

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2017

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P.No.5736 of 2011

and

M.P.No.1 of 2011

1.C.Tamilselvan
2.K.Megala
3.A.Kumaravel
4.D.Sharad Chandra Basa
5.M/s.Saravana Stores Food Private Limited,
Production Company represented by
D.Sharad Chandra Basa .. Petitioners/Accused 1 to 5

vs.

Food Inspector (I/O),
Government Primary Health Centres,
Elavanasurkottai Post,
Ulundurpet Taluk,
Villupuram District. .. Respondent / Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records from the learned I Additional District Munsif cum Judicial Magistrate No.I, Ulundurpet in C.C.No.43 of 2010 and quash the same as it has no prima facie case against the Petitioners.

For Petitioners: Mr.N.Sudharsan
For Respondent : Mr.B.Ramesh Babu
Government Advocate (Crl.Side)

JUDGMENT

The accused in C.C.No.43 of 2010 on the file of the learned I Additional District Munsif-cum-Judicial Magistrate Court No.I, Ulundurpet, is the petitioners herein who challenged the final report filed by the respondent herein.

2.The respondent / complainant has filed a charge sheet No. 01/2010 against the petitioners herein for the hence under sections 7(i) and 16(1)(a)(i), r/w 2(ia), (a) and (m) of the Prevention of Food Adulteration Act, 1954 alleging that the petitioners were selling the adulterated ice creams of Jamaai Ice Cream.

3.The learned counsel appearing for the petitioners would submit that on 16.04.2009 the respondent herein inspected the 2nd Petitioner's hotel and taken samples of ice creams and the same was sent to the Public Analyst, Food Analysis Laboratory, Coimbatore on 16.04.2009. After analyzing the food samples from 21.04.2009 to 5.5.2009, report was sent to Public Analyst, Food Analysis Laboratory, Coimbatore on 07.05.2009 and the same was received by the respondent on 03.06.2009. Form-VI was sent by the respondent to the 4th petitioner on 05.07.2009. Thereafter, intimation to the 4th petitioner was sent on 14.06.2010 under section 13(2) of the Prevention of Food Adulteration Act, 1954, which according to the learned counsel for the petitioners is beyond the period of one year and therefore, the petitioners' right to send the samples for second analysis test to the Central Food Laboratory has been deprived, hence the above charge sheet is liable to be quashed. In support of his above contention, the learned counsel for the petitioner placed reliance upon the order of this Hon'ble Court made in Crl.O.P. (MD)No.7988 of 2010 dated 10.08.2010 wherein our High Court has decided the similar issue involved as in this case. It is necessary to extract relevant paragraph of the above judgment hereunder:

"9.In other words, in the instant case, the appellant was prevented from applying for analysis of the second sample before 17.07.1989, by which time the second sample of curd had deteriorated and was not capable of being analysed as was found in Ghisa Ram referred to above."

4.In (2009) 1 MLJ (Crl.) 843 (Bhushan Prasad, Manager-Quality and Regulatory Operations of the general Mills India Private Ltd., Mumbai and Another Vs. K.Ravichander), this Court has held as follows:

"The reading of Section 13(2) of the Prevention of Food Adulteration Act 1954 makes it clear that on receipt of the Analyst report, the Local Health Authority shall after the institution of prosecution forward the copy of the analyst report to the accused concerned and to inform such persons that they may make an application before the Court within 10 days from the date of receipt of the copy of the report to get the other portion of the sample of article to be analyzed by Central Food Laboratory. But in the instant case, it is seen that the date of manufacture of the sample is 15.10.2003, the date of expiry of the article is dated 15.02.2004, the Food Inspector obtained sanction for prosecution on 12.11.2004 and the complaint was filed only on 10.12.2004 and as such the complaint itself was filed after the expiry of the product, viz., sample as early as on 15.02.2004 and as such the sample has become unfit for further analysis by the Central Food Laboratory and thereby the petitioners have lost their valuable right to get

the sample examined by the Central Food Laboratory which resulted in grave prejudice to the accused."

