

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL PETITION No.10916 of 2010

ORDER:

This petition is filed under Section 482 Cr.P.C. to quash the proceedings against the petitioners/A1 to A4 in C.C.No.101 of 2010 on the file of the court of II Additional Judicial Magistrate of First Class, Kothagudem, Khammam District.

2. The factual background leading to filing of the present criminal petition is briefly as follows: On 28.1.2003, at about 9.50 A.M., the Food Inspector, Division-I, Khammam District visited M/s.Madina Kirana General Stores, Timmaraopet Village, Enkur Mandal, Khammam District, for which petitioner No.1/A1 is the proprietor, for the purpose of inspection. On suspicion, the Food Inspector purchased three 250 grams packets of Nestle Nestea Dust Tea from out of the stock of eight 250 grams packets. The product was manufactured in August, 2002 Batch INUSI BCF-4 Mfd. By Ennar Enterprises at S.F.No.6/4, Trieny Road, Odderapalayam, Ondurpur (Post), Coimbatore – 641 016. The Food Inspector paid the cash of Rs.78/- to A1 towards purchase of three Tea packets and obtained cash receipt. Immediately, the Food Inspector served Form-VI notice to A1 expressing his intention of sending the purchased sample to the Public Analyst, State Food Laboratory, Hyderabad (hereafter, SFL). The Food Inspector divided purchased Tea power into three equal parts and put into three clean, dry and empty plastic tins separately, closed the tins with caps tightly, tied with twine and sealed with his specimen impression seal. The Food Inspector obtained the signature of A1 on each tin across the paper slip. On 28.1.2003, the Food Inspector sent one part of sample along with Form-VII to the Public Analyst, SFL and the remaining two parts of sample along with Form-VII in duplicate to the Local (Health) Authority. On 20.2.2003, the Public Analyst, SFL issued report opining that the sample contains iron filings, which is injurious to health; it is, therefore, adulterated.

The Food Inspector addressed letter to A1 to furnish the source of supply of the Tea packets in question, who in turn informed that he purchased the product from M/s.Sri Sai Vasavi Departmental Stores, Kirana and General, Cleaning and Packaging, Enkoor, for which the petitioner No.2/A2 is the proprietor, vide Bill No.310, dated 02.12.2002. The Food Inspector sent Form No.VI notice along with covering letter to A2 directing him to inform source of supply of the Tea packets in question, who in turn informed that he purchased the product from M/s.Bourisetty Shankarlingam General Merchant, Kothagudem, for which the petitioner No.3/A3 is the proprietor, vide Bill No.77, dated 20.11.2002. Basing on the letter addressed by the Food Inspector, A3 informed that he purchased the Tea packets from M/s.Nestle India Limited, Chennai represented by M/s.V.Easwaran, Assistant Manager (petitioner No.4/A4), vide Invoice No.AP.00076177, dated 29.8.2002. After receipt of sanction order permitting prosecution of the petitioners, the Food Inspector filed complaint on the file of the court of II Additional Judicial Magistrate of First Class, Kothagudem. The learned Magistrate, after perusing the material produced before him, took the cognizance of offence under Sections 16(1-A) (i), 7(i) and 2(ia) (h) of the Prevention of Food Adulteration Act, 1954 (for short, the Act) against the petitioners and issued summons.

3. The contention of learned counsel for the petitioners is four fold:
- (1) learned Magistrate has committed grave error while taking cognizance of offence as the allegations made in the complaint do not constitute any offence much less the offences alleged to have been committed by the petitioners;
 - (2) the Directorate of Institute of Preventive Medicine, Public Health Labs. & Food (Health) Administration, Hyderabad granted permission to prosecute the petitioners without applying its mind;
 - (3) the opinion issued by the Public Analyst, Central Food Laboratory (CFL) will supersede the report issued by the Public Analyst, SFL; and
 - (4) the continuation of criminal proceedings against the petitioners certainly would amount to abuse of process of law which eventually leads to miscarriage of justice.

Per contra, learned Public Prosecutor submitted that the petitioners

can urge all these points before the trial court as the material placed before the trial court is *prima facie* sufficient to proceed further against the petitioners.

