

HON'BLE SMT. JUSTICE ANIS
CRIMINAL PETITION No. 7937 of 2012

ORDER:

This is a Criminal Petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') by the petitioners/Accused Nos. 1 and 2 requesting to quash the proceedings in C.C.No.102 of 2011 on the file of the learned III Additional Judicial First Class Magistrate, Kakinda.

The petitioners herein are A.1 and A.2, whereas respondent No.1 is the *de facto* complainant in the above said crime. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the above said crime.

The case of the petitioners/Accused Nos. 1 and 2 is that on 10.03.2011 at about 5.30 PM, the Food Inspector along with his staff visited M/s Trishala General Traders situated in D.No.27-9-55, Pulavarthivari Street, Kakinda and at that time, first petitioner was present in the shop and transacting the business. On enquiry, the first petitioner disclosed that he is the sales incharge of that shop and the second petitioner is the proprietor of the shop. On suspicion of adulteration, the Food Inspector purchased 75 grams of Tea Dust in the shop found in loose condition in an open bag and obtained cash receipt from accused No.1 and after following due procedure, he sent one of the sealed samples to public analyst and later he received the report from analyst stating that the sample contained added synthetic food colours and iron filings and therefore, it was adulterated. After obtaining written consent from the State Food (Health) Authority, Hyderabad, the complaint was lodged for offence under Sections 7 (1), 2 (ia) (i) of Prevention of Food Adulteration Act, 1954 read with Rule 29 of P.F.A Rules, 1955.

Challenging the proceedings against the petitioners in C.C.No.102 of 2011 on the file of III Additional Judicial First Class Magistrate, Kakinada, the present petition is filed by the petitioners for quashment of the said criminal case.

The learned counsel for petitioners argued that the presence of iron filings in the sample collected by Food Inspector is contained 169.58 ppm and in the process of manufacturing of tea powder, some iron filings will remain in the powder on account of the same having been left due to friction of machinery parts and therefore the prosecution should not be launched against the petitioners. He further argued that the Central Government issued a Circular Letter dated 05.04.1984, to all Health Secretaries and Union Territories, wherein it was stated that a maximum limit of 250 ppm of iron particles in tea may be adhered to irrespective of size of individual iron filings as they would not be injurious to the human system. He further argued that as per the analyst report, the sample contained Tartrazine, Sunset, Yellow and Carmosine synthetic food colours, which should not be present, but as per Section 228 of PFA Rules, no synthetic food colours or a mixture except the following shall be used in food and the exceptions are Tartrazine, sunset yellow and carmosine and therefore, there is no contravention of the provisions of the P.F.A Rules in as much as the synthetic food colours, which were used in the tea, are permitted colours. He further argued that the respondents are not stated anything that the use of Tartrazine, Sunset, Yellow and Carmosine is injurious to health and further, the analyst report also not stated anything, which cause injurious to health of the consumer. In support of his contentions, he relied upon a decision reported in **Nisha Tea Company and others v. State**^[1], wherein it was held in para No.4,5 and 6 as follows:

“ Learned counsel for the petitioner contended

that the impugned order could not be passed when the Central Government had enlarged the tolerance limit in respect of presence of iron filings even by way of the letter subsequent to the commission of the alleged offence. He also relied upon the letter dated 5th April, 1984 vide which the tolerance limited had been further increased. That Circular Letter is addressed to all Health Secretaries of the States and Union Territories. That Circular Letter reads as under:

“ Sub: Iron filings in tea:

Sir,

With reference to our earlier communication No.P.15025/3/80/DMS and PFA dated 24.01.1981 and P.15013/25/79-PH(F &N) PFA/DMS/PFA/27.08.1983, I am directed to say that the question of presence of iron filings in tea has been engaging the attention of the Government of India for quite some time. The matter has been examined and re-examined in consultation with the Central Committee for Food Standards. After due consideration, this Ministry has come to the conclusion that a detailed study must be undertaken of the various facts of this problem. 2. In partial modification of our letter No.P.15025/3/80-DMS and PFA, dt. 24.01.1981, pending completion of the study, it is suggested that the maximum limit of 250 ppm of iron particles in tea may be adhered to irrespective of size of individual iron filings, as they would not be injurious to the human system. It is also request that specific prosecution may not please be launched within the prescribed limit mentioned above.

5) Such a matter came up for consideration before Charanjit Talwar, J. of this Court in State v. Charanjit Singh. The Judgment is reported as 1982 (2) FAC 173, it was held that the circular letters did not have any statutory force, that they could not override the rules, that, therefore, charge could be framed notwithstanding those circular letters but that in order to secure ends of justice, it was necessary that the complaint should be quashed and there should not be any prosecution when the iron filings in the tea were within the tolerance limit, as specified in the circular letters. In that case, a Magistrate had discharged the accused. Charnjit Talwar J. set aside the order of discharge but at the same time give relief to the accused by way of quashing the complaint.

(6) Not only that I am bound by the aforesaid authority but I also subscribe to the view taken by Charanjit Talwar J. It is obvious abuse of the process of law that when the Central Government on the one hand, is of the definite view that the person carrying on the trade of tea cannot be blamed on account of the existence of iron filings to the extent of tolerance limit, as prescribed in the latest letter dt. 5.04.1984 (reproduced already), yet complaint must be filed against them for punishing them for adulteration of tea. It is with a view to avoid that abuse of process of law that it is necessary that the inherent powers of this Court should be exercised.

Now, the point for determination is:

Whether the petitioners/A.1 and A.2 has made out any valid or sufficient grounds for quashing the proceedings in CC 102 of 20111 on the file of III Additional Judicial First Class Magistrate, Kakinada, as prayed for or not?

POINT: There is no dispute that on 10.03.2011 under the supervision of Assistant Food Controller and Local (Health) Authority, Zone-II, Kakinda, a raid was conducted in M/s Trishala General Traders situated at D.No.27-9-55, Pulavarthivari Street, Kakinada and at that time, petitioner No.1 was present and transacting the business and on enquiry, he disclosed that petitioner No.2 is the proprietor of the shop and on suspicion of adulteration, the Food Inspector purchased 75 grams of Tea Dust in the shop in loose condition in an open bag and later he sent the same to analyst for analysis and after obtaining the report from Analyst, the prosecution was launched as the report says that “sample contained added Synthetic Food Colours and Iron Filings”. A perusal of the analyst Report shows that the iron filings contained in the sample is 169.58 ppm.

As per the decision reported in **Brooke Bond Tea India Limited v. State of Himachal Pradesh and others**^[2], wherein extract of the letter dated 24.01.1981 was made and in which it was decided that whenever samples of tea are analysed, the tolerance limit of 250 parts per million subject to iron particles being not more than 2 mms in size”.

In the present case, the iron filings shows as 169.58 ppm. Therefore, the iron filings are lesser than the prescribed maximum limit. Therefore, they would not be injurious to the human system. Therefore, when the iron filings in the tea are within the tolerance limit as prescribed in the Circular Letters that person carrying on the trade of tea cannot be blamed on account of the existence of iron filings to the extent of tolerance limit. Therefore, to avoid abuse of process of law, it is necessary that the inherent powers of this Court under Section 482 Cr.P.C. is to be exercised and the petition is liable to be allowed.

With the above observation, the Criminal Petition is allowed quashing C.C.No.102 of 2011 on the file of III Additional Judicial First Class Magistrate, Kakinada

The miscellaneous petitions, if any, pending in the Criminal Petition shall stand closed.

ANIS, J

Date: 19.02.2015
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^[1] 27 (1985)DLT 276

^[2] 1984 CrI.J.1201