

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Petition No.13093 of 2011

ORDER:-

The petition is filed under Section 482 Cr.P.C., to quash all further proceedings in C.C.No.654 of 2004 on the file of the II-Additional Judicial Magistrate of First Class, Rajahmundry, registered under Sections 7(i), 2(ia)(b) and punishable under Section 16(1-A)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter, referred to as 'the Act').

2. The 2nd respondent/Food Inspector filed the complaint against A.1 to A.4. The petitioners herein are A.3 and A.4. The allegations are that on 11-12-2002, the Food Inspector inspected the shop of the non-petitioner/A.1 and drawn samples of Sil Mix Trix Mixed Fruit Jam and after fulfilling the mandatory requirements, the samples were sent to Public Analyst, who found that the sample is adulterated since it contains moulds. The report of the public analyst is dated 06-01-2003 and after obtaining the sanction, the prosecution is launched.

3. The non-petitioner/A.1 is the proprietrix of the business concern from where the samples were drawn and the non-petitioner/A.2 is the supplier. The petitioner/A.4 is the manufacturer of the said jam whereas the petitioner/A.3 is its nominee.

4. The petitioners/A.3 and A.4 filed the petition contending that the prosecution against the petitioners/accused is not maintainable for the reason that the manufacturer cannot be prosecuted along with a retailer at the inception of the proceedings. In support of this contention, the learned Counsel relied upon the Division Bench decision of our High Court reported in **MATHEW XAVIER v. STATE OF A.P.**^[1], which followed the decision of the Supreme Court

reported in **Omprakash Shivprakash V. K.I.Kuriakose (2000 (1) ALD (CrI) 633 (SC)** and also **Municipal Corporation of Delhi V. R.Sahai (AIR 1979 S.C., 1544)**.

5. In this connection, it will be relevant to extract Section 14-A and 20-A of the Act, which read as under:-

“14-A. Vendor to disclose the name etc., of the person from whom the article of food was purchased – Every vendor of an article of food shall, if so required, disclose to the food inspector the name, address and other particulars of the person from whom he purchased the article of food.

20-A. Power of Court to implead manufacturer, etc. – Where at any time during the trial of any offence under this Act alleged to have been committed by any person, not being the manufacturer, distributor or dealer of any article of food, the Court is satisfied, on the evidence adduced before it, that such manufacturer, distributor or dealer is also concerned with that offence, then, the Court may, notwithstanding anything contained in sub-Section (3) of Section 319 of the Code of Criminal Procedure, 1973, or in Section 20 proceed against him as though a prosecution had been instituted against him under Section 20.”

6. The law on this subject is well settled. A Division Bench of our High Court in Judgment reported in **Mathew Xavier’s case (cited 1st supra)** and after referring to the decisions of the Supreme Court reported in **Omprakash Shivprakash v. K.I.Kuriakose (2000 (1) ALD (CrI) 633 (SC)** and also **Municipal Corporation of Delhi v. R.Sahai (AIR 1979 S.C., 1544)** laid down the law on the subject in the following words:-

“The above decision of the Supreme Court puts the issue beyond any pale of doubt. While a joint trial of the manufacturer, distributor, dealer and vendor is permissible, but none the less if the link is missing amongst each of them the only recourse that is available is to examine the evidence that has come on record during the trial, which if permits the manufacturer, distributor and dealer also to be prosecuted, then the power under Section 20A has got to be exercised. It

has therefore to be understood that at the first instance, unless the Food Inspector has picked up the sample for analysis, right from the place where it is manufactured itself, he has to necessarily prosecute the manufacturer or dealer or distributor or agent only upon *prima facie* establishing their link to the alleged adulterated food article which has been sold or offered for sale. Therefore, at the initial stage itself the manufacturer or distributor or dealer cannot be straight away prosecuted on the strength and basis of the information gathered in terms of Section 14A of the Act.”

7. Learned Counsel appearing for the petitioners/A.3 and A.4 also placed on record a decision of the learned Single Judge of our High Court in Criminal Petition No.5050 of 2010, dated 10-08-2010 where on the similar set of facts, which are prevalent in the case in hand, the learned Single Judge has quashed the proceedings against A.3 and A.4 in that case who were the marketers of the product.