4. A perusal of the record reveals that the Food Inspector purchased three 250 grams packets of Tea power in question from the shop of A1 and obtained cash receipt by paying Rs.78/- towards cost of the Tea packets. He served Form-VI notice to A1 and divided the seized product into three samples and sealed the same by strictly adhering to the procedure as contemplated under Section 11 of the Act. The Food Inspector sent one sample to SFL for analysis and the remaining two samples to the Directorate of Institute of Preventive Medicine, Public Health Labs. & Food (Health) Administration, Hyderabad for safe custody. The learned counsel for the petitioners has not brought to the notice of this court even a minute deviation of the procedural aspects by the Food Inspector while inspecting the shop of A1 and seizure of Tea packets. The relevant portion of the report of the Public Analyst, SFL reads as follows:

<i>Test done</i>	<i>Value obtained</i>	<i>Values permitted in Clause A.14 in Appendix B to the PFA Rules.</i>
<i>Iron filings</i>	<i>202.40 p.p.m</i>	<i>Should be Absent</i>

“I am of the opinion that the sample contains iron filings which is injurious to health. It is therefore adulterated.”

5. Being not satisfied with the report of the Public Analyst, SFL, the petitioner No.2/A2 made application to the trial court to send one of the two samples remained with the Directorate of Institute of Preventive Medicine, Public Health Labs. & Food (Health) Administration, Hyderabad to the Public Analyst, CFL. As ordered by the trial court, one of the samples was sent to the CFL for inspection and report. On 13.6.2005, the trial court received the report issued by the Director, CFL, Pune. The relevant columns of the report read as follows:

<i>Sl. No.</i>	<i>Quality Characteristics</i>	<i>Name of Method of test used</i>	<i>Results</i>	<i>Prescribed standards ...</i>
<i>8.</i>	<i>Iron fillings</i>	<i>DGSH circular</i>	<i>Nil</i>	<i>Not more than 250 ppm</i>

“Opinion – I am of the opinion that the sample No.2KMM/D I/2062/03 conforms to the standards of Tea as per PFA Rules 1955.”

6. A perusal of the record clinchingly establishes that there is a conflict of opinion between the reports issued by the SFL and CFL. As per the report issued by the Director, CFL, Pune the Tea in question is in conformity with the standards of Tea as per PFA Rules 1955.

7. Now, the crucial question that arises for consideration in this criminal petition is:

Whether the opinion given by the CFL supersedes the opinion of the SFL?

8. Section 13 of the Act deals with report of public analyst. Sub-section (1) of Section 13 enables the Public Analyst, SFL to submit report to the Local (Health) Authority whether the article of food sent to him is adulterated or not. If the report of the Public Analyst, SFL indicated that the article of food is adulterated, copy of the report shall be served on the person from whom the article of food was seized. A person who is aggrieved with the report of the Public Analyst, SFL is entitled to ask the trial court for sending one of the samples kept with the Local (Health) Authority to the CFL for second opinion in view of sub-section (2) of Section 13 of the Act. The Director of CFL, after receipt of the sample and analyzing the article of food, issues the certificate under sub-section (2B) of Section 13 of the Act expressing the opinion whether the article of food is fit for human consumption or not. Sub-section (3) of Section 13 of the Act declares the effect of the certificate issued by the Director, CFL on the report of Public Analyst, SFL and it reads as follows:

13. Report of public analyst:-

(3) The certificate issued by the Director of the Central Food

Laboratory under sub-section (2B) shall supersede the report given by the public analyst under sub-section (1).

It is apposite to refer the case law on which learned counsel for the petitioners placed reliance in support of his contention that the report of CFL supersedes the opinion of SFL.

