

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

Crl.MC.No. 1192 of 2012 ()

**AGAINST THE ORDER/JUDGMENT IN CC 493/2011 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT-I, KOZHIKODE**

PETITIONER(S)/ACCUSED NO. 4 & 5 :

- 1. M/S.DESAI BROTHERS LIMITED
1436, KASBAPETH, PUNE-411011
REPRESENTED BY ITS NOMINEE
DEEPAK BHACCHANDRA DESHPANDE.**
- 2. DEEPAK BHACCHANDRA DESHPANDE
MANAGER
BEING THE NOMINEE OF M/S. DESAI BROTHERS LIMITED
1436, KASBAPETH, PUNE-411011.**

**BY ADVS.SRI.M.K.DAMODARAN (SR.)
SRI.GILBERT GEORGE CORREYA**

RESPONDENT(S)/COMPLAINANT & STATE :

- 1. THE FOOD INSPECTOR
KOZHIKODE CORPORATION, KOZHIKODE-673001.**
- 2. THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031.**

BY SRI.ROY THOMAS, PUBLIC PROSECUTOR

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
28-01-2015, ALONG WITH CRMC. 1193/2012, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:**

APPENDIX

PETITIONER(S) EXHIBITS :

ANNEXURE AI: TRUE COPY OF REPORT DATED 22-01-2011 OF THE PUBLIC ANALYST.

ANNEXURE AII: TRUE COPY OF THE LETTER NO. 119/10-11 DATED 03-02-2011 FROM THE OFFICE OF THE 1ST RESPONDENT TO THE 1ST PETITIONER COMPANY.

ANNEXURE AIII: TRUE COPY OF THE LETTER DATED 15-02-2011 ALONG WITH THE DETAILS OF NOMINATION OF THE COMPANY UNDER SECTION 17(2) OF P.F.A. ACT.

ANNEXURE AIV: TRUE COPY OF THE LETTER NO. 24/2011/DFI/KKD DATED 04-07-2011 FROM THE DISTRICT FOOD INSPECTOR, KOZHIKODE TO THE 1ST PETITIONER.

ANNEXURE AV: TRUE COPY OF THE COMPLAINT DATED 04-07-2011 FILED BY THE RESPONDENT AGAINST THE PETITIONERS/ACCUSED NOS. 1 & 2 BEFORE THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-1, KOZHIKODE.

ANNEXURE AVI: TRUE COPY OF THE MAHAZAR DATED 15-12-2010 PREPARED BY THE RESPONDENT.

ANNEXURE AVII: TRUE COPY OF THE SUMMONS IN C.C.NO. 493/2011 ISSUED BY THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-1, KOZHIKODE.

RESPONDENTS' EXHIBITS:

NIL

R.AV

//True copy//

PA to Judge

K.RAMAKRISHNAN, J

CRL.M.C.NOs.1192 OF 2012 & 1193 OF 2012

Dated this the 28th day of January 2015

ORDER

Crl.M.C.No.1192 of 2012 was filed by accused Nos.4 and 5, while Crl.M.C.No.1193 of 2012 was filed by the third accused in CC.No.492 of 2011 pending before the Judicial First Class Magistrate Court-I, Kozhikode to quash the proceedings as against them under section 482 of the Code of Criminal Procedure.

2. The proceedings was initiated by Food Inspector, Kozhikode. He purchased ginger paste in a sealed pocket from the first accused as vendor from the shop of which second accused was the licensee and as per the allegations, this article was manufactured by fifth accused and fourth accused was their nominee under section 17 of the Food Adulteration Act and it was obtained from third accused by the licensee for sale. When it was sent for analysis, it was found that it does not confirm the standard provided for ginger paste by the public analyst and on getting report it was revealed that third accused is the person having sales tax registration and fourth and fifth accused are the manufacturers and nominee of the fifth accused as seen from the label in the article purchased. Accordingly after launching a prosecution, section 13(2) notice was issued and

the second sample was sent to Central Food Laboratory and the report from the Central Food Laboratory obtained which also showed that it did not confirm the standard provided for ginger paste as per Annexure-B-A.16.28 of the Prevention of Food Adulteration Act and Rules. The petitioners filed this petition to quash the proceedings on the ground that there is no allegation against them that they have shared the common intention and joint trial is not possible and also contended that after coming into force of Food Safety and Standards Act, 2006 the prosecution by the Food Inspector is not maintainable and the third accused being only a clearing and forwarding agent, there is no provision in the Food Adulteration Act to implicate them as accused to be tried along with the others and on that ground they wanted to quash the proceedings.

3. After arguing for some time, when this court expressed its view that the grounds alleged are not sufficient for quashing the proceedings and it is a matter for evidence, the counsel for the petitioners submitted that the petition may be disposed of leaving open the right of the petitioners to raise all the contentions raised by them in these petitions before the trial court and directing the trial court to consider all those contentions in accordance with law. So, the above submission is recorded and the petition is disposed of accordingly leaving

open the right of the petitioners to agitate all the contentions raised by them before this court in these petitions before the trial court and the trial court is directed to consider and disposed of the objection in accordance with law. Interim order of stay dated 17.04.2014 is vacated and Cr.M.A.2306 of 2012 in Crl.M.C.No.1193 of 2012 and Crl.M.A.No.2305 of 2012 in Crl.M.C.No.1192 of 2012 are dismissed.

Office is directed to communicate this order to the concerned court immediately.

Sd/-
K.RAMAKRISHNAN, JUDGE

R.AV

//True Copy//

PA to Judge