryana Merchants, Qazigund, where from the sample of 'Nutralite Yummy Spread' was procured for analysis and it was found that he had purchased the said food item from Parvaiz Ahmad Sheikh who in turn had purchased the food item in question from M/s: MSK Traders Tangbagh Khayam Srinagar. It was also found that that MSK Traders, Srinagar had purchased the said food item from M/s: Vee Ess Agencies Gandhi Nagar Jammu (C & F Agent of Zydus Wellness Ltd.), and it was further found that label of the food item was bearing the address and name of petitioner's company.

04. The Designated Officer submitted the case to the Commissioner of Food Safety, J&K for grant of sanction of prosecution vide his letter dated 27-08-2014 for obtaining sanction of prosecution against the accused Tawkeer Ahmad Khanday, Parvaiz Ahmad Sheikh, Mubashir Ahmad Khan, Prop. of M/s VEE ESS Agencies Gandhinagar, Jammu and the petitioner herein i.e., M/s: Zydus Wellness Ltd. Vide Order No.04-CFS of 2015 dated 21-11-2015, the Commissioner of Food Safety accorded sanction for launching prosecution against the above-named persons including petitioner herein. Accordingly, the complaint was presented before the learned Judicial Magistrate 1st Class (Munsiff) Qazigund on

on 09.02.2016, on which date cognizance was taken and the process was issued against the accused persons including the petitioner herein.

05. The petitioner has challenged the impugned complaint and the order whereby the process has been issued against it, primarily, on the ground, that the complaint has been filed beyond the prescribed period of limitation and as such, it was not open to the learned trial Magistrate to take cognizance of offences and issue process against the accused. It has also been contended that the order whereby cognizance of offences has been taken and process was issued against the petitioner is mechanical in nature.

06. I have heard the learned counsel for the parties and perused the record of the case including trial Court record.

07. As per the complaint the sample of Food Article in question was collected by Food Safety Officer on 11.03.2014 where after it was sent to the Food Analyst. The Food analyst rendered his report dated 26.03.2014, whereafter the Designated Officer sent the sample to the Director Food Laboratory Kolkata for re-analysis. The report of re-analysis which forms basis of the complaint was rendered by the said laboratory on 11.07.2014. The sanction for prosecution was granted on 21.11.2015 and the complaint was filed before the learned Judicial Magistrate 1st Class (Munsiff) on 09.02.2016.

7. Section 77 of the FSS Act provides for time limit for prosecution. It reads as under:

“77. Time limit for prosecution. -Notwithstanding anything contained in this Act, no court shall take cognizance of an

offence under this Act after the expiry of the period of one year from the date of commission of an offence:

Provided that the Commissioner of Food Safety may, for reasons to be recorded in writing, approve prosecution within an extended period of up to three years.”

- 08.** From a perusal of the aforesaid provision, it is revealed that a Court is debarred from taking the cognizance of an offence under the FSS Act after expiry of period of one year from the date of commission of the offence. However, the Commissioner of Food Safety is vested with the power to approve prosecution within an extended period upto three years, subject to the condition that he has to record reasons for doing so.
- 09.** Adverting to the facts of the instant case, the report of the Food Referral Laboratory, Kolkata, which forms basis for prosecution against the petitioner was obtained on 11.07.2014 and the sanction for prosecution was granted on 21.11.2015 whereas the complaint laid before the learned Magistrate on 09.02.2016, meaning thereby, that the complaint has been filed by the respondent against the petitioner and co-accused beyond the prescribed period of limitation of 01 (one) year.
- 10.** Learned counsel for the respondents has vehemently argued that once the Commissioner of Food Safety has granted sanction for prosecution in terms of order dated 21.11.2015 it has to be presumed that he has extended the period for launching the prosecution. The argument appears to be without any substance for the reason that the requirement of proviso to Section 77 of the FSS Act is that the Commissioner of Food Safety has to record reasons in writing for approving the prosecution beyond the period of one year. A perusal of order dated 21.11.2015 issued by the Commissioner of Food Safety reveals that no reasons have been recorded by the said authority for approving the

prosecution beyond the period of one year from the date when the offence is alleged to have been committed. The order does not even mention that sanction for prosecution is being approved beyond the period of one year and it does not assign any reason for approving the sanction after the period of one year. The requirement of law is that the reasons have to be recorded in writing for approving the prosecution after the expiry of one year, which in the instant case is clearly missing in the order of sanction. Therefore, it cannot be stated that requirements of proviso to Section 77 of the FS Act have been complied with in the instant case.

11. The cases that are barred by limitation are liable to be quashed without any further enquiry because there is a statutory bar for the Courts to take cognizance of offences in such cases. Instant case is one of such nature as not only the sanction for prosecution has been granted after the period of limitation but the compliant has also been filed before the trial Magistrate well after the expiry of prescribed period of one year of limitation. The prosecution against the petitioner is, therefore, liable to be quashed on this ground alone.

12. The second ground urged by the petitioner also appears to be forceful for the reason that the learned trial Magistrate while issuing process against the petitioner herein in terms of order dated 09.02.2016 has not even mentioned as to what offences are *prima facie* made out against the petitioner or the co-accused. It was incumbent upon the learned trial Magistrate to apply his mind to the allegations made in the complaint as well as the documents annexed thereto before taking

cognizance of the offences and before issuing process against the accused. It should not have been a mechanical exercise.

13. Issuance of process in a criminal case is a serious business and it has the potential of curtailing liberty of an accused. Without application of mind and without recording a *prima facie* opinion as to which offences are made out, an order of issuance of process in a criminal case cannot be sustained in law. Had the learned trial Magistrate applied his mind to the material on record he would have certainly come to a conclusion that the compliant is barred by limitation. Instead of doing so, he has issued the process against the petitioner and co-accused without applying his mind in a routine manner. Thus, the impugned order is liable to be set aside on this ground as well.

14. For the foregoing reasons, the petition is allowed and the proceedings emanating from the impugned complaint as against the petitioner are quashed.

15. Registry is directed to send a copy of this order to learned trial Court for information.

(SANJAY DHAR)
JUDGE

SRINAGAR
27.12.2024
Shameem H.