



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2015

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH

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Crl.O.P(MD)No.15380 of 2011

and

M.P.(MD).Nos.1 and 2 of 2011

1.P.Raja

2.P.Sekar

3.M/s.Rohit India

... Petitioners/A1 to A3

-Vs-

The Food Inspector,
Cumbam Municipality,
Cumbam, Theni District.

... Respondent/complainant

PRAYER:- Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records the complaint in S.T.C.No.5144 of 2011 on the file of the Judicial Magistrate, Uthamapalayam and quash the proceedings.

For Petitioners :Mr.D.Venkatesh

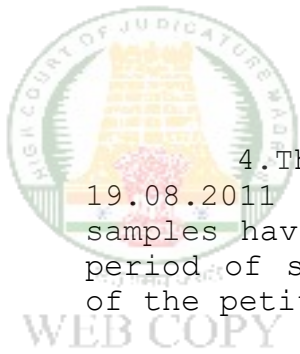
For Respondent :Mrs.S.Prabha
Government Advocate(Crl.side)

ORDER

This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 praying to call for the records the complaint in S.T.C.No.5144 of 2011 on the file of the Judicial Magistrate, Uthamapalayam and quash the proceedings.

2.Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl.side) appearing for the respondent.

3.The first petitioner is the owner of the shop, third petitioner is the manufacturer and the second petitioner is the nominee of the third petitioner. On 28.03.2007, the respondent made an inspection in the provisional store of the first petitioner and during inspection, the respondent had taken 3 samples of "Ruchi Amla Pickle". The bottles were sent for analysis office on 28.02.2007 and got the analysis report, which is adulterated. As it is adulterated since it is found to contain the mould mucor species, the presence of which makes the food article does not conform to microbiological requirements for pickles prescribed in Appendix D to PFA Rules 1955. Thereafter, the respondent collected the material document and sent it to the officer concerned for obtaining written consent from the Prosecution Sanctioning Authorities and filed the complaint. On 27.07.2011, the case was taken on file and thereafter, notice under Section 13(2) of the Prevention of Food Adulteration Act, was issued to all the accused on 19.08.2011. The option is as to whether the second sample can be sent for analysis.



4. The only question raised by the petitioners is that notice dated 19.08.2011 having been sent after merely 4 years from the date of the samples having been taken, the goods have become deteriorated with expiry period of six months from the date of food samples taken and the rights of the petitioners will be affected.

5. The learned counsel for the petitioners has made reliance upon the judgment of the Apex Court in *GIRISHBHAI DAHYABHAI SHAH V C.C.JANI AND ANOTHER* reported in (2010) 2 Supreme Court Cases (Cri) 270 : (2009) 15 Supreme Court Cases 64 as well as the order of this Court in *Crl.O.P. (MD).No.2473 of 2010* dated 31.08.2010.

6. The learned Government Advocate (Crl.side) based upon the counter affidavit submitted that the petitioners have not opted for sending the second portion of the food sample for analysis to the laboratory and hence, the petitioners cannot contend that they are prejudiced by the delayed prosecution.

7. Considering the very same issue and taking into account the judgment of the Apex Court referred supra, this Court was pleased to hold as follows:

"6. In such circumstances, it is appropriate to consider the decisions relied upon by the learned counsel appearing for the petitioners. In (2010) 2 Supreme Court Cases (Cri) 270 (Girishbhai Dahyabhai Shah Vs. C.C.Jani and another), wherein, the Apex Court has held as follows:

"7. Sections 13(1) and (2) of the Prevention of Food Adulteration Act, 1954, read as follows:

13. Report of Public Analyst. - (1) The Public Analyst shall deliver, in such form as may be prescribed, a report to the Local (health) Authority of the result of the analysis of any article of food submitted to him for analysis.

(2) On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the person from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under Section 14-A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory."

8. It will be apparent from the above, that only on receipt of the report of the Public Analyst under sub-section (1) to the effect that the article of food is adulterated, can a prosecution be launched and a copy of



the report could be supplied to the accused, Sub-section (2) also indicates that on receipt of the report the accused could, if he so desired, make an application to the Court within a period of ten days from the date of the receipt of the copy of the report to get the sample of article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.

