

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.5653 of 2011

ORDER:

This petition is filed seeking for quashment of the proceedings against the petitioners, who are A3 and A4, in CC.No.454 of 2010 on the file of the Additional Judicial Magistrate of First Class, Sullurpet, SPSR Nellore District.

2. Heard the counsel for the petitioners and the Public Prosecutor appearing for the respondent.

3. The complaint was filed by the Food Inspector on behalf of the State, facts of which, in brief, are as follows:

On 20.08.2009 at about 10:40 hours, the Food Inspector inspected the shop of A1, who was present by that time. The Food Inspector disclosed his identity and the purpose of visit and secured one mediator and during inspection sealed 23 bottles of Kisan Mixed Fruit Jam of 500 grams each with label numbers in a cupboard was kept for sale for human consumption. The Food Inspector suspected the quality of the same and purchased three bottles by paying the appropriate price and under due receipt. The Food Inspector issued Form-VI notice to A1, disclosing his intention to take the samples and send the same to the public analyst. The samples were divided into three parts. One part of the sample was sent to FSL on 21.08.2009. The FSL report was dated 26.10.2009 and the complaint was filed on 18.08.2010. Section 13(2) notice was admittedly sent on 05.01.2011. The shelf life of the sample is 12

months and it expired in the month of April, 2010. Hence, by the date of filing of the complaint itself, the shelf life of the sample is over.

4. There can be no disagreement with the opinion of this Court that the quality of the sample sent by the complainant and the quality of the sample sought to be sent by the accused for second opinion should not vary. That would be possible only when much time is not lost between the period of sending the first sample and the second sample. Such valuable right offered to the accused under Section 13(2) of the Prevention of Food Adulteration Act, 1954 (for short, "the Act") would get defeated if it is otherwise. The delay in the complaint would result in the two dates getting distanced thereby rendering the exercise of sending any sample for second opinion futile. Apart from the above, the contention is that the accused are not the nominees. Hence, the complaint fails on two grounds.

5. There is no denial of the dates that were submitted by the petitioners herein. In view of the above, there would not be any purpose served by permitting the prosecution to proceed with the case and it would result in abuse of process of law.

6. The counsel also relies on the judgment of this Court in *R.Hari Hara Reddy and another v. State of Andhra Pradesh*¹, wherein it was held that the inordinate delay in filing the complaint would deprive the valuable right offered on the accused under Section 13(2) of the Act. Because of the violation

¹ 2017(2) ALD (CrL.) 662

of the mandatory requirement, no purpose would be served by continuing the prosecution against the accused.

7. The decision of the Supreme Court in *State of Haryana v. Unique Farmaid (P) LTD.*² is also on the same lines. The contention therein that in the absence of the statutory time limit the shelf life of the sample was not relevant, was rejected.

Relevant portion at paragraphs 11 and 12 observed as follows:

“11. Sub-section (1) of Section 30 which appears to be relevant only prescribes in effect that ignorance would be of no defence but that does not mean that if there are contraventions of other mandatory provisions of the Act, the accused have no remedy. Procedure for testing the sample is prescribed and if it is contravened to the prejudice of the accused, he certainly has right to seek dismissal of the complaint. There cannot be two opinions about that. Then in order to safeguard the right of the accused to have the sample tested from Central Insecticides Laboratory, it is incumbent on the prosecution to file the complaint expeditiously so that the right of the accused is not lost. In the present case, by the time the respondents were asked to appear before the Court, expiry date of the insecticide was already over and sending of sample to the Central Insecticides Laboratory at that late stage would be of no consequence. This issue is no longer *res integra*. In *State of Punjab v. National Organic Chemical Industries Ltd.* [(1996) 11 SCC 613] this Court in somewhat similar circumstances said that the procedure laid down under Section 24 of the Act deprived the accused to have sample tested by the Central Insecticides Laboratory and adduce evidence of the report so given in his defence. This Court stressed the need to lodge the complaint with utmost dispatch so that the accused may opt to avail the statutory defence. The Court held that the accused had been deprived of a

² (1999) 8 SCC 190

valuable right statutorily available to him. On this view of the matter, the court did not allow the criminal complaint to proceed against the accused. We have cases under the Drugs and Cosmetics Act, 1940 and the Prevention of Food Adulteration Act, 1954 involving the same question. In this connection reference be made to decisions of this Court in *State of Haryana v. Brij Lal Mittal* [(1998) 5 SCC 343] under the Drugs and Cosmetics Act, 1940; *Municipal Corporation of Delhi v. Ghisa Ram* [AIR 1967 SC 970]; *Chetumal v. State of Madhya Pradesh & Anr.* [(1981) 3 SCC 72] and *Calcutta Municipal Corporation v. Pawan Kumar Saraf*, [(1999)] 2 SCC 400] all under the Prevention of Food Adulteration Act, 1954.

12. It cannot be gainsaid, therefore, that the respondents in these appeals have been deprived of their valuable right to have the sample tested from the Central Insecticides Laboratory under sub-section (4) of Section 24 of the Act. Under sub-section (3) of Section 24 report signed by the Insecticide analyst shall be evidence of the facts stated therein and shall be conclusive evidence against the accused only if the accused do not, within 28 days of the receipt of the report, notify in writing to the Insecticides Inspector or the Court before which proceedings are pending that they intend to adduce evidence to controvert the report. In the present cases Insecticide Inspector was notified that the accused intended to adduce evidence to controvert the report. By the time the matter reached the court, shelf life of the sample had already expired and no purpose would have been served informing the court of such an intention. The report of the Insecticide Analyst was, therefore, not conclusive. A valuable right had been conferred on the accused to have the sample tested from the Central Insecticides Laboratory and in the circumstances of the case accused have been deprived of that right, thus, prejudicing them in their defence.”

8. In the light of the above legal position and also the reasons mentioned by this court in the aforementioned paragraphs, the Criminal Petition is allowed and the proceedings in CC.No.454 of 2010 on the file of the Additional Judicial Magistrate of First Class, Sullurpet, SPSR Nellore District, against the petitioners, shall stand quashed.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

December 13, 2017
LMV

T. RAJANI, J

