

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.O.P.No.23237 of 2011

and

M.P.No.1 of 2011

1. G. V. Prakash

2. J.Gnanadurai

3. A.K.Muthusamy

4. S.K.M. Animal Feeds and Foods (India)

Chavadipalayam Pudur Road,

Nanjaiuthukuli,

Modakurichi,

Erode District.

... Petitioners

Vs.

The Food Inspector,

Vaniputhur Town Panchayat,

Government Primary Health Centre,

T.N.Palayam - 638 506

Erode District.

.. Respondent

Prayer: Criminal Original Petition was filed under Section 482 of Cr.P.C to call for the records relating to order passed in C.C.No.280 of 2009 on the file of Judicial Magistrate No.I, Gobichettipalayam and quash the same.

For Petitioners: Mr.A.Sundaravadhanam

For Respondent : Mr.B.Ramesh Babu

Government Advocate (Crl.Side)

O R D E R

This criminal original petition is preferred by the Petitioners/Accused A1 to A4 against the complaint filed by the complainant which is pending in C.C.No.280 of 2009 on the file of the learned Judicial Magistrate No.I, Gobichettipalayam.

2. Brief case of the petitioners/accused A1 to A4:

The prosecution case is that the respondent, who is the Food Inspector of Government Primary Health Centre, T.N.Palayam, inspected the groceries shop of the 1st petitioner/accused on 27.12.2007 and found that Refined Rice Bran Oil in 500 Ml. sachets sealed and packed in the brand name of Porna Refined Rice Bran Oil and on suspicion, he taken the sample as required under the said Act and Rules, in presence of independent witness and after following the mandatory procedure, he sent one sample to the Public Analyst at King Institute, Chennai, on 27.12.2007 and other samples to the concerned authorities as contemplated under the Act. Thereafter, the public analyst sent his report dated 18.1.2008, stating that his opinion that the sample is found to be misbranded since it is not labeled in accordance with the requirements of Rule 37 and 39 of the Rules, and sent the same to the Local Health Authority on 21.1.2008, subsequently the respondent/complainant sent notice under section 14(A) and 17(2) of the Act, seeking particulars of the persons in-charge of the affairs of the company to the 3rd and 4th petitioners/accused on 30.1.2008, for which they have sent the reply on 5.2.2008, and the same was received by the complainant on 7.2.2008, and the notice also given to the 2nd petitioner on 30.1.2008, and obtained report on the same date. Respondent have applied for sanction from the Public Health and Preventive Medicine only on 12.6.2009, and after obtaining the sanction, the complaint has been filed on 16.9.2009, before the learned Judicial Magistrate, Gobichettipalayam, and the learned Judicial Magistrate also taken cognizance of the above offence, in C.C.No.280 of 2009 and issued summons to all the petitioners/accused for the offences under section 7(ii) and 16(1)(a)(i) r/w sec. 2(ix)(k) and rule 37 and 39 and /or any suitable sections Prevention of Food Adulteration Act and Rules 1955. Aggrieved over the same the petitioner/accused preferred this quash petition.

3. Heard the arguments on either side and perused the entire materials available on record.

4. The learned counsel for the petitioners /accused A1 to A4 submits that the main charge is the Rice Bran Oil Manufactured and sold by the petitioners is misbranded, since it is not labeled in accordance with the requirements of section 2(ix) (g) of the Act, and Rule 37 of the Rules, and section 2(ix)(k) of the Act and rule 39 of the rules, hence they are all punishable under section 7(ii) and 16(1) (a)(i) r/w section 2(ix) (g) and (k) and section 2(g) and (k) of the Act.

5. The learned counsel for the petitioners /accused A1 to A4 submits that the complaint does not disclose any ingredients for contravention or violation under section 7(ii) and 16(1) (a) (i)

r/w section 2(ix) (g) and (k) of the Act, the respondent/complainant /Food Inspector simply reproduced the opinion of the public analyst stating that the sample is found to be misbranded since it is not in accordance with rules 37 and 39 of the rules, without disclosing in what manner, the sample is said to have misbranded, and no prima facie material mentioned out against the petitioners for the allegation that the sample is misbranded under section 2(ix)(g) and (k) of the act and rule 37 and 39 of the rules. In absence of any statement or material in the complaint to show that in what the eye of law to attract the penal provision of the act and rules. There must be a specific averment in the complaint stating how and what manner the customers being mislead on account of misbranding, in order to attract the provision of rule 37 or what are all the words mentioned in the label which implying recommendation by Medical Profession. In absence of as such, a mere reading of the complaint, are all not making out a prima facie case to show that the sample is misbranded. In the above circumstances, allowing any proceedings against the petitioners is only amounts to an abuse of process of law.

6.The learned counsel for the petitioners /accused A1 to A4 submits that even as per the report of the public analyst a printing of picture 3 Heart in the pack penal of the label and the statement printed namely Rice Bran Oil increases HDL (Good cholesterol) LDL (Bad cholesterol) and triglycerides which will violates section 2(ix)(g) of the act and rule 37 of the rules. To violate the provisions of section 2(ix) and (g) of the Act, package should contain the statement or design regarding the ingredients or substance contain therein which is false or misleading or any particular or the package is otherwise deceptive with respect to it is contents under section 2(ix)(g) of the act, and it must contain any statement which is false or misleading or quantity or nutritive value or in relation to place of origin of the said food, in order to violate the rule 37 of the rules. But the statement of the public analyst does not disclose in what manner the above statement is misleading or deceive or deceptive in order to violate the above provision. The public analyst should necessarily mention what manner the statement deceive the general public and also in order to substantiate his claim he should necessarily place material in order to prove statement is misleading, but by mere reproducing of the rules he come to a conclusion it is misbranded, which is not at all maintainable in the eye of law. The report is prima facie does not disclose any offence under section 2(ix) (g) or rule 37 of the rules.