5.In (2008) 3 MLJ (Crl) 779 (Baskar Vembu, Indian Inhabitant, Nominee of Cadbury India Ltd., Mylapore, Chennai - 600 004 and Another Vs. State of Tamil Nadu at the instance of K.Jebaraja Shobana Kumar, Food Inspector, Food & Drugs, Administration, Tamil Nadu), this Court has held as follows:

"In the present case, even if the stand taken by the respondent is accepted that the samples were drawn in the prescribed manner, there is a gross failure on their part in launching the prosecution instantly as enunciated in the Act. Notice under Section 13(2) of Act came to be served on the petitioners only on 04.10.2005 and by that time, food sample had become so decomposed and totally unfit for analysis. Strikingly, there is no explanation forthcoming on the part of the prosecution for such serious lapses. The valuable right of the accused/petitioners is taken away. In such circumstances, the Court has no other option except to quash the entire proceedings pending against the petitioners before the trial Court."

6.In G.Sivakumar and Others Vs. Food Inspector, City Municipal Corporation of Coimbatore reported in (2009) 2 MLJ (Crl) 1035, wherein, this Court has held as follows:

"Admittedly, in this case, the delay between the launching of prosecution and forwarding of form III was beyond six months and is hit by Rule 9-B of the Prevention of Food Adulteration Rules. That apart, the report of the Public Analyst is dated 12.09.2001 and the prosecution came to be launched on 07.09.2004 when the complaint was preferred and it was taken on file on 16.09.2004. On 21.09.2004 the petitioners/accused received notice and if they calculate the said period, the prosecution has been launched after a period of nearly 3 years.

In view of such a long delay in launching prosecution in the present case, the petitioners/accused are put to serious prejudice as they lost their right of having the sample analyzed."

7.As per the above said citations, because of the delay in issuing 13(2)notice, the petitioners were prevented from sending the sample for second analysis within the time prescribed. In such circumstances, I am of the opinion that all the citations are squarely applicable to the facts of the present case.

8.The learned counsel appearing for the petitioner would also rely upon the order of this Court made in Crl.O.P.(MD) No.5765 of 2009, where, the learned Judge cited the view of his Lordship Justice Malai Subramanian in an earlier occasion, which read as follows:

"The petitioner seeks to quash the proceedings pending against them in all the matters where they were prosecuted for the offence of misbranding under the provisions of the prevention of Food Adulteration Act.

2. According to the learned senior counsel, the label pasted on the containers of the food products do not contain the term "up to" as ordered in the letter of the State Local Health Authority and joint Director in his communication dated 28.09.2001. The petitioner plead that they are not aware of the distinction between new label and the old one. They also undertake to paste the new labels on the food products hereafter. It does not appear to be a grave offence of misbranding. There is not much distinction between the contents of the earlier label and the new label except incorporation of certain words. It is also appropriate to consider the decision of this court made in Crl.O.P.(MD) No.11867 of 2009, wherein, this Court has held as follows: "A perusal of the complaint would reveal that it has been merely stated that 'sample is misbranded as it is not labelled in accordance with Rules 32(f) (i) and 42 (zzz) 17 of P.F.A. Rules, 1955. It is not quite clear as to how the sample is misbranded and the averments made in the complaint are also bereft of any particulars. There must be a specific averment that the customers are being mislead on account of misbranding and in the absence of any such clear averments, it cannot be said that the customers are mislead or misdirected."

7. Per contra, the learned counsel for the respondent would submit that only adhering with all the legal formalities, the prosecution was launched against the petitioner. It is his further contention that the sample were properly taken and sealed as per Rules and regulations.

8. I heard Mr.N.Sudharsan, learned counsel for the petitioners and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) for the respondent and materials available on records are perused.

9. Now the only question that arises for consideration is whether the notice sent by the respondent under section 13 (2) of the Prevention of Food Adulteration Act, 1954 is well within the prescribed period or not.

10. To decide the above issue it is useful to extract section 13 (2) of the Prevention of Food Adulteration Act, 1954 hereunder:

"13.

1.

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 persons from whom the sample of the article of food was taken and the person, if any, whose name, address and other 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 analysed by the Central Food Laboratory".

11.As per section 13(2) of the Prevention of Food Adulteration Act, 1954, on receipt of the analyst report, the Local Health Authority shall forward the copy of Analyst report to the accused by informing that the accused 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 other portion of the sample of article of food to be analysed by central food Laboratory.

