

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

Crl.Rev.Pet.No. 152 of 2015 ()

AGAINST ORDER DATED 6.11.2014 IN CMP.7347/2014 IN CC.1627/11 OF JFMC,
AMBALAPUZHA

PETITIONERS/ACCUSED 3 AND 4:

1.KANAN DEVAN HILLS PLANTATIONS COMPANY PVT. LTD.
KDHP HOUSE
MUNNAR-685612 REPRESENTED BY ITS SENIOR MANAGER
MR. MOHAN C. VARGHESE.

2.MR. MOHAN C. VARGHESE
CHOKANAD HOUSE, MUNNAR P.O., SENIOR MANAGER
KANAN DEVAN HILLS, PLANTATIONS COMPANY PVT. LTD.
MUNNAR.

BY ADVS.SRI.JOSEPH KODIANTHARA (SR.)
SRI.V.ABRAHAM MARKOS
SRI.BINU MATHEW
SRI.ABRAHAM JOSEPH MARKOS
SRI.ISAAC THOMAS

RESPONDENT(S):

1.STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
OFFICE OF THE ADVOCATE GENERAL, HIGH COURT BUILDINGS
ERNAKULAM-682031

2. FOOD INSPECTOR
ALAPPUZHA CIRCLE, PIN:688 012.

3. C.RAJU
KOCHIPARAMBIL HOUSE, PURAKKADU P.O.-690551.

4. P.C.KURIAKOSE
PAEDICKAL HOUSE, THATHAMPALLY P.O., ALAPPUZHA-688013.

R1 BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
10-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

ANNEXURE A1:TRUE COPY OF THE REPORT DATED 12.8.2009 SUBMITTED BY THE PUBLIC ANALYST.

ANNEXURE A2:TRUE COPY OF THE COMPLAINT C.C.NO.1627/2011 DATED 10.10.2011 FILED BY THE 2ND RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE, AMBALAPUZHA.

ANNEXURE A3:TRUE COPY OF THE ANALYSIS REPORT ISSUED BY THE CENTRAL FOOD LABORATORY DATED 29.11.2011 IN FORM II UNDER RULE 4(5) OF THE PREVENTION OF FOOD ADULTERATION RULES, 1955.

ANNEXURE A4:TRUE COPY OF THE CENTRAL GOVERNMENT ORDER (STATUTORY ADVISORY) DATED 23.11.2012 ISSUED THROUGH THE FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA TO THE FOOD SAFETY COMMISSIONERS OF ALL STATES.

ANNEXURE A4(A):TRUE COPY OF THE CENTRAL GOVERNMENT ORDER DATED 23.5.2014 UNDER SECTION 16(5).

ANNEXURE A5:TRUE COPY OF THE LETTER DATED 5.4.1984 ISSUED BY THE CENTRAL GOVERNMENT AS PER SECTION 22A TO ALL STATE GOVERNMENTS.

ANNEXURE A6:TRUE COPY OF THE INDIAN STANDARD SPECIFICATIONS FOR BLACK TEA IN THE YEAR 2003 ISSUED BY THE BUREAU OF INDIAN STANDARDS (BIS), THE NATIONAL STANDARDS BODY OF INDIA.

ANNEXURE A7:TRUE COPY OF THE DISCHARGE PETITION VIDE CMP.NO.7347/2014 DATED 23.10.2014 FILED BY THE PETITIONER BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, AMBALAPUZHA UNDER SECTION 245 OF THE CR.P.C.

ANNEXURE A8:CERTIFIED COPY OF THE IMPUGNED ORDER DATED 6.11.2014 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT, AMBALAPUZHA IN C.M.P.NO.7347/2014 IN C.C.NO.1627/2011 FILED BY THE PETITIONER.

RESPONDENTS' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

C.T. RAVIKUMAR, J.

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Crl.R.P. No.152 OF 2015

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Dated this the 10th day of February, 2015

ORDER

This revision petition is filed against order dated 6.11.2014 in CMP.No.7347 of 2014 in C.C.No.1627 of 2011 passed by the Court of Judicial First Class Magistrate, Ambalapuzha. The said C.M.P was filed by the petitioners who are accused Nos.3 and 4 in the M.C under section 245 Cr.P.C praying for their discharge. The learned Magistrate considered the contentions taken up by the petitioners claiming for discharge and dismissed the petition.

2.I have heard the learned counsel for the petitioners and also the learned Public Prosecutor. The prosecution case against the petitioners and the co-accused is that the tea dust sold to Food Inspector, Ambalappuzha contained iron filings and therefore, the

food item was adulterated. On getting public analyst's report, at the request of the first petitioner herein/the third accused therein, a second opinion was obtained from the Central Food Laboratory. In the meanwhile, this Court rendered a decision in **Gopalakrishnan v. Food Inspector [2013 (3) KLT 455]**. It is the said circumstances that constrained the petitioner to file the aforementioned M.C.

