

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2017

CORAM:

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

Cr1.O.P.No.27061 of 2009
and
M.P.No.1 of 2009

M.Vatchala

... Petitioner

Vs.

Union of India through
Chief Health Inspector and Food Inspector,
Chennai Egmore Railway Station,
Southern Railway, Chennai - 600 008.

... Respondent

Prayer:

Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in connection with entire records relating to the proceedings in SMMF No.01 of 2009, on the file of XX Judicial Metropolitan Magistrate, Ripon Building (Annexe), Chennai-600 003 and quash the same.

For Petitioner : Mr.M.Babumuthumeeran

For Respondent : Mr.P.T.Ramkumar
Standing Counsel for Railways

ORDER

This criminal original petition is preferred by the petitioner/accused A4 against the proceedings pending in SMMF.No.01 of 2009 on file by the learned XX Judicial Metropolitan Magistrate, Ripon Building (Annexe) Chennai and quash the same.

2.Brief case of the petitioner/accused A4:

The facts of the case is that the petitioner/accused A4 is the proprietrix of M/s.VSP Oil Mills, Hasthinapuram, Chrompet, Chennai dealing with manufacturing consumables, including VSP packed drinking water. The product manufactured by the petitioner/accusedA4 was supplied to the dealers whom the water

packets will be sold in retail. The manufacturing of drinking water packet is strictly in accordance with the standards laid down for manufacturing and obtained the ISI Certificate. On 19.9.2008 at about 10.00 hrs, the respondent/complainant have made routine inspection and seized the water packets from Vegetarian Light Refreshment Stall at Saidapet Railway Station, Chennai who is the retail seller of the products. Thereafter the respondent/complainant subjected those water packets for analysis at Food Analysis Laboratory, Chennai on the same day. Based on a report issued by the Public Analysis, Food Analysis Laboratory, Chennai dated 14.10.2008 to the effect that the Aerobic Microbial count per ml on PCA at 37C°/24 hours is more than the maximum permissible limit as per appendix B to PFA Rules, 1955, the instant complaint was given by the respondent/complainant against the petitioner/accused A4 and others.

3. On 29.1.2009 petitioner/accused A4 received a letter dated 28.1.2009 vide M /MD.9/1/13 (2) Notice/MS/19082/IV from the office of the respondent/complainant informing about the institution of the case in SMMF No 01 of 2009 and if the petitioner so desires, she can make an application before the learned XX Judicial Metropolitan Magistrate, Chennai to file a petition for sending the samples for second analysis as contemplated under section 13(2) of the prevention of food adulteration act. Aggrieved over the same the petitioner/accused A4 filed this quash petition.

4. The learned counsel for the petitioner/accused submits that the impugned proceedings are not maintainable or sustainable under law especially it is contrary to section 13(2) of the Prevention of Food Adulteration act.

5. The learned counsel for the petitioner/accused submits that section 13(2) of the act contemplates as under:

"13(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 14-A 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."

6.The learned counsel for the petitioner/accused submits that the samples which were taken on 19.9.2008 by the respondent/complainant was manufactured on 18.9.2008 which has a shelf -life of 15 days from the date of manufacturing i.e, the product is fit for consumption on or before 2.10.2008. As per law, before the expiry of shelf-life of the product, the same has to be tested and thereafter, the petitioner has to be given an opportunity as per section 13(2) of the act for subjecting the product for second analysis by the competent authority. This specific provision has been violated. Whereas, the complainant has issued a notice dated 28.1.2009 to the petitioner informing her to challenging the report of the public analysis by subjecting the product to analysis before the Central Food Laboratory, Pune, which is after the shelf-life of the product. Thus, no significance or advantage can be achieved from the second analysis.

7.The learned counsel for the petitioner/accused submits that the right of the petitioner to get the samples re-tested by the Central Food Laboratory, Pune is defeated by the delay on the part of the complainant in launching the prosecution, thus, a serious prejudice has been caused to the petitioner. Therefore, the entire proceedings against the petitioner are vitiated and are liable to be quashed.

8.The learned counsel for the petitioner/accused submits that the petitioner was informed by a notice dated 28.1.2009 to challenge the report of the public analysis by subjecting the product to analysis before the central food laboratory, Pune, the shelf-life of the product had expired. Thus the petitioner was deprived of a valuable right for re analysis of the sample.

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

- 1) 2005-2-L.W. (Cr1) 598 M.Chokalingam Vs The State represented by its Food inspector, in-charge
- 2) 1984 L.W. (Cr1) 67 P.Ponnu Reddiar Vs Food Inspector, Madurai Corporation
- 3) 2005-2-L.W. (Cr1) 598 M.Chockalingam J Vs The state represented by its Food Inspector In-charge

4) 2006-I. L.W.(Crl) 65 S.R.Singaravelu Vs Food Inspector
Coimbatore

5) 2005-2 L.W. (Crl) 598 M.Chockalingam Vs The stte
represented by its Food Inspector

6) 1984 L.W.(Crl) 67 P.Ponnu Reddiar Vs Food
Inspector,Madurai corporation

10.The learned counsel for the respondent cited the following decisions in support of their contentions and sought for the dismissal of the quash petition:

- 1) 1984 SCC 487 (Tulsiram Vs State of Madhya Pradesh)
- 2) 1984 SCC 177 (Prabu Vs State of Rajasthan)

11.I heard Mr.M.Babumuthumeeran, learned counsel for the petitioner and Mr.P.T.Ramkumar, learned standing counsel for the respondent and perused the entire materials available on record.

12.In the case on hand, Section 13(2) of the Prevention of Food Adulteration Act was not followed and the proceedings initiated were contrary to the Act. It is admitted fact that once the provisions of section 13(2) of the Act were not followed, the entire proceedings against the petitioner/accused are vitiated.

13.Further the judgments cited by the learned counsel for the petitioner categorically held that the violation of the rules relating to food adulteration act cannot be diluted and has to be followed scrupulously. Further the right of the petitioner/accused has been frustrated under section 13(2), due to the inordinate delay and inaction on the part of the prosecution.

14.In the result, this criminal original petition is allowed and the case pending against the petitioner/accused A4 in S.M.M.F.No.1 of 2009, on the file of the learned XX Metropolitan Magistrate, Ripon Building (Annexe) Chennai is hereby quashed. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vs

To

The XX Judicial Metropolitan Magistrate,
Ripon Building (Annexe), Chennai-600 003.

+1cc to Mr.M.Babumuthumeeran, Advocate, S.R.No.82569

+1cc to Mr.P.T.Ramkumar, Advocate, S.R.No.82669

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CS/12/03/2019



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