

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Orders Reserved on : 27.02.2017****Orders Pronounced on : 28.03.2017****CORAM:****THE HON'BLE MR.JUSTICE R.SUBBIAH****Cr1.O.P.No.7242 of 2011****and****M.P. (MD) .No.1 of 2011**

1.Thiagarajan

S/o.Malaiyalankara Chettiar,
Door No.55/44, Mengles Road,
Dindigul.

2.Ravikumar (died)

S/o.Perumal Samy (died)and
substituted K.Thangaraj
S/o.S.Kalimuthu,
Nominee A.R.Dairy Food Private Limited,
No.10/5C Madurai Road,
Begumbur, Dindigul.3.M/s.A.R.Dairy Food Private Limited,
No.10/5C Madurai Road,
Begumbur, Dindigul.

... Petitioners/Accused

Vs.

Food Inspector,
Dindigul Municipality,
Dindigul.

... Respondent/Complainant

Prayer: Petition filed under Section 482 of Cr.P.C., praying to call for the records relating to complaint in C.C.No.376 of 2004, dated 12.08.2004 on the file of the learned Judicial Magistrate No.II, Dindigul and to quash the proceedings.

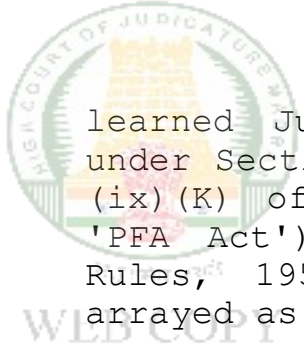
For Petitioners : Mr.C.Ramachandran

For Respondent : Mr.C.Mayilvahana Rajendran, APP

* * * * *

ORDER

This Criminal Original Petition has been filed by the petitioners seeking to quash the criminal proceedings in C.C.No.376 of 2004 pending against them, on the file of the



learned Judicial Magistrate No.II, Dindigul, for the offences under Sections 7(i), 7(ii), 16(1)(a)(i) r/w 2(ia)(M) and Section 2(ix)(K) of Prevention of Food Adulteration Act, 1954 (in short 'PFA Act') and Rule 32(f) of Prevention of Food Adulteration Rules, 1955 ('PFA Rules'). The petitioners herein have been arrayed as accused 1 to 3 respectively in the above said case.

2.The brief case of the prosecution is as follows_

2-1.The respondent/complainant is the Food Inspector attached to the Dindigul Municipality. On 14.12.2002 at about 11.15 am, the respondent, Food Inspector, went to the business premises of one M/s.Ambal Stores at Dindigul. After disclosing his identity, he collected the sample of milk in three bottles, measuring 250 ML each and he added necessary preservative in the sample bottles. Thereafter, he despatched one of the samples bottle to the Public Analyst for analysis, as per the procedure laid down under Rule 16 of the PFA Rules. The Local Health Authority, Dindigul received analyst report in Form III from the Public Analyst, in which it was stated that the Food Sample on analysis was found to contain 8.0% Milk Solid non fat, as against 8.5%, the standard prescribed for Milk in the PFA Rules; further, there was no label declaration in the food sample as provided under Rule 32(f) of PFA Rules; thus, the Form No.III reported that the milk sent for analysis was adulterated. The Form No.III report of the Public Analyst was received by the respondent/complainant through the Local Health Authority on 30.01.2003. Thereafter, as per Section 13(2) of PFA Act, u/s 20 of the PFA Act, the respondent/complainant obtained a sanction from the Joint Director of Health Services, Chennai, authorizing him to launch prosecution against the accused. On receipt of the sanction order, the respondent/complainant filed a private complaint before the learned Judicial Magistrate No.2, Dindigul in C.C.No.376/2004 on 12.08.2004. Since the 3rd accused was the manufacturer and the 2nd accused was nominated by the 3rd accused, they were also prosecuted.

2-2.Thereafter, a Notice under Section 13(2) of PFA Act was sent to all the accused on 19.08.2004 informing them that if the accused are so desired, they can move the Court of Judicial Magistrate No.II, Dindigul for the purpose of having the other portion of the sample analysed by the Central Food Laboratory. Accordingly, the 2nd petitioner/A2 filed a petition under Section 13(2) of the Act before the learned Judicial Magistrate on 25.08.2004 within 10 days of receipt of the notice from Local Health Authority and the required fee was also paid to the Court. Then, one of the other two bottles kept by the Local Health Authority, Dindigul was sent to the Court. The learned Magistrate sent the sample to the Director of Central Food Laboratory, Kolkatta for analysis report as per Section 13(2)(B) of the Act. But, the Director of the Central Food Laboratory, Kolkatta, vide his letter dated 05.10.2004 sent a memo to the learned Judicial



Magistrate No.II, Dindigul informing that Tamil Nadu was under the jurisdiction of Central Food Laboratory, Pune and as such, the sample in question forwarded to their laboratory by railway parcel could not be accepted. The Director of Central Food Laboratory, Kolkatta returned the demand draft and the railway bill. Thereafter, the learned Judicial Magistrate No.II, Dindigul in his letter dated 12.10.2004 requested the Station Manager, Southern Railway, Dindigul Railway Station to make necessary arrangements to return back the railway parcel addressed to Central Food Laboratory, Kolkatta. But, till date the parcel was not received by the Court of the Judicial Magistrate No.II, Dindigul and no further step was taken for sending the other portion of the sample to the Central Food Laboratory, Pune for analysis and report.