3.As noticed hereinbefore, in this case, the proceedings were instituted by filing the complaint by the Food Inspector Alappuzha Circle alleging commission of offence under section 16 (1-A) (ii) read with section 2(i-a)(b), 7(i)(v) Rule 5 Appendix-B A-14 of PFA Act. The allegation against the accused is that on 31.7.2009, the predecessor in office of the complainant conducted an inspection of shop VI/72 of Purakadu Panchayat and purchased tea dust under a mahazar and on compliance with the legal formalities, one of the samples was sent for analysis to Government Analytical Laboratory, Thiruvananthapuram. The result would reveal the presence of iron

filings not less than 257.6 ppm and based on the same, it was opined that the food article is adulterated. Paragraph 6 of the impugned order would reveal that the decision of the Hon'ble Apex Court in **Pepsico India Holdings (P) Ltd v. Food Inspector [2010 (4) KLT 706 SC]** and the decision in **Gopalakrishnan's** case (supra) were considered by the learned Magistrate. It was found that the Hon'ble Apex Court held that non-formulation of the rules under section 23(1A) (ee) and (hh) is fatal to the prosecution and in such circumstances when tolerance limit of presence of pesticide was not prescribed in regard to sweetened carbonated water no fruitful purpose could be served by sending company's sample to forensic laboratory. The learned Magistrate found that subsequently notification was issued and rules were promulgated for implementing the mandate of the statutory provisions under section 23(1A) (ee) and (hh) of the PFA Act and in such circumstances, the opinion of the public analyst stands confirmed by the analysis conducted at Central Food Laboratory. I do not think it necessary to look into the correctness of the findings of the learned

Magistrate at this stage as the trial is going on. That apart, a mere glance at the provisions under section 245 Cr.P.C would reveal that it empowers the learned Magistrate to discharge an accused if, upon taking all the evidence referred to in section 244 he considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant conviction of the accused. Taking into account the contentions of the petitioners, a report was called for, from the Court of Judicial First class Magistrate, Ambalappuzha. The report furnished by the learned Magistrate would reveal that earlier, to be precise on 9.1.2013, PW1 was examined and Exts.P1, P1(a) and P2 to P8 were marked as part of the enquiry under section 245, Cr.P.C and on 9.5.2013, after preliminary hearing charge was framed against all the accused under section 246, Cr.P.C. and it was read over and explained to all of them and they pleaded not guilty. The report would further reveal that PW1 was recalled and he was examined on 29.9.2014. It was then that the aforementioned CMP was filed seeking their discharge. After dismissing the petition

as per the impugned order, the case is now posted to 18.2.2015 for examination of the remaining witnesses. It is thus evident that in this case, the evidence of the prosecution as referred to in section 244 was already taken and it was thereafter that charge was framed against the accused under section 246, Cr.P.C.. As part of the procedure prescribed thereunder PW1 was recalled and was virtually cross-examined and the remaining witnesses are yet to be cross examined. Going by section 247, Cr.P.C after following the procedure under section 246, Cr.P.C the revision petitioner/accused shall be called upon to enter upon his defence and needless to say that if he produces his evidence, then the provision of section 243, Cr.P.C shall have to be applied. When once a charge was framed in terms of the provisions under section 248, Cr.P.C. the Magistrate has to enter into a finding as to the guilt of the accused and then he shall be acquitted or convicted according to such finding, in accordance with law. From the facts and circumstances obtained thus, it cannot be said that the case on hand is groundless and the petitioners have to be discharged. When the

charge was framed and PW1 was examined this Court will not be justified to go into a roving enquiry and now, it is for the revision petitioners to decide whether they should seek for recalling the remaining witnesses and to cross-examine them. As regards the trial court now, it has to follow the procedure under sections 246 to 248, Cr.P.C.. Though the petitioners attempted to canvass the position that the case is groundless they have failed to establish the same and in view of the aforesaid circumstances I am of the considered view that now, the procedures contemplated under sections 246 and 249 have to be followed. The learned counsel for the petitioners submitted that the petitioners could not produce Annexure- A4 before the learned Magistrate along with the petition for discharge. According to the petitioners, in the light of Annexure-A4, no prosecution against the petitioners is possible and permissible in the facts and circumstances. The court below could not be found fault in not looking into those documents as admittedly the said document was not produced and no contention based on the same was raised before the trial court for

consideration. The facts expatiated above would reveal that no interference is possible and permissible in the circumstances and certainly, it will be open to the petitioners to bring Annexure-A4 to the notice of the court appropriately at the appropriate stage and to adduce evidence in defence. In such circumstances, this revision petition is dismissed without prejudice to the right of the petitioners to seek for recalling of witnesses and to adduce evidence, in accordance with law.

**Sd/-
C.T. RAVIKUMAR
(JUDGE)**

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

