

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

CRL.P.No.9630 of 2009

ORDER:

Petitioners-A1 and A2 seek to quash the proceedings initiated against them in C.C.No.304 of 2008 on the file of the II-Additional Judicial Magistrate of First Class, Nellore, which was taken on file for the offences under Sections 7(i), 2 (ia) (j) read with Section 16 (i-a) (i) of the Prevention of Food Adulteration Act, 1954 (for brevity "the Act").

It is the case of the prosecution that the petitioners herein are carrying on business in the name and style of 'M/s Sri Venkateswara Confectionery' at Mukundapuram, Nellore. On 30.12.2006 at 4.30 P.M. the 2nd respondent-Food Inspector herein inspected the said shop and found the accused transacting business of Shruthis Candy S.B.C. (yellow) and on suspicion that the said Candy being adulterated, he purchased three packets of Shruthis Candy S.B.C. (yellow) of 200 grams each and on the same day, he sent one sample to the Public Analyst, who gave his report opining that the sample contains excess dye content and is, therefore, adulterated. Accordingly, a complaint was filed after following the procedure contemplated under the Act. The complaint was taken cognizance by the concerned Magistrate.

Learned Counsel for the petitioners submitted that

the samples were lifted by the 2nd respondent on 30.12.2006 and the report of the Public Analyst is dated 09.02.2007, whereas notice under Section 13 (2) of the Act was served on the petitioners on 02.04.2008 i.e., after lapse of two years four months from the date of collection of samples. He further submitted that the learned Magistrate ought to have refused to take cognizance of the complaint on the ground of abnormal delay, which causes prejudice to the petitioners.

I find force in the contention of the learned Counsel for the petitioners. Since there is abnormal delay in issuing notice under Section 13 (2) of the Act, the petitioners are deprived of their right of sending the second sample to the Central Food Laboratory for analysis, as the same must have been spoiled by the time the petitioners were served with the notice. That apart, the facts in the present case are similar to the facts in Criminal Petition No.5733 of 2010, wherein this Court, by order dated 29.06.2010, allowed the said petition.

For the aforementioned reasons, I am of the considered view that continuance of proceedings initiated against the petitioners-A1 and A2 are nothing but an abuse of process of law and are liable to be quashed.

Accordingly, the Criminal Petition is allowed and the proceedings initiated against the petitioners-A1 and A2 in C.C.No.304 of 2008 on the file of the II-Additional Judicial

Magistrate of First Class, Nellore, are hereby quashed.

Miscellaneous petitions, if any, pending shall stand closed.

M.S.K.JAISWAL, J

18-09-2015

Gsn