

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 16.03.2017

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

Crl.O.P.No.23918 of 2010 and
M.P.Nos.1 and 2 of 2010

Niyaz Ahmed

.. Petitioner/Accused

vs

The Food Inspector.
S.I.126, Zone VIII,
Corporation of Chennai.

.. Respondent/Complainant

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for records in SMMF.5 of 2010 on the file of the learned XXth Metropolitan Magistrate, Rippon Buildings, Chennai and quash the same.

For Petitioner : Mr.V.Krishnamoorthy

For Respondent : Mr.B.Ramesh Babu
Government Advocate
(Criminal Side)

ORDER

This Criminal Original Petition has been filed by the petitioner to call for records in SMMF.5 of 2010 on the file of the learned XXth Metropolitan Magistrate, Rippon Buildings, Chennai, and to quash the same.

2. I heard Mr.V.Krishnamoorthy, learned counsel for the petitioner and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) for the respondent and also perused the materials available on record.

3. The respondent lodged a complaint before the learned XXth Metropolitan Magistrate under Section 7(ii) and 16(1)(a)(i) and (ii) of the Prevention of Food Adulteration Act and the learned Magistrate took cognizance of the offence in S.M.M.F.No.5 of 2010 and issued summons to the petitioner requiring him to appear before him for the hearing date on 05.10.2010. Challenging the same, the petitioner has filed this petition seeking to quash the same.

4. The case of the prosecution is that on 06.07.2009 at 2.30 p.m., the respondent entered Salem Stores at Old No.50, New No.95, Theagaraya Road, T.Nagar, Chennai, owned by the petitioner and introduced himself as Food Inspector and enquired the details such as name, license etc. While inspecting the shop, the respondent saw 10 kgs of Chilly powder in 15kg container and suspecting adulteration in the powder, he took sample for analysis. Thereafter, the respondent prepared Form-6 in duplicate and gave notice to the petitioner of his intention to take 750 gms of Chilly powder for analysis and got acknowledgement from the petitioner. The respondent has paid Rs.150/- towards the cost of the food.

5. Further case of the prosecution is that the respondent divided the Chilly powder equally with 250 gms each and packed them in three glass bottles and sealed them and after obtaining the signatures of the petitioner, the respondent brought them to his office and after obtaining permission from his higher officials, the respondent prepared Form-7 and handed over Form-2 and two samples to the Health Officer and obtained his acknowledgement and the remaining one sample was given to Analyst, Corporation of Chennai and obtained his acknowledgement.

6. According to the prosecution, the respondent received analysis report dated 28.7.2009 from the Health Officer, wherefrom the respondent found that the sample food item contravened the provisions of Prevention of Food Adulteration Act and its Rules. Hence, the respondent preferred a complaint under Section 7(ii) and 16(1)(a)(i) and (ii) of the Prevention of Food Adulteration Act and sent it to the Joint Director, Food Adulteration for obtaining sanction for prosecution. After obtaining sanction order dated 10.12.2009, the respondent lodged the complaint before the learned Magistrate on 17.9.2010.

7. The petitioner sought to quash the complaint on the ground that though the respondent lifted the sample on 6.7.2009 and report of the local Analyst was received on 28.7.2009, after a lapse of one year and two months, they lodged the complaint. The aforesaid act of the respondent amounts to flagrant violation of the provisions of the Prevention of Food Adulteration Act. The inordinate delay of more than one year in filing the complaint has not been properly explained and on that score alone, the complaint is liable to be quashed.

8. The learned counsel for the petitioner argued that the right of the accused enshrined under Section 13(2) of the Prevention of Food Adulteration Act has been infringed. He would submit that though the Food Inspector received the report of the Analyst on 28.7.2009, he took nearly fourteen months to produce the sample before the learned Magistrate. He would

submit that the delay was not properly explained.

9. The learned Government Advocate submitted that there was no wilful negligence on the part of the respondent in lodging the complaint immediately after the receipt of the report and only due to administrative reasons the delay occurred. The petitioner cannot take advantage of the delay caused in filing the complaint. The learned Government Advocate further submitted that there is no merit in this petition.

10. In the case on hand, it is beyond any cavil that on 06.7.2009, the respondent had inspected the petitioner's shop and took 750 gms of Chilly powder for analysis. The Analyst submitted his report on 28.7.2009, opining that the sample is adulterated. However, the complaint was lodged only on 17.09.2010, i.e., after lapse of almost 14 months from the date of filing of the report by the Analyst.

11. This Court in G.Sivakumar and others v. Food Inspector, City Municipal Corporation of Coimbatore, 2009 1 LW (Crl.) 344, held as under:

"8. A perusal of the complaint and the provisions of the Food Adulteration Act and the Rules framed would reveal that there are specific period prescribed for each stage. The reason behind is that the sample must be analysed either by the Public Analyst sent by the local health authority or by the Central Food Laboratory at the instance of the accused should be done in a quickest possible time. The said right is valuable one and where there is a denial of the right on account of the deliberate conduct of the prosecution that is delay in launching the prosecution, as a result of which, there is possibility of the sample became highly decomposed and could not be analyzed. In such event, the concerned accused will be seriously prejudiced.

....

10. 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 analysed."

12. Referring to the aforesaid decision, another learned Judge of this Court in Selvakumar v. State, reported in 2010 (2) FAC 304, held as under:

"7. As per the above said citations, because of the delay in issuing 13(2) notice the petitioner was prevented from sending the sample for second analysis within 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 matter 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 28.9.2001. 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."

9. A perusal of the public analyst's report would reveal the Public Analyst has simply stated that the sample was misbranded since it is not labelled in accordance with the requirements of Rule 37 of P.F.A. Rules 1955, but he has not mentioned as to how and what manner the sample was misbranded. There must be a specific averment that the customers 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.

10. In the above stated circumstances, as already stated that there is a delay in issuing 13(2) notice and the details of misbranding has not been mentioned, I am of the view that the complaint against the petitioner is liable to be quashed."

13. In view of the principles laid down in the above decisions and in view of the fact that there has been a delay of nearly 14 months in filing the complaint, thereby depriving the petitioner of the valuable right under Section 13(2) of the Act because of the violation of the mandatory requirements under Section 11(4) of the Act, it is held that no useful purpose would be served by continuing the prosecution against the petitioner. No explanation is forthcoming for the delay of nearly 14 months in lodging the complaint after the report of the Analyst is submitted. In view of the said lapse on the part of the respondent, even if the petitioner would like to exercise their valuable right conferred under Section 13(2) of the Act, it would serve no useful purpose because the condition of the sample would not be same. Therefore, the proceedings are liable to be quashed.

14. Accordingly, the proceedings initiated against the petitioner in SMMF.No.5 of 2010 on the file of the learned XXth Metropolitan Magistrate, Rippon Buildings, Chennai are held liable to be quashed and accordingly quashed.

15. In the result, the criminal original petition is allowed and the proceedings in S.M.M.F.No.5 of 2010 on the file of the learned XX Metropolitan Magistrate, Rippon Buildings, Chennai are quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vs

To

1. The XXth Metropolitan Magistrate,
Rippon Buildings, Chennai.
2. The Public Prosecutor,
High Court, Madras.

CrI.O.P.No.23918 of 2010 and
M.P.Nos.1 and 2 of 2010

NRI (CO)

rrs 25/10/2018



WEB COPY