

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2016

CORAM

THE HONOURABLE Ms.JUSTICE R.MALA

Crl.OP.No.24298 of 2009

and

M.P.No.1 of 2009

1. Venu Madhav
Senior General Manager,
Nominee & Manufacturer,
Amalgamated Bean Coffee Trading Co. Ltd.
112, Raheja Chambers,
12, Museum Road, Bangalore 560 001.
2. Amalgamated Bean Coffee Trading Co. Ltd.
112, Raheja Chambers,
12, Museum Road, Bangalore 560 001. ... Petitioners/A2&A3

Vs.

State rep. by its
Mr.D.Sivakumar,
Food Inspector,
Udhagamandalam Municipality,
Udhagamandalam District. ... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C.,
to call for the records in CC.No.25 of 2008 on the file of the
Judicial Magistrate, Udhagamandalam and quash the same.

For Petitioners : Mr.R.Karthikeyan

For Respondent : Mr.C.Emalias,
Additional Public Prosecutor

WEB COPY

ORDER

The petitioners who are arrayed as A2 and A3 in
CC.No.25/2008 on the file of the learned Judicial Magistrate,
Udhagamandalam, has come forward with this petition seeking to
quash the said proceedings.

2. The 1st petitioner is the Senior General Manager / Nominee and Manufacturer of the 2nd petitioner / Company. The petitioners are carrying on the business in the name and style of "CAFE COFFEE DAY" which includes preparing, selling, marketing, supplying and serving various food and beverages including coffee, tea, sandwiches, cakes, pastries, cookies as well as other items.

3. While so, on 27.06.2007, at about 3.30 p.m., the respondent herein inspected the said shop and A1 [A.Stalin] was on duty at the relevant point of time. The respondent introduced himself and found that Coffee crème was being sold in 200 ml bottles. He informed A1 about his taking samples of the same as per the procedure and had taken 3 bottles ; sealed it and sent one bottle for LHA on the same day and the other bottle to the Kings Institute at Guindy, on 28.06.2007. A report from the Kings Institute was received on 26.07.2007, stating that the product is "misbranded" as the product was not as per Rule 32[b] of the Prevention of Food Adulteration Act, 1955 and that the same was not labeled as per section 2[ix][a] of the said Act.

4. Accordingly, after completing the formalities and after receipt of the Consent Letter from the Joint Director of Public Health on 18.12.2007, a case came to be registered by the respondent for the offences u/s.7[ii] and 16[1][a][i] r/w section 2[ix][a][k] of the Act and Rule 32[a] and 32[b] of the Rules. A notice u/s.13[2] of the Act was issued to the petitioners and they filed an application on 04.03.2008 praying for sending the samples to the Central Laboratory, Pune for further analysis.

5. Upon allowing of the said application, the samples were sent to the Central Laboratory, Pune, who after receipt of the same and after analysing it, had issued a report on 10.11.2008 stating that the Label had been complied with the PFA Rules 1955 and that the sample contained Benzoic Acid more than the prescribed limit and hence, the same is in violation of Rule 55 of PFA Rules. In the interregnum, a charge sheet came to be laid in Cc.No.25/2008 on the file of the learned Judicial Magistrate, Udhagamandalam.

6. Hence, in view of the contra findings of the Central Laboratory, Pune, the petitioners have come forward with the present petition seeking to quash the proceedings in CC.No.25/2008.

7. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the State/respondent.

8. The learned counsel for the petitioners would submit that the case of the prosecution as projected is not maintainable as the basis on which the case has been registered, viz., the Report of the Kings Institute, has been superseded by the Report of the Central Laboratory, Pune and that the ingredients of the aforesaid offences are not made out against the petitioners and hence, prays for setting aside of the proceedings in CC.No.25/2008.

9. Per contra, the learned Additional Public Prosecutor would submit that the prosecution has proved its case beyond reasonable doubt against the petitioners and that the minor discrepancies pointed out, do not affect the main case of the prosecution and hence, prays for dismissal of the petition as no ground is made out by the petitioners to quash the proceedings in CC.No.25/2008.

10. This Court considered the rival submissions made on either side and also perused the materials placed on record.

11. It is an admitted fact that the petitioners who are arrayed as A2 and A3, are facing prosecution in CC.No.25/2008 and they are involved in manufacturing, selling and marketing various food items. It is seen that on 27.06.2007, a surprise inspection was done by the respondent herein and he had taken three samples of Coffee crème for analysis. He sent one sample to LHA on the same day and the other sample to the Kings Institute on the next day, i.e., on 28.06.2007. It is seen from the said report that the Date of Package was stated to be 06.06.2007 ; and "Best before Four months from the date of Packaging". Upon analysis, the Kings Institute found the sample to be "misbranded" since the same is not labelled in accordance with the requirements of Section 2[ix][a] of the PFA Act 1954 and Rules 32[a] and [b] of the Rules, 1955. For better appreciation, the opinion of the Public Analyst attached to Kings Institute in the said report dated 26.07.2007 reads thus:-

"I am of the opinion that the said sample is found to be misbranded since it is not labelled in accordance with the requirements of Section 2[ix][a] of the PFA Act 1954 and Rules 32[a] and [b] of the Rules, 1955."

