

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL PETITION No.10480 OF 2010

ORDER:

_____ This petition is filed under Section 482 Cr.P.C. to quash the proceedings against the petitioners/A1 to A3 in C.C.No.609 of 2010 on the file of the court of Judicial Magistrate of First Class, Srikakulam.

2. The brief facts of the complaint, which are necessary for disposal of this criminal petition, are as follows:

_____ The article of food alleged to have been adulterated is Zest Badam Double Toned Sterilised Flavoured Milk (Visakha Dairy) Good Milk. The petitioner No.1/A1 is individual sub-vendor of the milk bottles. The petitioner No.2/A2 is the Manager (Quality Control) and petitioner No.3/A3 is M/s.Sri Vijaya Visakha Milk Producers Company Limited (Visakha Dairy). On the suspicion of adulteration of milk by Visakha Dairy, the Food Inspector visited the shop of the petitioner No.1/A1 on 11.11.2008 and purchased 6 milk bottles of 200 ml each, for Rs.66/-. The Food Inspector secured divided the milk into three parts and made them as three samples and sealed them in accordance with procedure. He obtained the signature of petitioner No.1/A1 on three samples and sent one sample to Public Analyst, State Food Laboratory, Hyderabad, for analysis and report. Remaining two samples were handed over to the Local (Health) Authority, Srikakulam District by the Food Inspector in person on 11.11.2008. On 29.12.2008, the Local (Health) Authority received Analyst report opining that the sample does not conform to the standard of Total plate Count and it is therefore adulterated. After receipt of sanction order from Director and Food (Health), permitting prosecution of the petitioners, the Food Inspector filed complaint on the file of the court of Judicial Magistrate of First Class, Srikakulam. The learned Magistrate, after perusing the material produced before him, numbered the case as C.C. No.609 of 2010.

3. The learned counsel for the petitioners submitted that Food Inspector has not followed the procedure as contemplated under Section 10(4) of the Prevention of Food Adulteration Act, 1954 (the Act) while collecting the samples. He further submitted that the Food Inspector has not produced the seized food article before the Magistrate as contemplated under Section 11(4) of the Act. He also submitted that by the time of service of notice on the petitioners under Section 13(2) of the Act, the seized food article is not fit for human consumption; therefore, no purpose will be served by sending the second sample to Central Food Laboratory. ***Per contra***, learned Public Prosecutor submitted that mere non-sending of second sample to Central Food Laboratory, would not cause any prejudice to the petitioners even if they face trial.

4. In the light of the rival contentions, the point that arises for consideration in this criminal petition is:

Whether continuation of criminal proceedings against the petitioners would amount to abuse of process of law?

5. It is an admitted fact that the milk packets seized by the Food Inspector on 11.11.2008 were packed on 02.11.2008. The packets contain following caution "*Best before 180 days from the date of manufacture when stored in a cool and dry place*". Thus the shelf life of the milk packets seized by the Food Inspector is up to 10.05.2009. There is no doubt that Section 10(4) of the Act authorises the Food Inspector to visit the premises and collect samples of food articles if he suspects that particular article intended for food appears to be adulterated or misbranded. A perusal of the record clearly reveals that the Food Inspector strictly adhered the procedure contemplated under Section 10(4) of the Act. It is not out of place to extract hereunder sub-section (4) of Section 11 of the Act.

11. Procedure to be followed by food inspectors.-

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(1) ...

(2) ...

(3) ...

(4) An article of food seized under sub-section (4) of section 10, unless destroyed under sub-section (4A) of that section, and any adulterant seized under sub-section (6) of that section shall be produced before a magistrate as soon as possible and in any case not later than seven days after the receipt of the report of the public analyst.

Provided that if an application is made to the magistrate in this behalf by the person from whom any article of food has been seized, the magistrate shall by order in writing direct the food inspector to produce such article before him within such time as may be specified in the order.

Sub-section (4) of section 11 of the Act mandates that the Food Inspector shall produce the seized food article before the concerned Magistrate in not less than seven days after receipt of the report of the Public Analyst. It is not the case of the prosecution that on receipt of the Analyst report dated 22.12.2008, the Food Inspector has produced the seized food article before the learned Magistrate as contemplated under sub-section (4) of Section 11 of the Act.

7. The Parliament in its wisdom incorporated Sub-section (2) of Section 13 of the Act to facilitate the accused to send the second sample to Central Food Laboratory for analysis and report. There is a statutory obligation on the part of the Local (Health) Authority to serve the report of the Public Analyst, State Food Laboratory on the accused, in all probability, before expiry of shelf life of the remaining two samples of seized food article.

8. At this juncture, learned counsel for the petitioners has drawn my attention to the decision of the apex court in **Girishbhai Dahyabhai**

Shah v C.C. Jani^[1]. The relevant paragraphs read as under:

8. It will be apparent from the above, that only on receipt of the report of the Public Analyst under sub-section (1) to the effect that the article of food is adulterated, can a prosecution be launched and a copy of the report could be supplied to the accused. Sub-section (2) also indicates that on receipt of the report the accused could, if he so desired, make an

application to the court within a period of ten days from the date of the receipt of the copy of the report to get the sample of article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.

9. In other words, in the instant case, the appellant was prevented from applying for analysis of the second sample before 17-7-1989, by which time the second sample of curd had deteriorated and was not capable of being analysed as was found in *MCD v Ghisa Ram*, AIR 1967 SC 970, referred to above.

10. In that view of the matter, we are unable to sustain the judgment of the High Court impugned in this appeal and we also see no reason to continue with the proceedings which have lasted for 28 years in the absence of any valid and reliable report with regard to the second sample.

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9. While the Public Analyst issued report on 29.12.2008, the Food Inspector issued notice to the petitioners under Section 13(2) of the Act on 04.9.2010. As observed earlier, the shelf life of seized food article is up to 10.5.2009 only. Therefore, the valuable legal right conferred on the petitioners under Section 13(2) of the Act was infringed due to the inordinate delay caused by the Food Inspector in furnishing copy of analyst report dated 22.12.2008 to the petitioners.

10. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that continuation of criminal proceedings against the petitioners certainly would amount to abuse of process of law. Viewed from factual or legal aspect, it is a fit case to quash the proceedings against the petitioners.

11. In the result, the criminal petition is allowed, quashing the proceedings against the petitioners/A1 to A3 in C.C.No.609 of 2010 on the file of the court of Judicial Magistrate of First Class, Srikakulam. Miscellaneous petitions, if any pending in this criminal petition shall stand closed.

T. SUNIL CHOWDARY, J

26.2.2016

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[\[1\]](#) (2009) 15 SCC 64