(a) **Calcutta Municipal Corporation v Pawan Kumar Saraf**^[1]

wherein the apex court, while explaining Section 13 of the Act, held as follows:

9. Sub-section (2-B) of Section 13 requires the court to despatch one of the parts of the sample under its own seal to the Director of the Central Food Laboratory. Once it is despatched, it is the duty of the said Director to send a certificate to the court “in the prescribed form within one month from the date of receipt of the part of the sample specifying the result of the analysis”. Sub-section (3) of Section 13 is important in this context and is extracted below:

“13. (3) The certificate issued by the Director of the Central Food Laboratory under sub-section (2-B) shall supersede the report given by the public analyst under sub-section (1).”

13. Thus the legal impact of a certificate of the Director of the Central Food Laboratory is threefold. It annuls or replaces the report of the Public Analyst, it gains finality regarding the quality and standard of the food article involved in the case and it becomes irrefutable so far as the facts stated therein are concerned.

(b) **Food Inspector, Warangal, rep. by PP High Court of A.P.,**

Hyderabad v Alleni Tulsiram^[2], wherein the High Court of Andhra Pradesh held as follows:

“7. ... The only contention raised by the learned advocate for the accused is that no complaint is maintainable in view of the directions given by the Central Government with regard to the limit of iron filings in respect of tea dust. It is no doubt true that the Central Government cannot issue any directions contrary to the provisions contained in the Act and the Rules made thereunder. Item No.A-14 in Appendix B of the Act does not reveal about the percentage to be present in respect of iron filings. Consequently, if the Central Government gives any direction to the State Governments under Section 22-A of the Act not in contravention to Item No.A-14 in Appendix B of

the Act, it cannot be said to be improper direction. As seen from the direction given by the Central Government, the maximum limit of 250 parts per million in respect of iron filings may not be injuries to the human system and therefore, the prosecution need not be launches within the prescribed limit.
... ..”

(c) **Yog Raj v State of H.P.**^[3], wherein the Himachal Pradesh High Court held as follows:

5. In view of the aforesaid clear statutory provision that any report signed by the Director of CFL may be used as evidence of the facts stated therein in any proceeding under 1954 Act, it was not at all required that the aforesaid report should have been formally got proved and/ or formally admitted into evidence. The fact that this report was not got formally proved or that this report had not been formally admitted into evidence did not make any difference in so far as the contents of the report are concerned in view of the aforesaid clear, unambiguous and binding statutory stipulation contained in Sub-section (5) of Section 13 of 1954 Act.

6.

7. Sub-section (3) of Section 13 of 1954 Act reads thus:

(3) The certificate issued by the Director of the Central Food Laboratory under Sub-section (2-B) shall supersede the report given by the public analyst under Sub-section (1).

8. The aforesaid Sub-section (3) of Section 13 of 1954 Act in most unambiguous terms clearly stipulates as well as mandates that the certificate issued by the Director, CFL under Sub-section (2-B) of Section 13 shall supersede the report given by the Public Analyst under Sub-section (1) of the said Section 13. Undoubtedly, the second part of the sample was sent to the Director, CFL by the Court while exercising its jurisdiction and power under Sub-section (2-B) of Section 13. The certificate from the Director, CFL dated 18 December, 1995 was thus issued by it in terms of Sub-section (3) (supra) which was duly received by the learned trial Court on 26th December, 1995. This certificate therefore superseded the report given by the Public Analyst (Ex.P-8). The learned Courts below however based the conviction of the petitioner solely upon Ex.P-8 which was a clear violation of Sub-section (3) (supra).

(d) **C.L. Yadav v State of Madhya Pradesh**^[4], wherein the Madhya Pradesh High Court held as follows:

14. Earlier decision of Supreme Court in the cases of Municipal Corporation of Delhi v Ghisa Ram, AIR 1967 SC 970 : 1967 CriL J939 and in Chetumal v State of Madhya

Pradesh, AIR 1981 SC 1387 : 1981 CriLJ 1009 were also considered by the Apex Court. In both these above stated cases, the report of Director, Central Food Laboratory was found conclusive even when in first case the sample sent to him became highly decomposed and hence no analysis was possible and in second case the seal of the sample was tempered.

15. Therefore, the law laid down by the Supreme Court is clearly to the effect that the certificate of Director of Central Food Laboratory annuls or replaces the report of Public Analyst, it gains finality regarding the quality and standard of the food article involved in the case and it becomes irrefutable so far as the facts stated there in are concerned.

