

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2017

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**Crl.O.P No.3 of 2009
and
M.P.No.1 of 2009**

R.Palanivelu

... Petitioner

vs.

1.Union of India rep. by
Chief Health Inspector and Food Inspector,
Egmore Railway Station,
Southern Railway, Chennai – 600 008.

2.The Chief Medical Superintendent,
(Local Health Authority), Railways,
Egmore, Chennai – 8.

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records and quash the SMMF.No.01 of 2008, on the file of the XX Judicial Metropolitan Magistrate, Ripon Buildings, Chennai-3.

For Petitioner : Mr.S.Ilamvaludhi

For Respondents : Mr.P.T.Ramkumar
Standing Counsel (Railways)

JUDGMENT

The petitioner has filed this criminal original petition to quash the proceedings initiated against him in SMMF.No.01 of 2008 on the file of the learned XXth Metropolitan Magistrate, Ripon Buildings, Chennai-3.

2.The case of the revision petitioner is that he is the proprietor of "Mother Food and Aravind Enterprises" holding its registered office at Chennai and involved in manufacturing of corn puffs. The corn puffs were manufactured and packed in plastic covers such that 30gms per packet and marketed through Aravind Enterprises, who in turn sold them to shops through agencies, being so it was found that the Chief Health Inspector and Food Inspector on 13.03.2008 visited the soda water stall on platform No.2 and 3, Park Railway Station, Chennai. During his visit the Chief Health Inspector saw the corn puff packets kept there for sale and he purchased 18 packets of 30gms each. He divided them into 3 equal parts of 6 packets each and wrapper each part with a thick paper and pasted a paper slip containing the signature and code number and serial number of the local authority. One part was sent to public analyst, Gundi for analysis, whereby report dated 31.03.2008 was submitted that the product was misbranded and adulterated. Based on the said report the present complaint was lodged before the learned XXth Metropolitan

Magistrate, Ripon Buildings, Chennai. Thereupon the petitioner was charged under P.F.A Act, under Section 7(i) and (ii) and 16 (I) (a) (i), r/w Rules. 2 (ia) (a), (m) and 2 (ix) K and Rule 23 and 29 and Rule (zzz) (17) and 50 (1) for not obtaining a valid license under Prevention of Food Adulteration Act and Rules, 1955. The charge leveled against the petitioner is not sustainable in the eye of Law and facts. There are material irregularities on the part of the Health Inspector while causing the product to analysis. Therefore invoking the inherent power of this Court under Sec. 482 Cr.P.C, the petitioner has come up with the present Crl.O.P to quash the complaint in S.M.M.F.No.1 of 2008 on the file of the learned XXth Metropolitan Magistrate, Ripon Buildings, Chennai.

3.I heard Mr.S.Ilamvaludhi, learned counsel appearing for the petitioner and Mr.P.T.Ramkumar, learned standing counsel (Railways) appearing for the respondents and perused the entire records.

4.The learned counsel for the petitioner would submit that according to the report submitted by the public analyst, two allegations remain leveled against the petitioner company that the petitioner has involved in adulteration of food substance by adding synthetic food colour to the product and he has Violated Rule 42(zzz) (17) of Production of Food Adulteration Rules, 1955 by non mentioning the nature of food as to

whether it is vegetarian or otherwise. Both the allegations are unsustainable, since there was neither adulteration nor non-mentioning the nature of the product. There is a patent material irregularity in the case on hand that there is a sheer violation of Section 11(4) of Production of Food Adulteration Act, which contemplates that the sample should have been sent to the Magistrate within the stipulated period of 7 days from the date of seizer, whereas the product is sent to the learned Magistrate Court only after 32 days beyond the time allowed. Furthermore the petitioner was deprived of the opportunity to request the Magistrate to send the other part of the sample for fresh analysis as per Sec.13 of P.F.A Act. In so far the charge under Rule 42 (zzz) (17) of P.F.A Rule 1955, is concerned the symbol green colour was printed, but the colour has faded as it was plastic cover. Further the corn puff of the petitioner's company was free from mould and foul order, the same was satisfactory in task. The said factors recorded in the analysis report disclose that the corn puff is free from adulteration. Moreover it would be relevant to state that there was not even a single complaint made by the consumers or agents with regard to the quality and quantity of the corn puff packets.

5.The learned counsel for the respondents despite of sufficient time granted by this Court has not come forward to file counter.

6. Before going into the question of adulteration, it is indispensable for the Court to look into the aspect as to whether there is due compliance of mandatory provisions in the procedure adopted, on subjecting the sample product to public analysis. As per Sec.11 (4) of P.F.A Act one of the parts of the sample should have sent to the Magistrate within 7 days from the date of inspection and Seizure of the food products.

