

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL PETITION No.2579 of 2016

ORDER:

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This Criminal Petition is filed by the petitioners-accused Nos.1 & 3 under Section 482 Cr.P.C. seeking to quash the proceedings against them in C.C.No.85 of 2010 on the file of the Judicial First Class Magistrate, Cheepurupalli, Vizianagaram District. The petitioners along with other accused are alleged to have violated the provisions of Section 7 (i) and 2 (ia) (m) of the Prevention of Food Adulteration Act, 1954 (for short 'the Act'), which is punishable under Section 16 (1)(a) (i) of the Act.

The brief facts of the case are as under:

First petitioner-A1 is the Proprietor of M/s.A.V.Ramana (Visakha Dairy Parlour) and second petitioner-A.3 is the Company by name Sri Vijaya Visakha Milk Products Company Limited ('Visakha Dairy'). A.2 died and the case against him was dismissed as abated. The case of the prosecution is that on 22.1.2009 L.W.1 along with staff visited the shop of A.1, who is doing the business of selling milk and milk products. L.W.1 in the presence of witness-L.W.2, inspected and stock and suspected the quality of curd of 200 gm weight manufactured by A.3 and he purchased 3 cups of curd and obtained cash receipt from A.1. Then he served the notice in Form-VI to A.1 informing his intention for sending the same to the analysis and obtained acknowledgement. After complying with the mandatory requirements as contemplated under the Act, L.W.1 sent one sample to the public Analyst, State Food Laboratory, A.P., Hyderabad on 23.1.2009. The remaining two parts of the sample were sent to the Assistant Food Controller & Local (Health) Authority, Zone-I, Visakhapatnam on 23.1.2009 for safe custody. On 12.3.2009 Assistant Food Controller received the report of Public Analyst on 3.3.2009 and the same was

received by L.W.1 on 19.3.2009 wherein it was opined that the sample does not conform to the standard of Milk fat and it is adulterated. On 8.6.2009, L.W.1 submitted a report of the sample along with relevant documents to the Director, Institute of Preventive Medicine, Public Health Labs Food (Health), Administration, A.P., Hyderabad for necessary orders, who in turn, having satisfied with the report, by written consent vide Rc.No.8036/F1/2009, dated 31.10.2009 directed L.W.1 to launch prosecution against the accused for the offence of sale of adulterated curd. After receipt of the said written consent, the present complaint is lodged against all the accused including the petitioners.

Heard and perused the material available on record.

Learned Counsel for the petitioners submitted that in the present case, the public Analyst report was given on 3.3.2009 and the written consent to launch the prosecution against the petitioners was given on 31.10.2009 by the Director, Institute of Preventive Medicine, Public Health Labs Food (Health), Administration, A.P., Hyderabad i.e. more than 338 days after the report of the Analyst. Further Section 13(2) notice was given to the petitioners on 27.7.2010 i.e. more than 266 days after the written consent given to launch the prosecution and that the Food Inspector filed the complaint on 6.7.2010 more than 245 days after the said consent. As seen from the complaint itself, the label on the curd that was purchased by L.W.1 on 22.1.2009 discloses the manufacturing date as 20.1.2009 and the shelf life of the product is only seven days i.e. the curd would be expiring by 26.1.2009. But the report was received on 3.3.2009 and the prosecution was launched on 31.10.2009 and thereby the petitioners are deprived of the valuable statutory right under Section 13(2) of the Act in getting the sample analyzed through a Central Lab.

A perusal of the averments made in the complaint

indicates that the date of manufacture of the product is 20.01.2009 and on the label, it was mentioned as best before 7 days i.e. its life would be 20.01.2009 to 26.01.2009. The curd was lifted from the shop of the petitioner-A.1 on 22.1.2009 and the complaint came to be lodged in 06-07-2010. Obviously, the prosecution is launched much after the shelf-life of the product expired i.e. nearly one year from the date of manufacture of the product thereby depriving the petitioners of their valuable right under Section 13 (2) of the Act in getting the sample analyzed through a Central Lab.

In this regard, the learned Counsel for the petitioners placed the orders passed by this Court in Criminal Petition Nos.2533 of 2009 and 522 of 2008 wherein this Court quashed the proceedings on the ground that no useful purpose would be served in launching the proceedings when the accused was deprived of his right in getting the sample re-analyzed. The view taken by this Court holds the field and squarely applies to the facts of the present case. Therefore, this Court is inclined to quash the proceedings in the above C.C. against the petitioners.

In the result, the Criminal Petition is allowed and the proceedings against the petitioners-A1 and A3 in C.C.No.85 of 2010 on the file of the Judicial First Class Magistrate, Cheepurupalli, Vizianagaram District are hereby quashed as against the petitioners herein. Consequently, Miscellaneous Petitions, if any, pending shall stand closed.

JUSTICE RAJA ELANGO

26th February, 2016
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