9. In other words, in the instant case, the appellant was prevented from applying for analysis of the second sample before 17.07.1989, by which time the second sample of curd had deteriorated and was not capable of being analysed as was found in Ghisa Ram referred to above."

In (2009) 1 MLJ (Crl) 843 (Bhushan Prasad, Manager-Quality and Regulatory Operations of the general Mills India Private Ltd., Mumbai and Another Vs. K. Ravichander), this Court has held as follows:

"The reading of Section 13(2) of the Prevention of Food Adulteration Act 1954 makes it clear that on receipt of the Analyst report, the Local Health Authority shall after the institution of prosecution forward the copy of the analyst report to the accused concerned and to inform such persons that they may make an application before the Court within 10 days from the date of receipt of the copy of the report to get the other portion of the sample of article to be analysed by Central Food Laboratory. But in the instant case, it is seen that the date of manufacture of the sample is 15.10.2003, the date of expiry of the article is dated 15.02.2004, the Food Inspector obtained sanction for prosecution on 12.11.2004 and the complaint was filed only on 10.12.2004 and as such the complaint itself was filed after the expiry of the product, viz., sample as early as on 15.02.2004 and as such the sample has become unfit for further analysis by the Central Food Laboratory and thereby the petitioners have lost their valuable right to get the sample examined by the Central Food Laboratory which resulted in grave prejudice to the accused."

In (2008) 3 MLJ (Crl) 779 (Baskar Vembu, Indian Inhabitant, Nominee of Cadbury India Ltd., Mylapore, Chennai - 600 004 and Another Vs. State of Tamil Nadu at the instance of K. Jebaraja Shobana Kumar, Food Inspector, Food & Drugs, Administration, Tamil Nadu), this Court has held as follows:

"In the present case, even if the stand taken by the respondent is accepted that the samples were drawn in the prescribed manner, there is a gross failure on their part in launching the prosecution instantly as enunciated in the Act. Notice under Section 13(2) of Act came to be served on the petitioners only on 04.10.2005 and by that time, 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. The valuable right of the



accused/petitioners is taken away. In such circumstances, the Court has no other option except to quash the entire proceedings pending against the petitioners before the trial Court."

In *G.Sivakumar and Others Vs. Food Inspector, City Municipal Corporation of Coimbatore* reported in (2009) 2 MLJ (Crl) 1035, wherein, this Court has held as follows;

"Admittedly, in this case, the delay between the launching of prosecution and forwarding of form III was beyond six months and is hit by Rule 9-B of the Prevention of Food Adulteration Rules. That apart, the report of the Public Analyst is dated 12.09.2001 and the prosecution came to be launched on 07.09.2004 when the complaint was preferred and it was taken on file on 16.09.2004. On 21.09.2004 the petitioners/accused received notice and if they calculate the said period, the prosecution has been launched after a period of nearly 3 years.

In view of such a long delay in launching prosecution in the present case, the petitioners/accused are put to serious prejudice as they lost their right of having the sample analyzed."

7.As per the above said citations, because of the delay in issuing 13(2) notice, the petitioners were prevented from sending the sample for second analysis within the time prescribed. In such circumstances, I am of the opinion that all the citations are squarely applicable to the facts of the present case.

8.This Court is also convinced that the petitioners are very much prejudiced because of sending the second portion of the sample, after the period of four years.

9.In the light of the above, this Court has no other option, except to quash the proceedings. Accordingly, the proceedings initiated against the petitioners in S.T.C.No.5144 of 2011 on the file of the Judicial Magistrate, Uthamapalayam is hereby quashed and the criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Per.Admn)

\\True copy\\

Sub Assistant Registrar

To

1.The Judicial Magistrate,Uthamapalayam.

2.The Food Inspector, Cumbam Municipality, Cumbam, Theni District.

3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

+1cc to MR.D.VENKATESH, ADVOCATE SR.NO.22800

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M.P. (MD) .Nos.1 and 2 of 2011

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