

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

Criminal Petition No.1446 of 2011

ORDER:-

The petition is filed under Section 482 Cr.P.C. to quash further proceedings in C.C.No.299 of 2010 on the file of the Additional Junior Civil Judge-cum-First Class Magistrate, Bapatla, Guntur District, insofar as it is against the petitioners who are arrayed as A.3 and A.4.

2. Facts, in brief, are as under:-

On 26-08-2009 at about 10.00 a.m., the respondent/Food Inspector inspected M/s.Sun Rise Bakery, Bapatla, and took samples of Kissan Mixed Fruit Jam by following the procedure prescribed under the Act. Non-petitioner/A.1 was the proprietor and present at that time. He produced a receipt to the effect that he purchased the said bottles from the non-petitioner/A.2. The samples were sent for analysis and the report of the Public Analyst was to the effect that the sample is adulterated since it do not conform to the standard of Class-II preservatives added. The Food Inspector issued notices under Section 14-A of the Prevention of Food Adulteration Act, 1954 (for short 'the Act') to A.2 and also sent notices to A.4 and Ex.A6 as per the label declaration on the sample bottles that it is Kissan Mixed Fruit Jam marked by M/s.Hindustan Uniliver Limited (A.4) and manufactured by M/s.Godrej Hershey Foods & Beverages Limited (A.6). After obtaining the sanction orders and complying the requirements of the Act, the Food Inspector filed the complaint on the file of the learned Magistrate which was taken cognizance of against the petitioners A.3 and A.4 and the non-petitioners-A.1, A.2 and also A.5 and A.6.

3. Learned Counsel appearing for the petitioners/A.3 and A.4 submits that the learned Magistrate ought not to have taken cognizance of the case insofar as it is against the petitioners/A.3 and A.4. Admittedly, A.1 is the vendor and A.2 is the supplier. The petitioner/A.4 is a Marketer and A.3 is its nominee. A.6 is the manufacturer and A.5 is its nominee. It is further submitted that the action against the accused was based solely on the basis of a label declaration and there was no evidence to show that it was supplied by A.4 to A.2. It is submitted that it is a well-known fact that

the market is flooded with spurious branded goods and unless there is direct link connecting the supply of the product by A.4 to A.2, the complaint cannot be lodged against A.4 or its nominee A.3. Learned Counsel further submits that the Supreme Court of India has clearly laid down the law on this subject in several decisions and a Division Bench of our High Court in the case reported in **MATHEW XAVIER v. STATE OF A.P.**^[1] is directly applicable to the facts of the case in hand. Learned Counsel therefore submits that all further proceedings against A.4 and its nominee A.3 are liable to be quashed.

4. Learned Public Prosecutor on the other hand submits that the involvement or otherwise of the petitioners/A.3 and A.4 can be known only during the course of trial and the proceedings in C.C.No.299 of 2010 cannot be quashed.

5. The point that arises for consideration is as to whether the petitioners are liable to be prosecuted along with the non-petitioners?

6. The factual matrix is not in controversy. The only point that falls for consideration is as to whether A.4 who has been described on the label as marketer of the product, manufactured by A.6, can be prosecuted in the absence of there being any evidence that the samples that were seized from the shop of A.1 and which were admittedly purchased by A.1 from A.2 who is a supplier was the same product that was marketed by M/s.Hindustan Uniliver Limited and its nominee the petitioner/A.3. While it is not in dispute that the samples that were taken from the shop of A.1 were supplied to him by the non-petitioner/A.2 namely M/s.Reliance Fresh Limited, there is no evidence, whatsoever, that M/s.Reliance Fresh Limited/A.2 was supplied the said product by A.4/Hindustan Uniliver Limited. Unless there is a direct link in between the manufacturer, the marketer and the supplier and the retailer and if there is any break in the chain, the marketer cannot be prosecuted along with the retailer or the supplier from the inception of the proceedings.

7. 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.”

8. The law on this subject is well settled. A Division Bench of our High Court in Judgment reported in **Mathew Xavier’s case (cited 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.”

9. 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 also M/s.Hindustan Lever Ltd.

10. Following the above authorities on the subject, I have no hesitation in holding that launching of the prosecution against the marketers based on the label on the sample seized along with the retailer or supplier cannot be proceeded unless evidence is placed on record that the product that was supplied by the supplier/A.2 to a retailer/A.1 was the same product which was supplied by the marketer/A.4 to A.2. Therefore, there is sufficient force in the submission of the learned Counsel appearing for the petitioners/A.3 and A.4 that the proceedings against the petitioners/A.3 and A.4 cannot be continued and hence the same are liable to be quashed. The point is answered accordingly.

11. In the result, the Criminal Petition is allowed quashing the proceedings against the petitioners/A.3 and A.4 in C.C.No.299 of 2010 on the file of the Junior Civil Judge-cum-First Class Magistrate, Bapatla.

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

M.S.K.Jaiswal, J

July, 2015
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[\[1\]](#) 2009 (2) ALD (CrI) 685 (A.P.)