



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2017

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.(MD)No.14562 of 2011

And

Crl.M.P.(MD)No.1 of 2011

1.Murugesan

2.M.Sunil Krian Mathew

Quality Assurance Manager

... Petitioners/ Accused Nos.1 and 2

Vs.

State Represented by,

The Food Inspector,

Cumbum Municipality,

Cumbum,

Theni District.

... Respondent/ Complainant

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the records from the lower court in S.T.C.No.5141/2011 on the file of the Judicial Magistrate No.I, Uthamapalayam, Theni District and to quash the same.

For Petitioners : Mr.V.Kathirvelu,
Senior Counsel
for M/s.S.Ragaventhre

For Respondent : Mr.K.Anbarasan
Government Advocate (Crl.Side)

O R D E R

This petition has been filed seeking to call for the records from the lower court in S.T.C.No.5141 of 2011 on the file of the learned Judicial Magistrate No.I, Uthamapalayam, Theni District and to quash the same.

2.It is averred in the petition that the first petitioner is the Seller and the second petitioner is the Quality Assurance Manager of Hindustan Coc-Cola Beverages and both were implicated in the food adulteration crime as if they were misbranded.

3.The food packet was sold through the distributorship. The first accused is the seller and was selling various food products



including the products manufactured and marketed by the second petitioner. On 16.03.2009 at about 4.30 p.m., the respondent Food Inspector has purchased and taken the sample fanta food product from the first petitioner, after observing all the formalities and sent the sample for analysis on the same day. The said sample has been analyzed and as per the analysis report, the sample is misbranded namely, the sample contains chemical preservative without a declarative label stating that fact. This is not as per the PFA Act, 1954. As per Rule 42 (zzz) (1) (iii) of PFA Act, 1955, the package of food which contains sugar such food shall carry label as quantity of sugar added gm/100 gm. As per this violation the analyst report declared that the sample is misbranded.

4.The complaint is dated 25.07.2011 and the sample has been taken on 16.03.2009. The complaint has not disclosed when they have received analyst report. The outer cover of the sample disclosed 'best before 2-1/2 months from manufacture'. The date of manufacturing is 07.03.2009. The sample has been taken on 16.03.2009. The complaint is dated 25.07.2011. The complaint was received by the Court on 29.10.2011. The 13(2) notice has to be served only after the institution of prosecution. It is beyond the period of 2-1/2 months and the delay in filing the complaint has not been explained.

5.The learned Senior Counsel appearing for the petitioners would submit that the sample was taken on 16.03.2009. The said sample was sent to the Public Analyst, Food Analysis Laboratory, Guindy, Chennai on 17.03.2009. However, the shelf-life of the said product is only 2-1/2 months and the same was expired on 21.05.2009. Thereafter, the complaint was presented to the learned Judicial Magistrate No.I, Uthamapalayam on 25.07.2011 and the said complaint was received by the Court on 29.10.2011. The 13(2) notice has to be served only after the institution of prosecution, which is beyond 2-1/2 months. Hence the delay in filing the complaint has not been explained. The petitioners were not given an opportunity before the expiry of the shelf-life of the product and thereby, they have lost their valuable right for sending the same for second analysis and therefore, the prosecution lodged by the respondent is not sustainable in the eye of law.

6.The learned Senior Counsel appearing for the petitioners has relied upon the judgment in the case of **Municipal Corporation Of Delhi V. Ghisa Ram**, reported in **AIR 1967 Supreme Court 970**, wherein at paragraph Nos.7 and 11, it has been held as follows:-

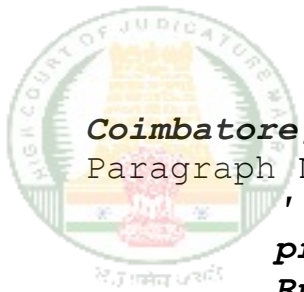
'7.It appears to us that when a valuable right is conferred by S.13(2) of the Act on the vendor to have the sample given to him analysed by the Director of the Central Food Laboratory, it is to be expected that the prosecution will proceed



in such a manner that that right will not be denied to him. The right is a valuable one, because the certificate of the Director supersedes the report of the Public Analyst and, is treated as conclusive evidence of its contents. Obviously, the right has been given to the vendor in order that, for his satisfaction and proper defence, he should be able to have the sample kept in his charge analysed by a greater expert whose certificate is to be accepted by Court as conclusive evidence. In a case where there is denial of this right on account of the deliberate conduct of the prosecution, we think that the vendor, in his trial, is so seriously prejudiced that it would not be proper to uphold his conviction on the basis of the report of the Public Analyst, even though that report continues to be evidence in the case of the facts contained therein.

11. In *Municipal Corporation, Gwalior v. Kishan Swaroop*, AIR 1965 Madh Pra 180 it was held that, where there was delay in launching the prosecution, it deprived the accused of the valuable right to challenge the report of the Analyst in the manner prescribed by S.13 (2) of the Act, and when this right was denied to the accused for no fault of his, but wholly due to the inordinate laches of the prosecution, no weight could be given to the report of the Public Analyst. That decision proceeded on the basis of the value of the report of the Public Analyst being affected by the fact that the accused had been deprived of his right to challenge that report by obtaining a certificate from the Director of the Central Food Laboratory. The report of the Public Analyst, as we have said earlier, does not cease to be good evidence merely because a certificate from the Director of the Central Food Laboratory cannot be obtained. The reason why the conviction cannot be sustained is that the accused is prejudiced in his defence and is denied a valuable right of defending himself solely due to the deliberate acts of the prosecution.''

7. The learned Senior Counsel appearing for the petitioners has also relied upon another judgment in the case of **G. Sivakumar and others Vs. Food Inspector, City Municipal Corporation Of**



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Coimbatore, reported in (2009) 2 MLJ (Crl) 1035, wherein at Paragraph Nos.8 to 10, it has been held as follows:-

'8. A perusal of the complaint and the provisions of 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 analyzed 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.

9. 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.

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 analyzed.'

8. The above said decisions are squarely applicable to the present case on hand, since the sample was taken on 16.03.2009 and the same was sent to the Public Analyst, Food Analysis Laboratory, Chennai and the Public Analyst received the sample on 21.03.2009 and he analysed the same from 08.04.2009 to 13.04.2009 and sent a report on 16.04.2009. Thereafter, Food Inspector sought a consent of the Joint Director, Public Health and Preventive Medicine, Coimbatore. The Joint Director, Public Health and Preventive Medicine, Coimbatore sanctioned consent for prosecution and sanction letter was



received by the Food Inspector. Subsequently, the complaint was presented to the learned Judicial Magistrate No.I, Uthamapalayam, on 25.07.2011, i.e., after a period of 2 years when the shelf life of food product itself is one year i.e., best before 12 months and it came to an end in March 2010.

9.In view of the above facts and the decisions cited supra and taking note of the delay in launching the prosecution, the prosecution launched against the petitioners/accused will cause serious prejudice to them as they have lost their valuable right for sending the sample for second analysis, I have no hesitation to allow the Criminal Original Petition.

10.Accordingly, this Criminal Original Petition is allowed and the proceedings in S.T.C.No.5141 of 2011 pending on the file of the learned Judicial Magistrate No.I, Uthamapalayam, Theni District, are quashed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.I,
Uthamapalayam, Theni District.
2. The Food Inspector,
Cumbum Municipality,
Cumbum,
Theni District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 cc TO Mr.S.Ragaventhre , Advocate in SR No. 89529

rmk/pri

AE/JC/SAR4/14.02.2018/5P/5C

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