12.In the case on hand, admittedly the respondent herein received the report from the Public Analyst, Food Analysis Laboratory, Coimbatore on 03.06.2009. Thereafter the Local Health Authority should have informed the petitioners by forwarding the copy of the Analysis report stating and they may make an application to the Court within 10 days from the date of receipt of the copy of report to get the other portion of the sample of article to be analyzed by central food Laboratory. But in this case, section 13(2) information was sent by the Local Health Authority on 14.06.2010 to the petitioners, which was after the period of one year from the 1st analysis report dated 07.05.2009 by which time the 2nd sample of the ice cream had deteriorated and incapable of being analyzed. Hence, as per the dictum laid down by our High Court cited supra, the petitioners have lost their valuable right to get the sample examined by the Central Food Laboratory which resulted in grave prejudice to the accused.

13.No doubt that the petitioner had a right for asking second Analyze report as per the Act. In the case on hand admittedly there is a delay of more than one year from the date of taking first sample. It is also significant to note from the report of the public analyst dated 07.05.2009, the date of expiry the coffee powder was labelled to be twelve months from the date of manufacture.

14.In view of the settled legal preposition of law, I have no hesitation to hold that the above charges against the petitioners are liable to be set aside, accordingly, it is set aside.

15.In the result, this Criminal Original Petition is allowed and the charge sheet filed against the petitioners in C.C.No.43

of 2010 pending on the file of the learned I Additional District Munsif-cum-Judicial Magistrate Court No.1, Ulundurpet, is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar (CS)

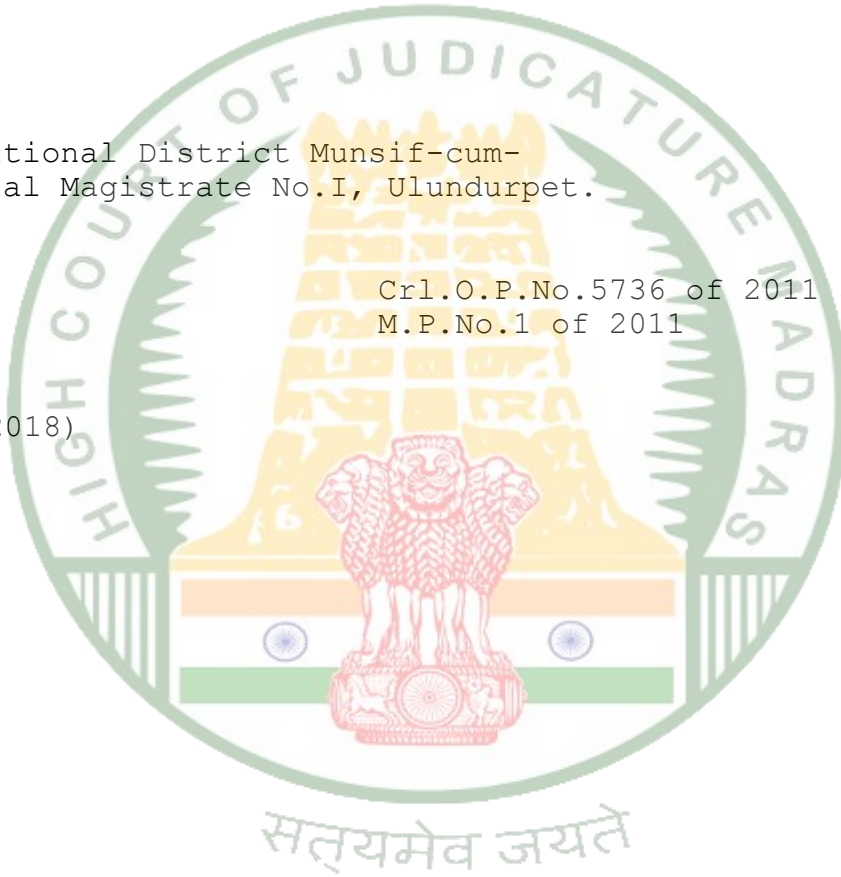
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Sub Assistant Registrar

vs
To
The I Additional District Munsif-cum-
Judicial Magistrate No.I, Ulundurpet.

CrI.O.P.No.5736 of 2011 and
M.P.No.1 of 2011

(CS-DR)
EU(30/10/2018)



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