7.The learned counsel for the petitioners /accused A1 to A4 submits that the public analyst statement regarding violation of rule 39 of the rules, the statement reads as it contain squalene which nourishes skin vitamin-E (tocorpherol) help in maintaining

the balance of nervous system and has tucoterinol which has antithrombotic and anti-cancer properties, which according to the Public Analyst is violative of rule 39 of the rules, rule 39 of the rules says that the label not to use words imply recommendation by Medical Profession of the rule reads as follows:

"Rule 39 Labels not to use words implying recommendations by medical profession - There shall not appear in the label of any package containing food for sale the words "recommended by the medical profession" or any word which imply or suggest that the food is recommended, prescribed, or approved by medical practitioners"

8.A casual reading of the statement contain in the label does not contain a word that recommendation by a Medical profession or any word imply that the food is recommended, prescribed or approved by Medical Practitioner or approval for Medical purpose in order to violation of rule 39 of the rules. The statement contain in the label is only the statement according the ingredients of the rice bran oil, and at any rate it cannot be treated as a recommendation of other medical profession. Even in the statement the public analyst does not mentioned how it is attract the provision of rule 39 of the rules, hence the statement of the public analyst prima facie does not disclose any offence against the petitioners.

9.The learned counsel for the petitioners /accused A1 to A4 submits that there is a long delay in initiating the proceedings against the petitioners/accused which is also fatal to the prosecution, even though the analyst report was received on 18.1.2008 the complaint has been filed only on 16.9.2009, after long delay of one year and 8 months it affects the rights of the petitioners/accused to sent the sample to the Director of Central Food Laboratory under rule 13(2) (b) of the rules, apart from that the long delay in sending the report under rule 13(2) of the rules is also affect the rights of the petitioners/accused. The petitioners/accused is ISA ISO 9001-2000 Certified Company and maintaining a good reputation, and never intended to violate the provisions of Food Adulteration Act, and they are strictly following the norms prescribed under the Act. The long and unexplained delay in launching the prosecution against the respondent is fatal to the prosecution. The complaint is filed in trial abuse of process of law hence it is liable to be quashed.

10.The learned counsel for the petitioners /accused A1 to A4 submits that the 1st and 2nd petitioners/accused is retail and wholesale vendors of Rice Bran Oil and personally engaged the day to day business. Hence, they have not able to appear before

the court regularly. Likewise, 3rd petitioner/accused also is incharge of the business and the 4th petitioner company managing the daily affairs. Hence he also could not appear before the court regularly.

11.The learned counsel for the petitioners/accused cited the following decisions in support of their contentions:

1) 2010-2-L.W.(Crl)1212 Easwaramoorthi and others Vs The Food Inspector Tirunelveli Municipal Corporation

2) In the High Court of Judicature at Madras Crl.O.P.No.9271 of 2008 Bushan Prasad Vs Food Inspector Ambattur Municipality

3) In the High Court of Judicature at Madras Crl.O.P.No.542 of 2008 Bushan Prasad Vs Food Inspector Satyamangalam Municipality

12.The learned Government Advocate (Criminal Side) appearing for the respondent opposed the contentions of the petitioner/accused and sought for dismissal of the quash petition.

13.In the case on hand, the main allegation in the complaint filed by the respondent against the petitioners/accused A1 to A4 is that they sold the misbranded oil and not labeled in accordance with the requirements of section 2(ix) (g) of the Act, and Rule 37 of the Rules, and section 2(ix) (k) of the Act and rule 39 of the rules, hence they are all punishable under section 7(ii) and 16(1) (a) (i) r/w section 2(ix) (g) and (k) and section 2(g) and (k) of the Act.

14.It is to be noted that, as per the report of the public analyst, package should contain the statement of design regarding the ingredients are substance contained therein in order to violate the section 2(ix)(g) of the food adulteration act and also rules 37 and 39 of the prevention of the food adulteration act.

15.This court on reading the entire averments filed in support of the complaint do not indicate that the statement of the public analyst does not disclose in what manner the above statement is misleading or deceive or deceptive in order to violate the above provision. The public analyst should necessarily mention what manner the statement deceive the general public and also in order to substantiate his claim he should necessarily place material in order to prove statement is misleading, but by mere reproducing of the rules he come to a conclusion it is misbranded, which is not at all maintainable in the eye of law. The report is prima facie does not disclose any

offence under section 2(ix) (g) or rule 37 of the rules.

16.Further it is to be noted that the complaint has been filed by the respondent on 16.9.2009 after long delay of 1 year and 9 months which impliedly affects of the rights of the petitioners/accused to sent the sample to the central food laboratory. In any event, if the trial is commenced on this complaint nothing would be served.

17.In the result, this criminal original petition is allowed and complaint filed by the complainant which is pending in C.C.No.280 of 2009 on the file of the learned Judicial Magistrate No.I, Gobichettipalayam is hereby quashed. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1.The Judicial Magistrate No.I, Gobichettipalayam.

2.The Food Inspector,
Vaniputhur Town Panchayat,
Government Primary Health Centre,
T.N.Palayam - 638 506
Erode District.

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SP(18/03/2019)

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