Further, it is also seen that subsequent to the said Report, a notice u/s.13[2] of the Act has been issued, pursuant to which, the petitioners sought for re-analysis of the said sample by sending the same to the Central Laboratory, Pune. Accordingly, the sample was received by the Central Laboratory on 31.10.2008 and after completion of the analysis, it gave a report dated

10.11.2008, wherein it was opined that the sample contained Benzoic Acid more than the prescribed limit. The said opinion of the Central Laboratory, reads thus:-

"I am of the opinion that the above sample contains Benzoic Acid more than the prescribed limit and contravenes Rule 55 of the PFA Rules 1955."

Nowhere in the said report, it is stated that the sample is misbranded or it not labelled as per the requirements under the Act and Rules. Admittedly, the analysis was done by the Central Laboratory, Pune from 03.11.2008 to 10.11.2008. But, as per the sample, the date of packing was 06.06.2007 and the best before usage is four months from the date of packing, which implies that the expiry of the product is 06.10.2007 and that the second sample was sent to the Central Laboratory, Pune only after expiry of the period and thus, the ingredients of Benzoic Acid found in excess, is quite natural. The said report of the Central Laboratory, Pune, further reveals the fact that the label is as per the Prevention of Food Adulteration Act and Rules and there is no contravention.

12. Under such circumstances, this Court is of the view that the offences made out against the petitioners, prima facie, have not been made out and it is a fit case, wherein the proceedings in the said CC.No.25/2008 are liable to be quashed.

13. Accordingly, the criminal original petition is allowed and the proceedings in CC.No.25/2008 on the file of the learned Judicial Magistrate, Udhagamandalam, is hereby quashed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Judicial Magistrate
Udhagamandalam.

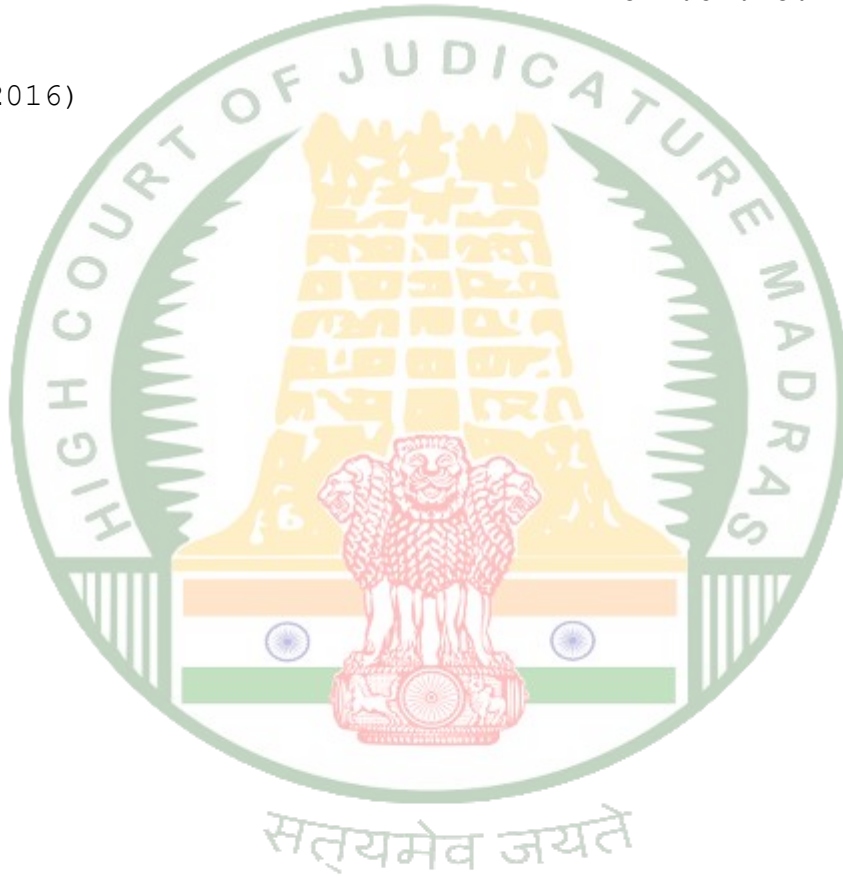
2. The Food Inspector,
Udhagamandalam Municipality,
Udhagamandalam District.

3. The Public Prosecutor
High Court, Madras.

+1cc to Mr.R.Karthikeyan, Advocate, S.R.No.11687

Cr1.OP.No.24298 of 2009

RSK(CO)
CA(07/03/2016)



WEB COPY