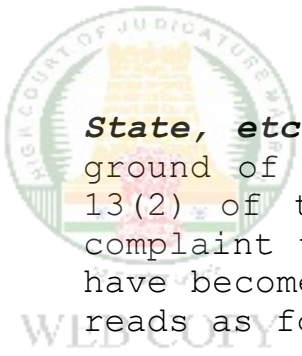
2-3. Meanwhile, the learned Judicial Magistrate No.II, Dindigul commenced the trial and examined P.W.1 (respondent/complainant) and recorded his evidence in chief on 29.10.2010. On 12.11.2010, the learned Judicial Magistrate No.II, Dindigul questioned the accused and framed charges under Section 7 (i), 7(ii), 16(1) (a) (i) r/w 2(ia) (M) and Section 2(ix) (K) of Prevention of Food Adulteration Act, 1954 (in short 'PFA Act') and Rule 32(f) of Prevention of Food Adulteration Rules, 1955 ('PFA Rules'). Now, challenging the said criminal proceedings in C.C.NO.376 of 2004, the petitioner/accused have filed the present petition.

3. I have carefully heard the learned counsel for the petitioners as well as the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

4. It is submitted by the learned counsel for the petitioners that there is an inordinate delay in filing the complaint by the respondent/complainant before the Court below; the complaint was filed by the complainant, after a lapse of 1 year 8 months from the date of taking the sample milk, which would have decomposed even if the preservative is added. Moreover, the sample was wrongly sent to the Central Food Laboratory at Kolkatta, which is not the fault of the petitioners/accused. Thereafter, the sample was not received by the Court below and no step was taken to send the sample to the Central Food Laboratory at Pune, which is having the jurisdiction. Now, the petitioners/accused have been deprived of their right to have the analysis report from the Central Food Laboratory as provided under Section 13(2) of the Prevention of Food Adulteration Act.

5. In this regard, the learned counsel for the petitioners/accused also relied upon the decision of this Court reported in **2005-2-L.W. (Cr1.) 598 [C.Suresh & Others Vs. The**

<https://hccourtsonline.org/cases>



State, etc], and submitted that in an identical situation, on the ground of delay of 10 months in sending the notice under Section 13(2) of the Act along with the report, this Court quashed the complaint therein stating that by that time, the milk sample would have become decomposed. The relevant portion in the said judgment reads as follows

"7. In the instant case, the sample of toned milk was taken on 22.07.2003 and despatched to the Government Analyst on 23.07.2003. Pursuant to an information that the toned milk food sample was broken in transit, the second portion of the sample was sent, and on analysis, a report was received on 07.08.2003. The same was received by the Local Health Authority on 28.08.2003. But, the written consent for launching the prosecution was received by the Local Health Authority on 23.01.2004, and the same was received by the Food Inspector on 30.01.2004. The complaint filed on 31.03.2004 was returned, and the same was re-submitted on 23.04.2004. The same was taken on file on 13.05.2004. It would be abundantly clear that the sample of toned milk was taken on 22.07.2003, the Food Inspector presented the complaint on 31.03.2004, and after it was taken on file on 13.05.2004, notice under Section 13(2) was issued to the petitioners on 18.05.2004. Thus, it would be quite evident that a notice along with the report of the analyst was sent on 18.5.2004, after an interval of nearly 10 months. By that time, the milk sample would have become decomposed. Thus, the right of the accused available under Section 13(2) has been frustrated, due to the inordinate delay and inaction on the part of the prosecution."

The dictum laid down in the above said decision would squarely apply to the facts of the present case also. In the case on hand also, there is an inordinate delay of 1 year 8 months in lodging the complaint. Further, as pointed by the learned counsel for the petitioners, even if the milk sample would have been sent for analysis, by that time, it would have become decomposed. The petitioners/accused have been deprived of their right to have the analysis report from the Central Food Laboratory as provided under Section 13(2) of the Prevention of Food Adulteration Act. Considering the facts and circumstances of the case, I am of the opinion that there is no useful purpose is going to be served if the trial is allowed to continue. It is a fit case to quash the

6. Accordingly, the Criminal Original Petition is allowed as



prayed for and the impugned criminal proceedings are quashed.
Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To,

1.The Judicial Magistrate-II,
Dindigul.

2.Food Inspector,
Dindigul Municipality,
Dindigul.

+1cc to Mr.C.Ramachandran, Adocate in SR.No:18866

SSV

AE/JC/10.05.2017/5P/4C

order
in
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and
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