



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.12.2017

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CrI.O.P.(MD)No.3377 of 2011

and

M.P(MD)No.1 of 2011

1. Manager
Plant Quality Assurance of Marico Industries Limited,
K.C.Marg,
Bandra Reclamation,
Bandra (West),
Mumbai - 400 050.
 2. Marico Industries Limited,
Rang Sharda,
K.C.Marg,
Bandra Reclamation,
Bandra (West),
Mumbai - 400 050.
by its representative D.R.Joshi
- ... Petitioners

Vs.

P.Veeramani
Food Inspector,
Nagercoil Municipality.

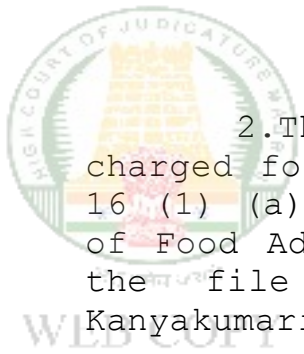
... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings in C.C.No.74 of 2008 on the file of the Judicial Magistrate Court-II, Nagercoil.

For Petitioners	: Mr.A.L.Somayaji Senior Counsel for Mr.Murali
For Respondent	: Mr.K.Anbarasan Government Advocate (Criminal side)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.74 of 2008 pending on the file of the Judicial Magistrate Court-II, Nagercoil.

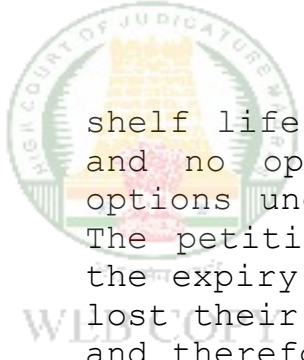


2.The petitioners are arrayed as A2 and A3 and they are charged for the offences punishable under Section 16 (1-A)(i) and 16 (1) (a) (ii) read with 7 (i) (v) and 2 (ia) (j) of Prevention of Food Adulteration Act, 1954, in C.C.No.74 of 2008, pending on the file of Judicial Magistrate Court No.II, Nagercoil, Kanyakumari District.

3.The case of the prosecution is as follows:

The first petitioner/A2, Manager, is the In-charge of Quality Control in the Plant situated at Mumbai and the second petitioner/A3 is a Marketing Company, which marketed "Soya Meal Maker" and the same was manufactured by M/s.Sonic Bichem Extractions Pvt. Ltd., Village Tadoth, Mhow-Neamch Road, Mandsaur, Madhya Pradesh. The said product was sold through the respective distributors. The first accused in the complaint is a resident vendor selling various food items including the products manufactured and marketed by the second petitioner/A3. On 29.04.2003 at 12.15 p.m., the Food Inspector, Nagercoil Municipality, had inspected the shop of the first accused, who is a resident vendor and seized samples of '100% Vegetarian Meal Maker Protein Rich Soya Chunks' weighing 200 grams marketed by M/s. Marico Industries & Ltd. The Food Inspector purchased 3 packets of '100% Vegetarian Meal Maker Protein Rich Soya Chunks' and subjected one packet of the said food sample to Food Analysis Laboratory, which has to be done by the Public Analyst, Chennai. The Food Analysis Laboratory submitted its report on 10.06.2003 stating that *"the sample is adulterated, since it contains the Synthetic colours: Sunset yellow carmeisine, the addition of which is not permitted in the said food as per PFA Rules 1955"*. The Public Analyst had stated that the product marketed by the second petitioner/A3 was adulterated and therefore, proceedings were initiated before the learned Judicial Magistrate No.II, Nagercoil. Taking cognizance of the complaint, the petitioners are before this Court.

4.The learned Senior Counsel appearing for the petitioners would submit that the sample was taken on 29.04.2003, the said sample was sent to the Public Analyst, Food Analysis Laboratory, Chennai and the Public Analyst received the sample on 08.05.2003 and he analysed the sample from 13.05.2003 to 09.06.2003 and sent a report on 10.06.2003. Thereafter, Food Inspector sought a consent of the Joint Director, Public Health and Preventive Medicine, Chennai, for sanction of prosecution on 05.02.2007 and the Joint Director sanctioned consent for prosecution only on 18.12.2007 and sanction letter received by the Food Inspector on 27.02.2008. Thereafter, the complaint was presented to the Judicial Magistrate Court, Nagercoil on 24.04.2008, i.e., after a period of five years. However, the date of manufacturing of the product in question is March 2003 and the shelf life of food product is one year i.e., best before 12 months. Accordingly, the



shelf life of the manufactured food product expired in March 2004 and no opportunity was given to the petitioners to avail the options under Section 13 (2) Prevention of Food Adulteration Act. The petitioners company has not been 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 launched by the first respondent is not sustainable in the eye of law.

5.This Court heard the learned Government Advocate (Criminal side) appearing for the respondent on the above said submissions made by the learned Senior Counsel appearing for the petitioners and carefully considered the submissions and also perused the materials available on record.

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 V. 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 29.04.2003 and the same was sent to the Public Analyst, Food Analysis Laboratory, Chennai and the Public Analyst received the sample on 08.05.2003 and he analysed the same from 13.05.2003 to 09.06.2003 and sent a report on 10.06.2003. Thereafter, Food Inspector sought a consent of the Joint Director, Public Health and Preventive Medicine, Chennai, for sanction of prosecution on 05.02.2007 and the Joint Director sanctioned consent for prosecution only on 18.12.2007 and sanction letter received by the Food Inspector on 27.02.2008. Subsequently, the complaint was presented to the Judicial Magistrate Court, Nagercoil, on 24.04.2008, i.e., after a period of 4 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 2004.

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. Under those circumstances, I have no hesitation to allow the Criminal Original Petition. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.74 of 2008 pending on the file of the Judicial Magistrate Court No.II, Nagercoil, are quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.II,
Nagercoil.

2. The Food Inspector,
Nagercoil Municipality.



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

+1cc to Mr.M.Murali, Advocate Sr.No.90958

LS/SMN2

VB/JC/SAR3/28/12/2017/6P/5C

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04.12.2017