



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.12.2017

CORAM

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Cr1.O.P. (MD) No.17237 of 2011

and

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

1.A.Balamurugan
2.S.K.M.Animal Feeds and
Foods (India) Limited,
through its Officer-in-charge
A.Balamurugan
Edible Oil Division,
Chavadipalayam Puthur Road,
Nanjaiuthukuli,
Modakurichi,
Erode.

... Petitioners/Accused Nos.2 & 3

Vs.

J.Lawrence
Food Inspector,
Dindigul Municipality,
Dindigul.

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to C.C.No.265/2011 on the file of the learned Judicial Magistrate No.II, Dindigul and quash the same as against the petitioners herein.

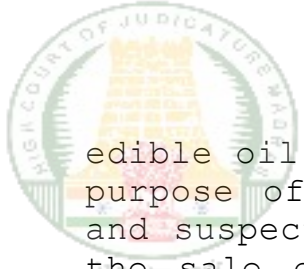
For Petitioners : Mr.A.Sivasubramanian
For Respondent : No appearance

ORDER

This Criminal Original Petition has been filed to quash the C.C.No.265/2011 on the file of the learned Judicial Magistrate No.II, Dindigul.

<https://hcservices.ecourts.gov.in/hcservices> 2 The case of the petitioner is as follows:

The first petitioner is a chemist, working in the second petitioner company. The second petitioner is producing



edible oil in the name and style of Poorna Rice Brand Oil for the purpose of cooking. The respondent visited the A1 retail shop and suspected the quality of the oil to be produced. After paying the sale consideration, the respondent took sample of the Rice Brand Oil packets. Thereafter, the Rice Brand Oil packets were seized and were packed intake by affixing seals as required under the Prevention of Food Adulteration Rules, 1955. Thereafter, the said samples packets were sent through the legal Welfare Officer to the Public Analyst Report on 24.03.2009, wherein it is stated is as follows:

" The above said sample is misbranded, since it is not labelled in accordance with the labelling requirement of Sec 2 (ix) (g) of PFA Act, 1957 and Rule 37 of PFA Rules, 1955".

3. The Joint Director of Public Health and Preventive Medicine granted permission on 26.11.2010 to launch the prosecution as against the petitioners herein and other accused persons. Thereafter, on 10.06.2011, a complaint was filed before the Judicial Magistrate No.II, Dindugul. After receipt of the complaint filed by the respondent, the learned Judicial Magistrate took cognizance of the matter in C.C.No.265 of 2011 and issued summons to the petitioner and other accused persons on 24.06.2011. Thereafter the petitioner received a notice on 26.07.2011. Aggrieved by the same, the petitioners filed this Criminal Original Petition under Section 482 Cr.P.C.

4.The learned counsel appearing for the petitioner would submit that though the samples were taken on 19.02.2009, the complaint was filed only on 10.06.2011 by the respondent. He would further submit that the life of the Rice Brand Oil packets were expired form the date of manufacturing. In the present case, the Rice Brand Oil packets were manufactured in December 2008, and therefore, the life of the sample oil packets could have expired within a period of six months from the date of manufactured. Accordingly, the Rice Brand Oil packets is expired on June 2009. Though, the respondent obtained a Public Analyst Report on 24.03.2009, he sent a letter only on 10.06.2011 to the Joint Director of Food Adulteration Officer to get sanction for conduction prosecution as against the petitioners.

5. The learned counsel for the petitioners further submitted that the petitioners are having rights for asking second analyze report as per the Act. He would further submit that there is a delay of more than two years in filing the complaint under Section 13(2) of the Act.

6. In support of his contention of the learned counsel for the petitioners has also relied upon the judgment of the Hon'ble Apex Court wherein it has held as follows:

"6. In such circumstances, it is appropriate to



consider the decisions relied upon by the learned counsel appearing for the petitioner. In (2012) 2 Supreme Court Cases (Cri) 270 (**Girishbhai Dahyabhai Shah Vs. C.C.Jani and another**), wherein, the Apex Court has held as follows:"

7.Sections 13(1) and (2) of the Prevention of Food Adulteration Act, 1954 read as follows:

13.Report of Public Analyst.- (1) The Public Analyst shall deliver, in such form as may be prescribed, a report to the Local (health) Authority of the result of the analysis of any article of food submitted to him for analysis. (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 person from whom the sample of the article of food was taken institution of prosecution against the person 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 desire, 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 analysed by the Central Food Laboratory."

