

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 07.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH**Crl.O.P. (MD) No.2672 of 2017****and CRL.M.P. (MD) Nos.2051 and 2052 of 2017**

WEB COPY

1.M/s.Caress Industries,
Represented by its designated Officer,
K.Muthusamy, aged 45 years,
S/o.Karuppana Gounder,
No.302 and 303, Appakoodal Road,
Kavindapadi - 638 455.
Erode District.

2.K.Muthuswamy : Petitioners/Accused 2 and 3
Vs.

A.Valarmathi,
The Additional Director of Agriculture,
Melur, Madurai. : Respondent/Complainant

Prayer : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records in C.C.No.29 of 2016 pending on the file of the learned Judicial Magistrate No.III, Madurai and quash the same.

For Petitioners : Ms.L.Maithili

For Respondent : Mr.K.Anbarasan
Government Advocate (Criminal side)

ORDER

On 26.11.2011, the Agricultural Officer, visited Ravichandran Stores, 715 Main Road, Melur, where fertilizers and pesticides were being sold. The officer lifted samples of Zinc Sulphate in Form "J" in accordance with the Rules and sent the same to the Fertilizer Testing Laboratory, Tallakulam, Madurai for analysis. The Test Report dated 15.12.2011, showed that the sample was not according to the specifications and fails in Zn Content only and therefore, it was declared as non-standard. Thereafter, the Joint Director of Agriculture, Madurai addressed a communication dated 08.05.2012, to M/s.Caress Industries, Erode, enclosing the copy of the Test Analysis Report and called for their explanation. Caress Industries submitted a reply dated 28.06.2012, stating that they are manufacturing "LEO" Brand Zinc Sulphate with ISI mark and that their products are not sub-standard. Thereafter, the Agricultural Officer has initiated

prosecution in C.C.No.29 of 2016 before the Judicial Magistrate No.III, Madurai against C.Ravichandran, Proprietor, Ravichandran Stores (A1), M/s.Caress Industries (A2) and Muthusamy (A3), the designated officer of M/s.Caress Industries for offence under Section 3 r/w Section 1(a)(ii) of Essential Commodities Act, 1955, challenging which, M/s.Caress Industries and Muthusamy are before this Court.

2.Heard M/s.L.Maithili, learned counsel for the petitioners and Mr.K.Anbarasan, learned Government Advocate (Criminal side) for respondent. Mrs.A.Valarmathi, the Agricultural Officer, Melur, Madurai is present. She has also filed a counter refuting the various allegations made in the application.

3.The short point for consideration is, is there any material to link A2 and A3 with the fertilizer that was lifted from the shop of A1?

4.Admittedly, the Agricultural Officer did not lift the samples under any Mahazar. Of course, in such cases it may not be necessary like police investigated cases to insist upon preparation of Mahazar or Panchanama. However, a sample has been lifted under Form "J", wherein, in column Nos.3 and 4 it is stated as follows:

"3.Details of marking on bags from where
 samples has been taken :
 (i) Type & grade of fertilizer with brand :Zinc Sulphate
 (ii) Name of Manufacturers : LEO
 (iii) Batch No. (if applicable)
 and date of manufacture : 103/13.10.11
 (iv) Composition : Zn 21%

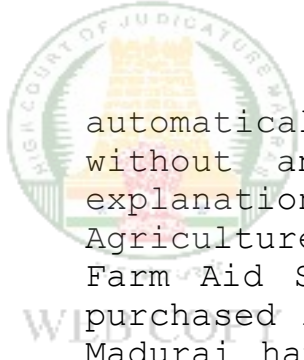
4.Date of receipt of the stock by the Dealer

Manufacturer/Pool handling agency : 14.10.11"

Thus, from the above, it is clear that the petitioners have not been shown as manufacturers of the seized products. However, it is stated that the brand name "LEO" has been found in the packets and since the fertilizer under the brand name "LEO" is being manufactured by M/s.Caress Industries, therefore, Caress Industries is liable.

5.I am unable to persuade myself with this stretched argument. A person who sells adulterated items would normally use the brand name of reputed companies. For instance, spurious tube lights and bulbs in the brand name of 'Philips' and 'Crompton' will be available in the market. On that basis, can 'Philips' and 'Crompton' companies be prosecuted without anything more?

6.The name of Caress Industries been given in Form "J" as the manufacturer of the fertilizer, then the issue would have been a little different. Merely stating it as "LEO" will not



automatically mean that it was manufactured by Caress Industries, without anything more. In fact, Ravichandran in his written explanation dated 15.05.2012, given to the Joint Director of Agriculture, has stated that he had purchased the said item from Farm Aid Services at Madurai and he has not stated that he had purchased it from Caress Industries. Strangely, Farm Aid Services, Madurai have not been made as an accused. That apart, the letter dated 08.05.2012, that has been sent by the Joint Director of Agriculture to Caress Industries enclosing the copy of the Test Analysis Report does not give any details as to the place from where the sample was lifted. Unless the manufacturer is put on notice on these aspects, namely, as to when and from where the sample was lifted, they cannot submit any explanation on the aspect.

7. In view of the aforesaid infirmities in the prosecution, this Court is of the view that this is a fit case, where the prosecution against A2 and A3 is liable to be quashed. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.29 of 2016 pending on the file of the learned Judicial Magistrate No.III, Madurai is quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.III,
Madurai.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.A.RAMASAMY Advocate in SR. No.58912

SJ

JS/RSK/SAR.2/14.6.2017/3P-4C

Order made in
Cr1.O.P. (MD) No.2672 of 2017
and CRL.M.P. (MD) Nos.2051 and 2052 of 2017
07.06.2017