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

Criminal Petition No.1167 of 2011

ORDER;-

The petition is filed under Section 482 Cr.P.C., for quashing all further proceedings in S.T.C.No.2 of 2007 on the file of the Judicial Magistrate of First Class, Hindupur. The complaint is filed by the Food Inspector, Hindupur Municipality, against the petitioners/A.2 and A.3 and also the non-petitioner/A.1 alleging offences under Sections 7(i) and 2(ia)(j) and punishable under Section 16 (1-A) of Prevention of Food Adulteration Act, 1954 (for short 'the Act') read with Rules 23 and 29 of Prevention of Food Adulteration Rules.

2. The facts, in brief, are as under:-

The non-petitioner/A.1 is a Kirana merchant at Penukonda. His shop was surprised by the Food Inspector on 27-07-2005 at about 10.30 a.m., and was found that he was selling various food items including Redgram Dall. The Food Inspector found about 20 Kgs., of Redgram Dall in a loose polythene bag. Suspecting the same to be adulterated, by following the mandatory provisions, the Food Inspector drawn the samples. The samples were sent to Public Analyst who by his report, dated 29-08-2005 found that the sample contains *Synthetic Food Colour Tartrazine* and it is therefore adulterated. The non-petitioner/A.1 has produced a Xerox copy of the bill, dated 23-05-2005 to the effect that he purchased Redgram Dall from the petitioner/A.3, the managing partner of which is the petitioner/A.2. The Food Inspector has followed the provisions of the Act and Rules and after completing the investigation, filed the charge-sheet against the petitioners/A.2 and A.3 along with the non-petitioner/A.1.

3. The present petition is filed by petitioners/A.2 and A.3 contending that the prosecution launched by the Food Inspector against them cannot be sustained for the reason that it is in contravention of the provisions of Sections 14-A and 20-A of the Act. It is further submitted that the samples that were drawn from the non-

petitioner/A.1 was admittedly in a loose polythene bag. It was not in a sealed condition. There was no evidence that the sample that was drawn from the shop of A.1 was the same product that was sold by the petitioners/A.2 and A.3. Merely on the basis of a cash receipt that too issued more than two months prior to the drawing of the sample cannot be taken as establishing the link in between the supply said to have been made by the petitioners to the non-petitioner/A.1 and that the sample that is drawn from the non-petitioner/A.1 is the same that was sold by the petitioners/A.2 and A.3 on 23-05-2005. Learned Counsel therefore submits that continuing the prosecution against them will amount to the abuse of process of law and hence the same be quashed.

4. On the other hand, learned Public Prosecutor submits that at this stage it cannot be decided as to whether the liability on the suppliers can be fastened or not and that it is a matter of trial and therefore the petition is liable to be dismissed.

5. Arguments of both sides were heard.

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

7. **Point:-** A perusal of the material on record clearly shows that the present prosecution insofar as it is against the petitioners/A.2 and A.3 cannot be sustained. Firstly, for the reason that the sample is drawn by the Food Inspector from the shop of A.1 on 27-07-2005. Admittedly, it was kept in a loose polythene bag. It was not a sealed product. According to the non-petitioner/A.1, he purchased the Redgram Dall from the petitioners on 23-05-2005. Absolutely, there is no material on record to show that the sample that is drawn is the same, which was sold by the petitioners/wholesalers to the non-petitioner/retailer. The time gap in between the alleged purchase by the retailer from the wholesaler is more than two months and since the product was kept in a loose polythene bag, it cannot be said that it is the wholesaler who is responsible for selling the adulterated Redgram Dall to the non-

petitioner/A.1. In the absence of there being a direct link in between the wholesaler and a retailer evidencing that the sample that is taken from the shop of a retailer is from out of the same product that was sold by the wholesaler, no prosecution can be launched unless the said link is established on the basis of the evidence that has to be led in during the course of trial.

8. In this connection, it may be appropriate to extract Sections 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.
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> **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 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 (Crl) 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."

10. In view of the above authoritative pronouncements and applying the same to the facts of the present case, I have no hesitation in holding that the prosecution against the petitioners/A.2 and A.3 cannot be sustained for the reason that absolutely there is not even *prima facie* evidence to show that the Redgram Dall that was being sold by the non-petitioner/A.1 was the same which he has purchased from the petitioners/A.2 and A.3 under receipt dated 23-05-2005. Continuing the prosecution against the petitioners will be a clear case of abuse of process of law. It is needless to state that it is always open to the competent Court to invoke the provisions of Section 20-A of the Act if it is felt necessary and legally permissible. The point is answered accordingly.

11. In the result, the Criminal Petition is allowed quashing the proceedings against the petitioners/A.2 and A.3 in S.T.C.No.2 of 2007 on the file of the Judicial Magistrate of First Class, Hindupur.

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

M.S.K.Jaiswal, J

July, 2015
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