16. When the certificate of Director of Central Food Laboratory totally annuls or replaces the report of Public Analyst, then the report of Public Analyst cannot be looked into for any purpose. In the present case, the report of the Public Analyst was the basis of the prosecution, which has been annulled by the certificate of Director of Central Food Laboratory, so that certificate shows that sample which was sent for analysis was not found adulterated. It also shows that the sample was analyzed as per the provisions of the Act and Rules.

(e) **P.Gopalakrishna v Food Inspector, Vizianagaram District,**

Division-III, Vizianagaram ^[5], wherein it was held as follows:

6. Under Section 13 (5) of Prevention of Food Adulteration Act, certificate of analysis issued by the Director, Central Food Laboratory will supersedes the certificate issued by the Public Analyst. As such, the certificate of analysis issued by the Director, Central Food Laboratory, Pune will prevail the certificate issued by the Public Analyst consequently, the report of the Public Analyst is of no avail and cannot be considered for any purpose, as the report of the Director, Central Food Laboratory, Pune reveals that the sample confirmed to the standards of chillies and capsicum (Lal Mirchi) power as per Prevention of Food Adulteration Act Rules, 1955, the case filed by the complainant is of no material under law.

As per the principle enunciated in the cases cited supra, the opinion issued by the Director, CFL, Pune shall supersede the report given by the Public Analyst, SFL, Hyderabad. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am fully agreeing with the submission of the learned counsel for the petitioners that the opinion issued by the

Director, CFL, Pune prevails over the opinion expressed by the Public Analyst, SFL, Hyderabad that the Tea power in question was adulterated.

9. A perusal of the record reveals that the Food Inspector filed complaint on 02.6.2004 after receipt of the permission dated 26.12.2003 from the Directorate of Institute of Preventive Medicine, Public Health Labs. & Food (Health) Administration, Hyderabad to prosecute the petitioners. The learned Magistrate has taken cognizance of offence against the petitioners on 07.1.2005 and numbered the complaint as C.C.No.53 of 2005, which is subsequently renumbered as C.C. No.101 of 2010. After receipt of the summons in C.C. No.53 of 2005, the petitioner No.2/A2 filed application to send the second sample to the CFL and in pursuance of the order of the trial court; second sample was sent to the CFL, Pune. The Director, CFL, Pune issued certificate on 13.6.2005 opining that the Tea powder in question conforms to the standards of Tea as per PFA Rules 1955. From the above sequence of events, it is clear that by the time of sanction order issued by the Directorate to prosecute the petitioners or by the time of taking cognizance of offence by the trial court, the certificate of the Director, CFL, Pune was not in existence. Even the second sample was sent to the CFL during the pendency of C.C. No.53 of 2005, as per letter No.1208, dated 23.9.2009 of the trial court, basing on the application submitted by the petitioner No.2/A2. In the light of the factual scenario, the contention of the learned counsel for the petitioners that the Directorate granted permission to prosecute the petitioners without applying its mind and learned Magistrate has erroneously taken cognizance has no substance.

10. Viewed from factual or legal aspects, continuation of criminal proceedings against the petitioners would certainly amount to abuse of process of Court. Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to quash the

criminal proceedings against the petitioners/A1 to A4.

11. In the result, the criminal petition is allowed, quashing the proceedings against the petitioners/A1 to A4 in in C.C.No.101 of 2010 on the file of the court of II Additional Judicial Magistrate of First Class, Kothagudem, Khammam District. Miscellaneous petitions, if any pending in this criminal petition shall stand closed.

T. SUNIL CHOWDARY, J

Date: 11.04.2016

YS

[\[1\]](#) (1999) 2 SCC 400 = 1999 CRI.L.J.1125 (SC)

[\[2\]](#) 2004 FAJ 175 (AP)

[\[3\]](#) 2007 FAJ 203 (HP)

[\[4\]](#) 2007 FAJ 300 (MP)

[\[5\]](#) 2011 (2) ALD (Cri.) 179 (AP)