

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.15056 OF 2016

ORDER:

This revision is filed under Section 482 of Cr.P.C to quash the proceedings in C.C.No.324 of 2006 on the file of the Judicial Magistrate of First Class, Kothapeta, East Godavari District, on the ground that the petitioner being a dealer is not liable for prosecution in view of Subsection (2) of Section 19 of Prevention of Food Adulteration Act, 1954, as he is only a dealer and he also further contended that the complaint filed against other accused i.e. A-2 to 4 was quashed by this Court in CrI.P.No.8514 of 2009 by order dated 03.03.2016. Therefore, continuation of the proceedings against the petitioner would result in hardship to the petitioner and requested this Court to quash the proceedings.

2. It is the case of prosecution that, on 18.11.2005 at about 1.30 PM the Food Inspector inspected the Kirana Shop of A.1 situated at D.No.10-101, Gopalapuram village, Ravulapalem Mandal and found 10 sealed packets of Swastic Golden Sambar Powder (each packet containing 100 gms) in an almyrah along with other food articles. On enquiry, A.1 disclosed that the said Swastic Golden Sambar Powder packets were kept for sale to the public for human consumption. A.1 disclosed that he purchased the same from A.2 vide Bill No.2099 dated 18.11.2005 and submitted the bill. On suspicion, the Food Inspector purchased six sealed packets (each containing 100 gms) from A.1 by paying Rs.72/-. The Food Inspector served Form IV notice on A.1 informing about his intention of taking samples for

sending them to Public Analyst, Hyderabad. The Food Inspector packed the purchased items as per the procedure contemplated under the Act. On 19.11.2005 the Food Inspector sent one of the samples to the Public Analyst, Hyderabad for analysis and report. A.1 disclosed through his letter dated 03.04.2006 that he purchased Swastic Golden Sambar Powder from A.4. After completion of necessary formalities, the Public Analyst delivered the report to the Local Authority. As per the report, the sample contains common salt, which was not declared on the label. After obtaining necessary sanction, the Food Inspector filed complaint on 04.10.2006 before the trial Court.

3. No doubt the petitioner purchased the Sambar Powder from A.4 through its distributor and the petitioner cannot be prosecuted subject to proof that he purchased the food article. It is not the case of the Food Inspector that A.1 to A.4 have manufactured the Swastic Golden Sambar Powder. It is also not the case of the Food Inspector that the petitioners have opened the packets and mixed some other material like salt etc. At this juncture, the learned counsel for the petitioners has drawn my attention to the ratio laid down by this Court in **Smt. A. Pavani Vs. State of A.P**¹ wherein this Court held as under:

5. In Amar Chand And Ors. v. State of Punjab {1984 (1) Prevention of Food Adulteration Cases 167}, it was held, by placing reliance on Section 14 of the Act, that a bill, cash memo or invoice in respect of sale of any article of food given by manufacturer or distributor or dealer to the vendor thereof shall be deemed to be warranty given by such manufacturer, dealer or distributor. The accused placed

¹ 2006 FAJ 463

reliance on the Photostat copy issued by the manufacturer which indicated that packets containing chilli powder were sold to the accused petitioner. It was held that the accused petitioner had purchased chilli powder under legal and valid warranty.

4. Section 19(2) of the Prevention Food Adulteration Act, 1954 deals with exemption of certain persons and it reads as follows:

19 (2). A Vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves-
(a) that he purchased the article of food-

(i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer,

(ii) in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and (b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.

5. Thus, from a bare reading of Section 19(2) of the Act, it is evident that the dealer is required to comply with the requirements contained under Section 19(2)(a) (i) & (ii) & 19(2)(b) of the Act. Question of proof would arise only during trial, but not at this stage. Therefore, the petitioner is not entitled to take advantage of Section 19(2) of the Act to quash the proceedings against him at this stage, since the language used in Section 19(2) of the Act indicates that subject to proof the dealer is entitled to benefit but proof would arise only during Trial, but not at this stage.

6. Since the petitioner is required to prove the requirements contemplated under Section 19(2) of the Act, the proceedings in C.C.No.324 of 2006 on the file of Judicial Magistrate of First Class, Kothapeta, East Godavari District, cannot be quashed before commencement of trial. Hence, I find that it is not a fit case to quash the proceedings and the petition is liable to be dismissed.

7. In the result, the criminal petition is dismissed.

8. Consequently, miscellaneous petitions pending, if any, shall also stand dismissed.

Date:25.10.2016
SP

JUSTICE M. SATYANARAYANA MURTHY