7. Sec.11 (4) of P.F.A Act is extracted hereunder:

11.1. Procedure to be followed by Food Inspectors:

(1) When a food inspector takes a sample of food for analysis, he shall:

(a) give notice in writing, then and there, of his intention to have it so analysed to the person from whom he has taken the sample and to the person, if any, whose name, address and other particulars have been disclosed under section 14 A;

(b) except in special cases provided by rules under this Act, divide the sample, then and there, into three parts and mark and seal or fasten up each part in such a manner as its nature permits and take the signature or thumb impression of the person from whom the sample has been taken in such place and in such manner as may be prescribed; Provided that where such person refuses to sign or put his thumb impression, the food inspector shall call upon one or more witnesses and take his or their signatures or thumb impressions, as the case may be, in lieu of the signature or thumb impression of such person;

(c) (i) send one of the parts for analysis to the public analyst under intimation to the Local (Health) Authority;

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.

8. Admittedly in the case on hand it is seen that the inspection was made on 13.03.2008, whereas the product was sent to the Magistrate Court only on 23.05.2008, i.e. 32 days beyond the prescribed time.

9. One another contention raised by the petitioner is that he was deprived of the opportunity to request the Magistrate to send the other part of the sample for fresh analysis as per Section 13 of P.F.A Act. In this regard it would be relevant to look into Section 13 of P.F.A Act, which runs as follows:

13. Report of Public Analyst : The public analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis.

(2) On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the person from whom the sample of the article of food was taken and the person, if any, whose name, address and particulars have been disclosed under section 14A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the Court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analyzed by the Central Food Laboratory.

(2-A)- When an application is made to the Court under subsection (2), the Court shall require the Local (Health) Authority to forward the part or parts of the sample kept by the said Authority and upon such requisition being made, the said Authority shall forward the part or parts of the sample to the Court within a period of five days from the date of receipt of such requisition.

(2-B)- On receipt of the part or parts of the sample from the Local (Health) Authority under sub-section (2A), the Court shall first ascertain that the mark and seal or fastening as provided in clause (b) of sub-section (1) of section 11 are intact and the signature or thumb impression, as the case may be, is not tampered with, and despatch the part or, as the case may be, one of the parts of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon 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.

(2-C)- Where two parts of the sample have been sent to the Court and only one part of the sample has been sent by the Court to the Director of the Central Food Laboratory under sub-section (2-B), the Court shall, as soon as practicable, return the remaining part to the Local (Health) Authority and that Authority shall destroy that part after the certificate from the Director of the Central Food Laboratory has been received by the Court :

Provided that where the part of the sample sent by the Court to the Director of the Central Food Laboratory is lost or damaged, the Court shall require the Local (Health) Authority

to forward the part of the sample, if any, retained by it to the Court and on receipt thereof, the Court shall proceed in the manner provided in sub-section (2B).

(2-D) Until the receipt of the certificate of the result of the analysis from the Director of Central Food Laboratory, the Court shall not continue with the proceedings pending before it in relation to the prosecution.

(2-E) If, after considering the report, if any, of the food inspector or otherwise, the Local (Health) Authority is of the opinion that the report delivered by the public analyst under sub-section(1) is erroneous, the said Authority shall forward one of the parts of the sample kept by it to any other public analyst for the analysis and if the report of the result of the analysis of that part of the sample by that other public analyst is to the effect that the article of food is adulterated, the provisions of sub-section (2),(2-D) shall, so far as may be, apply.

(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)

10. Therefore it is obvious that the accused is entitled to make an application to the Court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analyzed by the Central Food Laboratory, so as to subject the same for analysis by Director of the Central Food Laboratory.

11. However, the records reveal that the prosecution was instituted on 23.05.2008 and the report of analysis stood communicated to the petitioner by the local authority only on 18.06.2008. Admittedly the packing cover of corn puff indicated as "best before 2 months from manufacturing date", now even if 13.03.2008 on which date the sample was taken as date of manufacture, it will be fit for consumption only up to 12.05.2008. Whereas the copy of the report of the public analyst dated 31.03.2008 remains communicated to the petitioner by the local (Health) Authority (Chief Medical Superintendent) enclosed with his letter only on 18.06.2008 i.e. more than 3 months after sample was taken on 13.03.2008.

12. Therefore it is obvious for this Court to see that since the analysis report was not communicated within the period the corn puff was indicated to be fit for consumption, the petitioner was deprived of the

opportunity to request the Magistrate to send the other part of sample to central food laboratory, Pune for fresh analysis as per provision of Section 13 of the P.F.A Act.

13. In this context it would be relevant to note to the decision of the Hon'ble High Court of Allahabad in the matter of **Jagdish vs. State of U.P. reported in FAC 1991 (1) 96** holding that the conviction of the accused cannot be sustained in a case where there is a delay in sending the report of the Public Analyst. Further it was held that the right granted to the accused under section 13(2) of the Act is very valuable. The local health authority is bound to send a copy of the report of the result of the analysis to the accused informing him that he, if so desired, could make an application to the Court within a week to send the second sample for fresh examination by the experts. In case the accused is deprived of this right due to the laches or short comings on the part of the authorities concerned including local authority, no conviction of an accused can be sustained.