8. In view of the above admitted facts, I have no hesitation in holding that launching of the prosecution of the petitioners/accused, who are said to be the manufacturers of the product along with the retailer cannot be sustained in view of the Section 20-A of the Act.

9. The other contention of the petitioners/accused is that the complaint is also liable to be quashed on the ground that there was abnormal delay in launching the prosecution whereby the petitioners/accused were denied of the valuable right provided to them under the provisions of the Act of getting the sample re-analysed by the Central Food Laboratory.

10. The admitted facts are that the sample was lifted on 11-12-2002. It was sent for analysis on 11-12-2002. The report of the analyst is dated 06-01-2003. Sanction for prosecution was accorded on 07-08-2003. The complaint before the Magistrate was filed on 16-07-2004. The sample was manufactured in June, 2002 and it was described to be *best before 12 months*. Learned Counsel submits

that since the life of product was expired by June, 2003, the complaint itself was filed on 16-07-2004 and therefore the petitioners could not avail the remedy provided to them under Section 13(2) of the Act. In this connection, learned Counsel referred to certain Judgments of the learned single Judge of this High Court, but in a decision rendered by the Division Bench of this Court in **HANDI INSTANT FOODS, CHENNAI v. STATE OF A.P.**^[2], the Division Bench of this Court, after referring to various decisions on the subject, has laid down the law on the subject as under in para 14:-

“Whenever there is a report of the Analyst that the food articles is adulterated, by the date of filing of the complaint, there was *prima facie* material to show that the accused committed the offence. In order to prove his innocence, it is for the accused to make an application to send the second sample to the Central Food Laboratory for analysis by exercising his right provided under Section 13(2) of the Act and if the Central Food Laboratory differs with a view of the Public Analyst, the accused can be given the benefit of doubt. If there is a report from the Central Food Laboratory after sending the second sample for analysis that the food sample is not fit for analysis due to lapse of time, the accused is entitled for quashing the proceedings. But, without sending the sample to the Public Analyst either on the ground that there was time gap from the date of collecting the sample and filing the complaint or that the date fixed for using the food article has expired or that the period fixed for “best before” use has been crossed, the accused is not entitled for quashing the proceedings without showing that prejudice has been caused on account of delay caused in filing the complaint and serving the copy of the report of Public Analyst on the accused under Section 13(2) of the Act.”

11. In the instant case, the petitioners/accused did not make any application to send the second sample to the Central Food Laboratory for analysis. However, learned Counsel appearing for the petitioners/accused relies upon a decision of the Supreme Court

reported in **GIRISHBHAI DAHYABHAI SHAH v. C.C.JANI**^[3]. In the case before the Apex Court, a petition was filed under Section 482 Cr.P.C., contending that the report of the Public Analyst having been served on him only on 17-07-1989, the appellant/accused was not in a position to apply for the examination of the second sample to which he was entitled in terms of Section 13(2) of the Act prior to the said date. It was also contended that since the report is served on him only on 17-07-1989, by which time the sample of curd has deteriorated, any further examination of such sample had become meaningless, thereby depriving him of the valuable right conferred on him by Section 13(2) of the Act. The Supreme Court held that 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. In that view of the matter, the Supreme Court has quashed the proceedings pending before the Court of the Metropolitan Magistrate.

12. The above authority is applicable to the facts of the case in hand. In the instant case also, as already stated, the sample was drawn on 11-12-2002 and the complaint was filed before the Magistrate on 16-07-2004. The product was stated to be fit for consumption only till June, 2003. Therefore, the petitioners/A.3 and A.4 were deprived of an opportunity of getting the sample to be analyzed by the Central Food Laboratory. In that view of the matter, further proceedings against the petitioners/A.3 and A.4 are liable to be quashed.

13. In the result, the Criminal Petition is allowed quashing all further proceedings in C.C.No.654 of 2004 on the file of the II-Additional Judicial Magistrate of First Class, Rajahumundry, against the

petitioners/A.3 and A.4.

Miscellaneous petitions, if any, pending this Criminal Petition shall stand closed.

M.S.K.Jaiswal, J

September, 2015

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[\[1\]](#) 2009 (2) ALD (CrI) 685 (A.P.)

[\[2\]](#) 2007 (1) ALD (CrI) 316 (AP)

[\[3\]](#) (2009) 15 SCC 64