

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

CRL.O.P.No.22640 of 2009
and
M.P.No.1 of 2009

Mohammed Usman

.. Petitioner/Accused No.1

Vs.

The State of Tamil Nadu at
the instance of Mr. Jebaraj Shobana Kumar
Food Inspector, Food & Drugs
Administration, Division 124, Zone - 3,
Corporation of Chennai,
Tamil Nadu.

.. Respondent/Complainant.

Prayer : Criminal Original Petition is filed under Section 482 of
the Code of Criminal Procedure to call for the records and to quash
the proceedings in S.M.M.F. No.5 of 2005 pending before the
Honourable XX Metropolitan Magistrate, Rippon Buildings, Chennai.

For Petitioner : Mr.Zaffarullah Khan

For Respondent : Mr.L.N. Praghasham

ORDER

The petitioner is the A1 in S.M.M.F. No.5 of 2005
pending before the Honourable XX Metropolitan Magistrate, Rippon
Buildings, Chennai.

2.The petitioner along with the two other persons were
chargesheeted for offence committed punishable u/s 7 (i) & 16 (1)
(a) (i) r/w Section 2 (ia) (a) (m) of Prevention of Food
Adulteration Act, 1954.

3. The case of the prosecution is that the petitioner is a
vendor and he was found selling chocolate manufactured by the Cadbury
Dairy Milk. The Company which has been arrayed is the second accused.

4. On 02.04.2014, the Food Inspector inspected the shop
of the petitioner and found that he was selling dairy milk
chocolate and obtained the sample of Cadbury Dairy Milk by following
procedures contemplated under Section 13 (2) of the said Act and

the petitioner was also asked about the details of the persons who manufactured the chocolate and distributed the same and on the basis of the information furnished by the petitioner, the accused 2 and 3 were added as parties to the prosecution.

5. It is further stated that the sample purchased from the shop of the petitioner on analysis, found to be adulterated as it did not comply with the prosecution as provided under the Act and therefore, on the basis of the analyst report, prosecution was launched and notice was also issued to the petitioner and other accused on 04.10.2005 as per Section 13 (2) of the PFA Act and thereafter, the petition has been filed to quash the case.

6. It is submitted by the learned counsel for the petitioner that the accused 2 and 3, the manufacturer and distributor, filed CRL.O.P. No.10489/2008 on the file of this Court to quash the proceedings and S.M.M.F.No.5 of 2005 on the file of the learned XX Metropolitan Magistrate and this Court, by order dated 19.08.2008 allowed the petition and quash the prosecution against A2 and A3. He therefore, submitted that the prosecution against A2 and A3 was quashed and therefore, petitioner was only a retail seller, who sold chocolates of the manufacturer and distributor of A2 and A3 respectively cannot be prosecuted.

7. Though the learned counsel for the respondent submitted that he has no instruction to appear for the respondent, having regard to the order in CRL.O.P. No.10489/2008, I have decided to proceed with the case.

8. As rightly submitted by the learned counsel for the petitioner, prosecution was launched against the petitioner and also against the manufacturer and distributor. In CRL.O.P. No.10489/2008., the prosecution as against the manufacturer and distributor was quashed on the ground that there was no violation of Section 13 (2) of the PFA Act.

9. Admittedly, the sample was taken on 02.04.2004 and the analyst sent a report dated 28.04.2004 stating that the sample sent for analysis was adulterated and thereafter, complaint was filed on 22.09.2005 and notice was issued on 04.10.2005.

10. Considering the delay in sending the report to the analyst, this Court in the above original petition has held as follows:

6. In the present case, even if the stand taken by the respondent is accepted that the samples were drawn in the manner as prescribed in the Rules, there is a gross failure on their part in launching the prosecution instantly as enunciated in the Act. It is very unfortunate to note that prosecution

was launched 17 months after the public Analyst's Report dated 28.04.2004 and notice under Section 13 (2) came to be served on the petitioners only on 04.10.2005 and by that time, the food sample had become so decomposed and totally unfit for analysis. Strikingly, there is no explanation forthcoming on the part of the prosecution for such serious lapses. Due to the inordinate laches on the part of the prosecuting agency, the valuable right of the accused is taken away; in such circumstances, this Court has no other option except to quash the entire proceedings pending against the petitioners before the trial court.

11. As the manufacturer and distributor were discharged, the petitioner is also entitled to the same benefit and so far the petitioner is concerned, he has also lost a valuable chance by reason of the delay in sending the report of the analyst to the petitioner. Hence, the criminal original petition is allowed and S.M.M.F.No.5 of 2005 on the file of the XX Metropolitan Magistrate, Chennai is quashed.

In the result, the criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CO)

Dt:31/3/2015

True Copy

Sub-Assistant Registrar

To

1. The Food Inspector, Food & Drugs Administration, Division 124, Zone - 3, Corporation of Chennai, Tamil Nadu.
2. The XX Metropolitan Magistrate, Rippon Buildings, Chennai 3.

gr(co)

prk1/4

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