



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.05.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. (MD) No.3830 of 2017

&

Crl.M.P. (MD) Nos.2821 & 2822 of 2017

1 Anand
2 Saranya Anand Petitioners/Accused No.2 & 3

(Proprietors-cum-shareholders of Tea Export Firm
M/s. Sri Sakthi Associates
No.163/A, TV Samy Road (West)
R.S. Puram
Coimbatore)

vs.

The Food Safety Officer
Ambasamuthiram Taluk
Government Hospital Road
Ambasamuthiram
Tirunelveli District

Respondent/Complaint

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to call for the records relating to C.C. No.348 of 2014 on the file of the Judicial Magistrate Court, Ambasamuthiram, Tirunelveli District and quash the same.

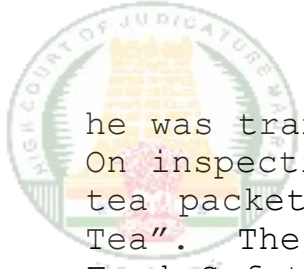
For petitioners Mr. B. Prahalad Ravi
For respondent Mr. K. Anbarasan
Government Advocate

ORDER

This Criminal Original Petition has been preferred seeking to call for the records relating to C.C. No.348 of 2014 on the file of the Judicial Magistrate Court, Ambasamuthiram, Tirunelveli District (for brevity "the Trial Court") and quash the same.

2 The complainant in the case before the Trial Court is the Food Safety Officer, Ambasamuthiram Taluk.

3 On 13.11.2013, around 5.30 p.m., the Food Safety Officer since posted at a Maruti Omni van bearing Registration No.TN 76 H 2089, in which, Mahesh (A1) was on the wheels, on suspicion that



he was transporting and selling substandard food items, viz., tea. On inspection of the said van, it was found that the van contained tea packets weighing 1,000 gms. each bearing label "Guru Imayam Tea". The complainant followed the procedure adumbrated under the Food Safety and Standards Act, 2006 (for brevity "the Act") and lifted representative samples of tea from the packets in possession of Mahesh (A1) and sent the same for analysis to the Government laboratory. When Mahesh (A1) was interrogated by the complainant, he is said to have told the complainant that he had purchased the tea in question in wholesale from one Sri Sakthi Associates (A6) and after re-packing the same in smaller lots, he is selling them in the brand name "Guru Imayam Tea". But, he was not able to produce any document to show that he had purchased the tea in wholesale from Sri Sakthi Associates (A6). The report of the Government laboratory showed that the tea was adulterated inasmuch as it was found to contain iron filings. The complainant complied with the other formalities required under the Act and has launched the prosecution in C.C. No.348 of 2014 before the Trial Court against Mahesh (A1), Sri Sakthi Associates (A6) and the partners of Sri Sakthi Associates, viz., Anand (A2), Saranya Anand (A3), Vishnu Anand (A4) and Vidyut Anand (A5), challenging which, Anand (A2) and Saranya Anand (A3) are before this Court.

4 Heard Mr. B. Prahalad Ravi, learned counsel for the petitioners/accused 2 and 3 and Mr. K. Anbarasan, learned Government Advocate appearing for the respondent.

5 Mr. B. Nagasubramanian, Food Safety Officer, Ambasamuthiram Block, Tirunelveli District was present before this Court.

6 The learned counsel for the petitioners/accused 2 and 3 submitted that there is absolutely no material to show that Sri Sakthi Associates (A6) had sold the subject tea to Mahesh (A1) and that merely on the statement of Mahesh (A1), Sri Sakthi Associates (A6) and its partners (A2 to A5) are being prosecuted, which is an abuse of process of law.

7 Per contra, the learned Government Advocate refuted the contention put forth by the learned counsel for the petitioners/accused 2 and 3 and submitted that between 15.04.2014 and 14.04.2015, Sri Sakthi Associates did not have the necessary licence as required under the Act for manufacturing and selling tea and they had sold the tea without there being licence with them to Mahesh (A1) and therefore, they are punishable for the offences mentioned in the complaint.

8 This Court gave its anxious consideration to the rival



9 Concededly, Mahesh (A1) is selling tea in the brand name of "Guru Imayam Tea". Had he been selling tea in the name of "Sri Sakthi Associates", then, there can be some justification for making Sri Sakthi Associates (A6) and its partners (A2 to A5) as co-accused. According to the complainant, on the statement of Mahesh (A1) that he had purchased tea in wholesale from Sri Sakthi Associates (A6), the petitioners/accused 2 and 3 have been made as accused without anything more.

10 In the considered opinion of this Court, merely on the ipse dixit of the principal accused that he had purchased tea from the co-accused without anything more, criminal prosecution cannot be launched. At the most, the statement of Mahesh (A1) can be considered as an extra judicial confession made to the complainant, who is not a police officer. Therefore, such a confession by Mahesh (A1) is admissible in a prosecution against himself. The confession of the principal accused against co-accused will be relevant only in terms of Section 30 of the Evidence Act.

11 As stated above, except the statement of Mahesh (A1), there is no other material to connect the partners of Sri Sakthi Associates (A6) with the crime. Incontrovertibly, Mahesh (A1) himself has stated that he had purchased the tea in wholesale and has re-packed the same in smaller weights and sold them in his own brand name "Guru Imayam Tea". Therefore, to say that the tea was adulterated by the alleged manufacturer, viz., Sri Sakthi Associates (A6) and sold to Mahesh (A1) appears a little incredible. The complainant may be morally satisfied that the tea has been purchased in wholesale from Sri Sakthi Associates (A6) by Mahesh (A1). But, criminal prosecution cannot be predicated upon moral grounds without there being a semblance of legal evidence. Hence, the prosecution as against the petitioners/accused 2 and 3 is liable to be quashed.

12 But, if the prosecution is quashed only in respect of the present petitioners/accused 2 and 3, viz., Anand (A2) and Saranya Anand (A3), then, Vishnu Anand (A4), Vidyut Anand (A5) and Sri Sakthi Associates (A6) will file separate quash applications and stay the trial against Mahesh (A1) indefinitely. Therefore, though Vishnu Anand (A4), Vidyut Anand (A5) and Sri Sakthi Associates (A6) are not before this Court, this Court is of the considered view that what applies to Anand (A2) and Saranya Anand (A3) equally applies to Vishnu Anand (A4), Vidyut Anand (A5) and Sri Sakthi Associates (A6) as well.

13 In such view of the matter, the prosecution as against Anand (A2), Saranya Anand (A3), Vishnu Anand (A4), Vidyut Anand (A5) and Sri Sakthi Associates (A6) is hereby quashed with a direction to the Trial Court to proceed with the trial as against Mahesh (A1), expeditiously.



In the result, this Criminal Original Petition is allowed.
Connected Crl.M.Ps. are closed.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

- 1 The Food Safety Officer
Ambasamuthiram Taluk
Government Hospital Road
Ambasamuthiram, Tirunelveli District
- 2 The Judicial Magistrate,
Ambasamuthiram, Tirunelveli District
- 3 The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai

+1cc to M/s.B.Prahalad Ravi, Advocate, in SR No. 55478

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