8.It will be apparent from the above, that only on receipt of the report of the Public Analyst under Sub-Section (1) to the effect that the article of food is adulterated, can a prosecution be launched and a copy of the report could be supplied to the accused, sub-Section (2) also indicates that on receipt of the report the accused could, if he so desired, make an application to the Court within a period of ten days from the date of the receipt of the copy of the report to get the sample of article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.

9.In other words, in the instant case, the appellant was prevented from applying for analysis of the second sample before 17.07.1989, by which time the second sample of curd had deteriorated and was not capable of being analysed as was found in Ghisa Ram referred to above."

In (2009) 1 MLJ (Cr1) 843 (**Bhushan Prasa, Manager-Quality and Regulatory Opertions of the general Mills India Private Ltd., Mumbai and Another Vs. K.Ravichander**), this Court has held as follows:

"The reading of Section 13(2) of the Prevention of Food Adulteration Act, 1954 makes it clear that on receipt of the Analyst's report, the Local Health Authority shall after the institution of prosecution forward the copy of the analyst



report to the accused concerned and to inform such persons that they may make an application before the Court within 10 days from the date of receipt of the copy of the report to get the other portion of the sample of article to be analysed by Central Food Laboratory. But in the instant case, it is seen that the date of manufacture of the sample is 15.10.2003, the date of expiry of the article is dated 15.02.2004, the Food Inspector obtained sanction for prosecution on 12.11.2004 and the complaint was filed only on 10.12.2004 and as such the complaint itself was filed after the expiry of the product, viz., sample as early as on 15.12.2004 and as such the sample has become unfit for further analysis by the Central Food Laboratory and thereby the petitioners have lost their valuable right to get the sample examined by the Central Food Laboratory which resulted in grave prejudice to the accused."

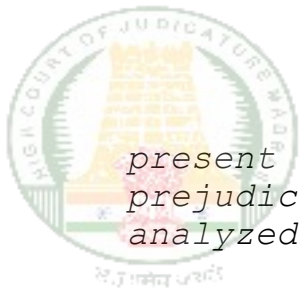
In (2008) 3 MLJ (Cr1) 779 (Baskar Vembu, Indian Inhabitant, Nominee of Cadbury India Lts., Mylapore, Chennai-600 004 and Another Vs. State of Tamil Nadu at the instance of K. Jebaraja Shobana Kumar, Food Inspector, Food & Drugs, Administration, Tamil Nadu), this Court has held as follows:

"In the present case, even if the stand taken by the respondent is accepted that the sample were drawn in the prescribed manner, there is a gross failure on their part in launching the prosecution instantly as enunciated in the Act. Notice under Section 13(2) of Act came to be served on the petitioners only on 04.10.2005 and by that time, food sample had become so decomposed and totally unfit for analysis. Strikingly, there is no explanation forthcoming on the part of the prosecution for such serious lapses. The valuable right of the accused/petitioners is taken away. In such circumstances, the Court has no other option except to quash the entire proceedings pending against the petitioners before the trial Court."

In G. Sivakumar and others Vs. Food Inspector, City Municipal Corporation of Coimbatore reported in (2009) 2 MLJ (Cr1) 1035, wherein, this Court has held as follows:

"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."

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."

7. Heard the learned Government Advocate appearing for the respondent and perused the material available on records.

8. On perusal of the documents, it could be seen that there was a delay in issuing notice. Accordingly, the petitioners were deprived and prevented from sending the sample for analyze before the expiry of the life of the Rice Brand Oil.

9. The judgments of Honourable Apex court decision cited supra is squarely applicable to the case on hand. Therefore, the proceeding in C.C.No.265/2011 on the file of the learned Judicial Magistrate No.II, Dindigul, is liable to be quashed. Accordingly, the same is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions is closed.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.II, Dindigul.

2. J.Lawrence
Food Inspector,
Dindigul Municipality,
Dindigul.

Copy To:-

The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.A.SIVASUBRAMANIAN, ADVOCATE IN SR No. 92497

RMI

TE/SV-MMS/SAR-1 : 05/02/2018 : 5P/6C

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