14. It would be further relevant to the decision of the Hon'ble High Court of Himachal Pradesh made in the matter of Rattan Lal vs. State of Himachal Pradesh reported in -FAC 1991 (I) 179, holding that it is incumbent upon the authorities concerned to have the samples analyzed

and the prosecutions launched with utmost despatch and that inordinate delay in making available to the accused his right to get the sample tested from the Director of Central Food Laboratory would tantamount to denial of his valuable and mandatory right under section 13(2) of the Act. Delay in such matters against the express directory provisions made in law and the Rules have to be treated with full deference and cannot be given a go-by in a light-hearted fashion.

15. In the light of the discussion above, this Court comes to conclusion that there is manifest laches and delay on the part of the respondents, which remain fatal to the prosecution, on the part of the respondents to adhere with the statutory provisions of P.F.A Act.

16. It is needless to say that the respondents have failed to adhere with Section 11 (4) of PFA Act too. In so far as the allegation that the petitioner has violated Rule 50 of Prevention of Food and Adulteration Act by non renewing his license, the said question does not arise, since at that relevant point of time i.e. 13.03.2008 the petitioner company held a valid license and it is further noticed that petitioner also submitted an application of renewal of license on 30.10.2007 for the year 2008, for which Demand Draft for Rs.1200/- drawn in favour of Deputy Chief

Inspector of Thiruvallur.

17.In view of the foregoing reasons and facts involved in the case, this Court deems fit to quash the proceedings in S.M.M.F.No.1 of 2008 on the file of the learned XX Judicial Metropolitan Magistrate, Ripon Building, Chennai, for want of compliance with P.F.A Act with regard to inspection and food analysis.

18.In the result:

(a) the Criminal Original Petition stands allowed;

(b) the complaint in S.M.M.F.No. 1 of 2008 on the file of the learned XXth Metropolitan Magistrate, Ripon Buildings, Chennai, is hereby quashed. Consequently, connected miscellaneous petition is closed.

22.03.2017

Note:Issue order copy on 10.08.2017

Index : Yes

Internet : Yes

vs

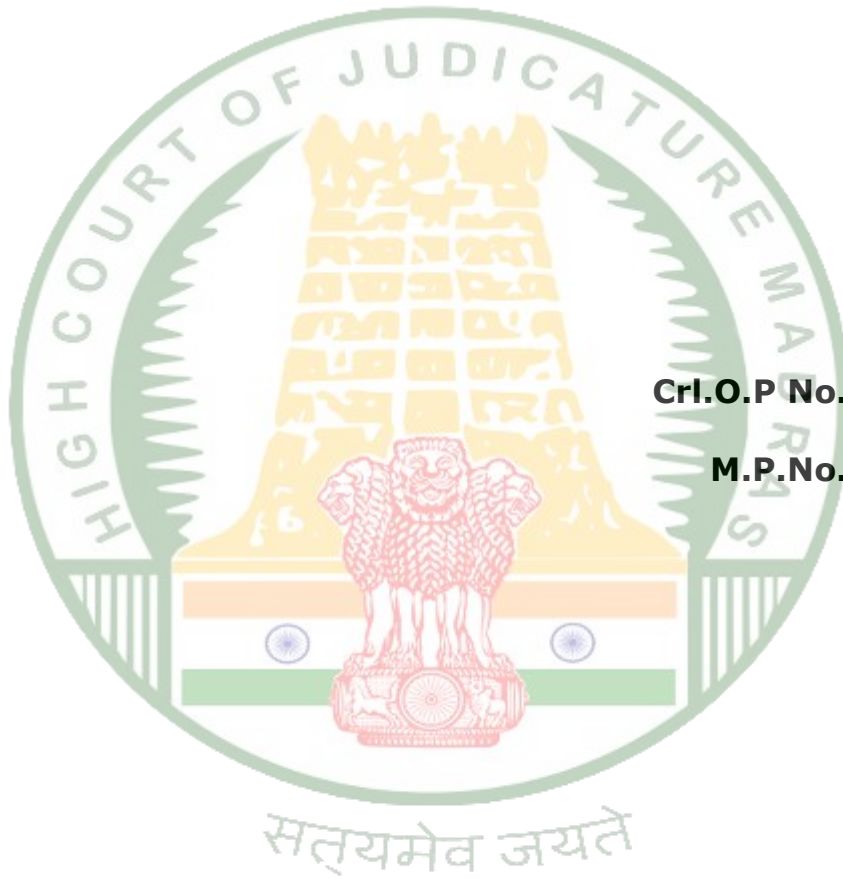
To

The XX Judicial Metropolitan Magistrate,
Ripon Building, Chennai.

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M.V.MURALIDARAN,J.

VS



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