

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL PETITION No.1788 OF 2010

ORDER:

_____ This petition is filed under Section 482 Cr.P.C. to quash the proceedings against the petitioner/A3 in C.C.No.437 of 2006 on the file of the court of Munsif Magistrate, Macherla, Guntur District.

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 Priya Gold Double Filtered Ground Nut Oil. The petitioner/A3 is the proprietor of A4–M/s.Santhoshimatha Oil Packaging Industries, Kakinada. A1 and A2 are the proprietors of the shop, in which they have been doing business in the name and style of Sri Venkata Sai Rama Traders, Macherla. On the suspicion of adulteration of Oil packets, on 29.6.2004, the then Food Inspector, Guntur District visited the shop of Sri Venkata Sai Rama Traders, wherein A1 has been transacting the business. The Food Inspector found two sealed boxes having 15 sealed packets in each box (each packet contains 1 litre oil). When he enquired, A1 disclosed that the said sealed packets were Priya Gold Double Filtered Ground Nut Oil, which were manufactured in the month of May, 2004. The Food Inspector purchased three numbers of one litre packets from the available stock and paid its cost of Rs.186/-. He served Form–VI notice on A1 and informed him that the oil packets will be sent for analysis to the Public Analyst, Hyderabad. The Food Inspector divided the three packets into three equal parts, placed them into three clean, dry and empty plastic containers and each plastic container was closed with cap, tied with thread and sealed with sealing wax and affixed labels. He obtained the signature of A1 on three samples. On 30.6.2004, he sent one sample to Public Analyst, State Food Laboratory, Hyderabad, for analysis and report. Remaining two samples were handed over to the Assistant Food Controller and

Local (Health) Authority, Zone–III, Guntur along with copies of memoranda in Form–VII.

3. The Food Inspector vide letter dated 29.6.2004 along with Form–VI notice requested A4 – Santhoshimatha Oil Packaging Industries, Ramanaiahpet, Kakinada to furnish ownership details. The Assistant Food Control, Zone-II, Kakinada furnished the ownership particulars of A4. The Public Analyst vide report dated 02.8.2004 opined that the same does not conform to the standard of Bellier’s test (turbidity temperature – Acetic acid method) and also contains Castor oil and it is therefore adulterated. After receipt of sanction order permitting prosecution of the petitioner and other accused, the Food Inspector filed complaint on the file of the court of Munsif Magistrate, Macherla. The learned Magistrate, after perusing the material produced before him, numbered the case as C.C. No.437 of 2006.

4. The learned counsel for the petitioner submitted that the learned Magistrate has committed grave error while taking cognizance of offence against the petitioner under Section 7(i) and 2(ia)(m) of the Prevention of Food Adulteration Act, 1954 (the Act). 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 the Local (Health) Authority did not serve notice on the petitioner as provided under Section 13(2) of the Act; therefore, the statutory right of the petitioner has been infringed by preventing him to send 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 petitioner even if he faces trial.

5. 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 petitioner would amount to abuse of process of law?

6. It is an admitted fact that the oil packets seized by the Food Inspector on 29.6.2004 were packed in the month of May, 2004. It is not out of place to extract the relevant portion of the complaint regarding declaration on the label of the oil packets:

"Priya Gold Doublet Filtered Ground Nut Oil, Pure Healthy, Net: 1 lt., EOP/AP/ZII/018, B.No.005, Month of Packing: May, 2004, MRP, Inclusive of taxes: 62=00, Best before Four months from manufacture, Free from Argemone Oil. Mfd: Santhoshimata Oil Packing Industries, Plot No.9, IDA, Ramanaiahpet, Kakinada-533 003, Ph.No.0884-2349883, Cell:98481-50792."

A perusal of the declaration on the label makes it clear that the shelf life of the oil packets seized by the Food Inspector is up to 30.10.2004. 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 to 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 02.8.2004, 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 petitioner 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 dated 02.8.2004, it is not

the case of the complainant that notice under Section 13(2) of the Act was issued to the petitioner more particularly before the expiry of shelf life of the oil seized. As observed earlier, the shelf life of seized food article is up to 30.10.2004 only. Therefore, the valuable legal right conferred on the petitioner under Section 13(2) of the Act was infringed due to non-furnishing copy of analyst report dated 02.8.2004 to the petitioner.

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 petitioner 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 petitioner.

11. In the result, the criminal petition is allowed, quashing the proceedings against the petitioner/A3 in C.C.No.437 of 2006 on the file of the court of Munsif Magistrate, Macherla. Miscellaneous petitions, if any pending in this criminal petition shall stand closed.

T. SUNIL CHOWDARY, J

March 03, 2016.

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