

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2015

CORAM

The Hon'ble Mr. Justice R.S.Ramanathan

CrI.O.P.No.24308 of 2009

and M.P.No.1 of 2009

- 1.Sunil Kumar Pathuwari @ Sunil Sadhwani
Partner of M/s.MSS Processors,
Madhya Pradesh.
 - 2.Amarchand Upadhyay
Partner and Manager
M/s.MSS Processors
Madhya Pradesh.
 - 3.M/s.MSS Food Processors,
Plot No.D, Sector -E,
Sanwer Road, Industrial Area,
Indore, Madhya Pradesh
Rep by its Manager,
Mr.Amarchand Upadhyay
- ...Petitioners
- vs.
- State Rep. By
The Food Inspector,
Cuddalore Municipality,
Cuddalore.
- ...Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for the records in C.C.No.221/2009 and quash pending on the file of Judicial Magistrate No.III, Cuddalore.

For Petitioners: Mr.T.V.G.Kartheeban

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

O R D E R

The petitioners are the accused 2 to 4 in C.C.No.221/2009 on the file of the Judicial Magistrate No.III, Cuddalore and they were prosecuted along with the first accused under the provisions of the Prevention of Food Adulteration Act, 1954.

2. The case of the prosecution is that the first accused is a retail vendor and on 30.07.2007, from his shop, Simla Gutkha (2 gms) which was displayed for sale was purchased by the complainant and after complying with the procedure the said Simla Gutkha was sent for analysis and the Chemical Analyst in his report stated that the food item is adulterated and the report of the Chemical Analyst was received by the complainant on 06.09.2007. Thereafter, notice was sent to the manufacturer namely the accused 2 to 4/petitioners herein and after getting sanction from local authority, a complaint was filed on 26.05.2009.

3. According to the learned counsel for the petitioners, after institution of prosecution, notice under Section 13(2) of the Prevention of Food Adulteration Act, 1954 was served on the petitioners only on 27.08.2009, which is in contravention of Section 13(2) of the Act and also Rule 9B of Prevention of Food Adulteration Rules, 1955 and the complaint was lodged after expiry of 2 years from the date of sample and therefore, no prejudice would be achieved in sending the samples for analysis as the expiry period was already over and therefore, the complaint is liable to be quashed against the petitioners.

4. The learned Additional Public Prosecutor submitted that the complaint is dated 26.05.2009 and it was filed before the Judicial Magistrate No.III Cuddalore on 02.06.2009 and thereafter, notice under Section 13(2) of the Act was sent on 25.08.2009, as it is seen from the complaint and records. It is submitted that even though Section 13(2) notice was issued two months later, the petitioners have not availed the opportunity of sending the samples for analysis and therefore, the petitioner cannot complain about violation of Rule 9-B of the Prevention of Food Adulteration Rules, 1955.

5. I am unable to accept the contention of the learned Additional Public Prosecutor. Admittedly sample was taken on 03.09.2007 and the complainant/respondent herein received the notice of the analyst on 06.09.2007 and the complaint was filed on 02.06.2009. Further it is seen that Section 13(2) notice was served on the petitioners only on 27.08.2009 and under Rule 9-B of the Prevention of Food Adulteration Rules, 1955, the Local Authority shall within a period of ten days after the institution of prosecution forward a copy of the report of analysis in Form III delivered to him under sub-rule (3) of Rule 7, by registered post or by hand, as may be appropriate, to the person from whom the sample of the article was taken by the Food Inspector and simultaneously also to the person, if any, whose name, address and others particulars have been disclosed under Section 14A of the Act.

6. Admittedly the complaint was filed on 02.06.2009 and Section 13(2) notice was served on the petitioners only on 25.08.2009, which is a clear violation of the mandatory provision of Rule 9-B of the

Food Adulteration Rules, 1955, which results in quashing the complaint.

7. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.221/2009 on the file of the Judicial Magistrate No.III, Cuddalore is quashed insofar as the petitioners are concerned. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.Judicial Magistrate No.III,
Cuddalore.

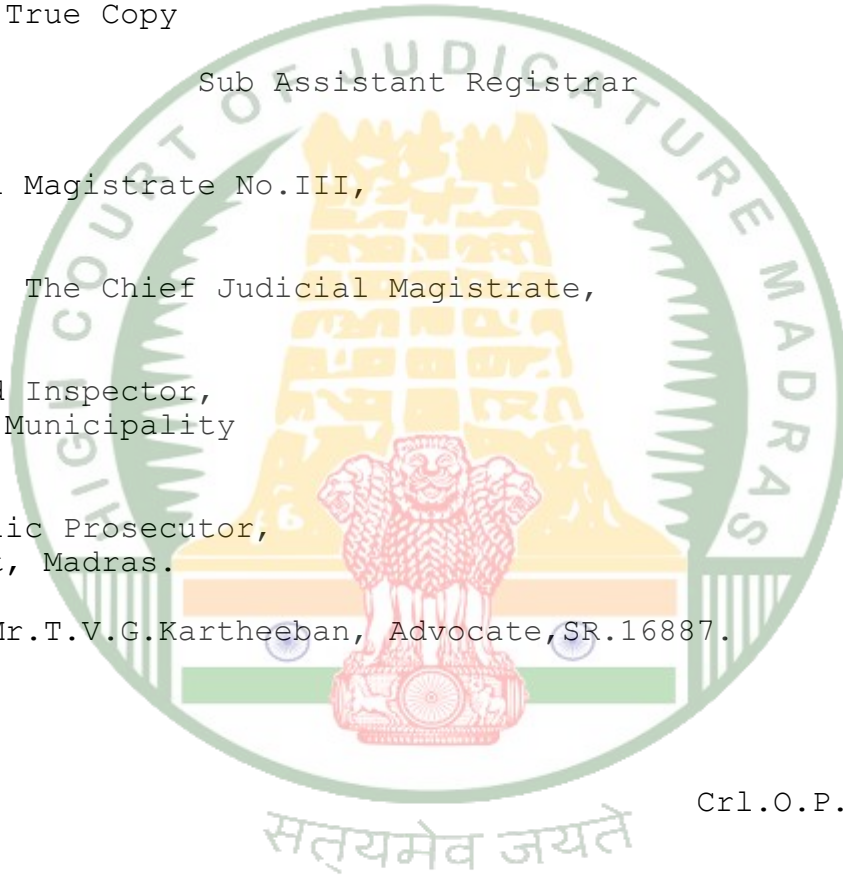
2.do thro' The Chief Judicial Magistrate,
Cuddalore.

3.The Food Inspector,
Cuddalore Municipality
Cuddalore.

4.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.T.V.G.Kartheeban, Advocate,SR.16887.

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krd 15/4



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