



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.11.2017
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.(MD)No.15869 of 2011

And

Crl.M.P.(MD)Nos.1 of 2011 and 1 of 2012

- 1.Shibu
 - 2.Devadoss (Agent)
 - 3.Sunil Kuriyan Mathew (Nominee)
 - 4.Sunil Kuriyan Mathew (for company)
- ... Petitioners/ Accused Nos.1 to 4

Vs.

State Represented by,
The Food Inspector,
(Munsirai Panchayat Union),
Primary Health Center,
Aaruthesam,
Kanniyakumari 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.336/2011 on the file of the Judicial Magistrate No.II, Kuzhithurai, Kaniyakumari 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.336 of 2011 on the file of the learned Judicial Magistrate No.II, Kuzhithurai, Kaniyakumari District and to quash the same.

2.It is averred in the petition that the first petitioner is the Seller, second petitioner is the Agent, third petitioner is the Nominee of the Company and fourth petitioner is for the Manufacturing Company and they were implicated in the food adulteration crime as if they were misbranded.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The food pocket 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 fourth petitioner. It is alleged that the sample has been taken on 24.09.2009 at about 2.50p.m. and the analyst sent a report to the Local Health Authority on 13.10.2009 stating that the sample is misbranded as per the Section 2(ix) (j) of PFA Act, 1954 alleging that declaration for the extraneous not mentioned addition of class II preservative. So the sample is misbranded since there is no label in accordance with the

labeling requirements of Section 2(ix)(j) of PFA Act, 1954. The sanction has been given by the authority to prosecute the accused on 21.01.2011. The sanction letter has been received by the respondent on 29.06.2011. Thereafter, on 11.07.2011 the complaint has been filed before the learned Judicial Magistrate No.II, Kuzhithurai, Kaniyakumari District.

4.It is further alleged that the mandatory provision of 13(2) can be invoked by the accused only if the sample is in a fit condition to send it for Central Food Laboratory. Here the outer cover of the sample has disclosed that the sample has to be used before 2-1/2 months from the date of manufacturing. The date of manufacturing is 05.09.2009. The sample has been taken on 24.09.2009. The complaint has been filed on 11.07.2011. So the case has been filed beyond the period of 2-1/2 months and hence the accused has lost opportunities of invoking mandatory provisions u/s.13(2) of PFA Act, 1954.

5.The learned Senior Counsel appearing for the petitioners would submit that the sample was taken on 24.09.2009. The said sample was sent to the Public Analyst, Food Analysis Laboratory, Guindy, Chennai on 24.09.2009. However, the shelf-life of the said product is only 2-1/2 months and the same was expired on 08.12.2009. Thereafter, the complaint was presented to the learned Judicial Magistrate No.II, Kuzhithurai, Kaniyakumari District and the said complaint was received by the Court on 11.07.2011. 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



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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. ''



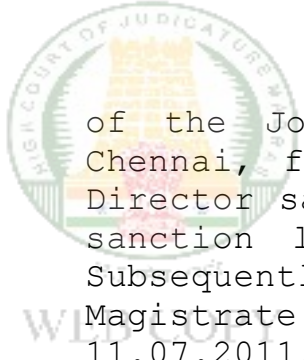
7. The learned Senior Counsel appearing for the petitioners has also relied upon another judgment in the case of **G.Sivakumar and others Vs. Food Inspector, City Municipal Corporation Of Coimbatore**, reported in (2009) 2 MLJ (Cr1) 1035, wherein at Paragraph Nos.8 to 10, it has been held as follows:-

''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 24.09.2009 and the same was sent to the Public Analyst, Food Analysis Laboratory, Chennai and the Public Analyst received the sample on 25.09.2009 and he analysed the same from 01.10.2009 to 08.10.2009 and sent a report on 13.10.2009. Thereafter, Food Inspector sought a consent



of the Joint Director, Public Health and Preventive Medicine, Chennai, for sanction of prosecution on 13.10.2010 and the Joint Director sanctioned consent for prosecution only on 20.01.2011 and sanction letter received by the Food Inspector on 29.06.2011. Subsequently, the complaint was presented to the Judicial Magistrate No.II, Kuzhithurai, Kaniyakumari District, on 11.07.2011, i.e., after a period of 1-1/2 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 September 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.336 of 2011 pending on the file of the learned Judicial Magistrate No.II, Kuzhithurai, Kaniyakumari District, are quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.II,
Kuzhithurai, Kanyakumari District.
2. The Food Inspector,
(Munsirai Panchayat Union),
Primary Health Center,
Aaruthesam, Kanniya Kumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 cc TO Mr.J.Senthil kumar , Advocate in SR No. 89527

rmk/pri

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

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