

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WEDNESDAY THE SEVENTH DAY OF OCTOBER
TWO THOUSAND AND FIFTEEN

PRESENT

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

CRIMINAL PETITION No.777 of 2011

Between:

S.Prahalad and another

..... PETITIONERS/A2 & A3

AND

State of Andhra Pradesh,
Rep.by its Public Prosecutor,
High Court, Hyderabad

.....RESPONDENT

The Court made the following:

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

CRIMINAL PETITION No.777 of 2011

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.394 of 2019 on the file of the Judicial Magistrate of First Class, Gajwel, Medak District, registered for the offence under Section 7(i) and 2 (ia) (m) and punishable under Section 16(1)(a)(i) of Prevention of Food Adulteration Act, 1954 (hereinafter referred to as “the Act”).

2. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor, representing the State.

3. The petitioners herein are A2 and A3 who are said to be the manufacturers of the product involved in the case, which is “Nandini Good Life Cow’s Pure Milk”. The same was lifted from the shop of the non-petitioner/A1, namely, M/s.Balaji Hukmi Chand Kirana & General Stores, Toopran village, Medak District.

4. The admitted facts are that the Food Inspector inspected the premises of the non-petitioner/A1 and lifted the sample of the product on 22.03.2010, after following the statutory requirements. The sample was sent to the Public Analyst on 23.03.2010, and on 19.04.2010 the Public Analyst gave his report opining that the sample is adulterated. Consent to launch prosecution against the accused was issued by the competent authority on 05.08.2010. Even before that, i.e. by 13.06.2010 the shelf life of the product, viz., the milk was expired. The complaint was filed on 24.11.2010. Notice under Section 13(2) of the Act was issued to the accused on 11.01.2011. All this happened more than 7 months after the expiry of the shelf life of the product-milk.

5. The contention of the petitioners is two fold, firstly, the petitioners/A2 & A3 being manufacturers cannot be prosecuted along with the non-petitioner/A1; secondly, due to the delay on the part of the complainant, the valuable right available to the petitioners of getting the sample re-analyzed for second opinion has been lost, inasmuch as the shelf life of the product is expired by 13.06.2010, and the complaint itself has been filed before the Jurisdictional Magistrate on 24.11.2010.

6. The learned Additional Public Prosecutor submits that the petitioners will not get any relief as they did not file any application for getting the second sample analyzed and without filing any application, it cannot be said that the right of the petitioners to get the sample re-analyzed has been lost.

7. In support of his contentions, the learned counsel for the petitioners relied upon the judgment of a Division Bench of this Court in ***Mathew Xavier v. State of A.P.***, which followed the decision of the Supreme Court in ***Omprakash Shivprakash V. K.I.Kuriakose*** {reported in 2000 (1) ALD (CrI) 633 (SC)} and also ***Municipal Corporation of Delhi V. R.Sahai*** {reported in AIR 1979 S.C., 1544}.

8. 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.”

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

“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.”

10. Learned Counsel appearing for the petitioners also placed on record a decision of a learned Single Judge of this 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 petitioners/A3 and A4 in that case who were the marketers of the product.

11. In view of the above admitted facts, I have no hesitation in holding that launching of the prosecution against the petitioners herein, 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.

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

13. The learned counsel for the petitioners submitted that in similar set of facts where the product of the sample is milk, this Court, in several cases, quashed all further proceedings on the ground that the complaint itself was filed after expiry of shelf life of the product and no useful purpose would be served if the sample is sent to Central Food Laboratory.

14. This view has been taken by a learned single Judge of this Court in CrI.P.No.8407/2012, dated 25.11.2014. The learned single Judge has referred to the various authorities of the High Courts and the Supreme Court and held that there has been inordinate delay in filing the complaint and thereby, deprivation of valuable right conferred on the accused under Section 13(2) of the Act and because of the violation of the mandatory requirement under Section 11(4) of the Act, this Court

holds that no purpose would be served by continuing the prosecution against A2 and A3 therein.

15. Similar is the case in CrI.P.No.4237/2012 which was disposed of by a learned single Judge of this Court on 23.07.2014, wherein also it was held that in view of delay, no useful purpose would be served by sending sample to the Central Food Laboratory and accordingly, quashed all further proceedings against the accused in STC No.59/2011 on the file of Judicial First Class Magistrate, Kaikaluru. In that case, the product was milk, which was manufactured by the petitioners herein, namely, "Nandini Good Life Cows Pure Milk.

16. Similarly, in CrI.P.No.3819/2011, vide orders dated 23.09.2015, this Court held that if there was delay in following the procedure prescribed under the Act and if the shelf life of the lifted product was expired, all further proceedings against the accused persons are liable to be quashed.

17. From the above authorities, what is evident that if shelf life of the product has expired even before launching of the prosecution or sending the notice under Section 13 (2) of the Act, prejudice would be caused to the petitioners since they are deprived of their valuable right under Section 13(2) of the Act in getting the sample re-analyzed by the Central Food Laboratory. In that view of the mater, all further proceedings against the petitioners/A2 & A3 are liable to be quashed.

18. In view of the above, the Criminal Petition is allowed, the proceedings in C.C.No.394 of 2019 on the file of the Judicial Magistrate of First Class, Gajwel, Medak District against the petitioners/A2 & A3 are hereby quashed.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date:07.10.2015

Dsr