

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL PETITION No.7235 of 2011

ORDER:

This criminal petition is filed under Section 482 of the Criminal Procedure Code to quash the proceedings in STC.No.5 of 2010 on the file of the Judicial Magistrate of First Class, Penukonda, Anantapur District.

2. The petitioners herein are accused Nos.2, 3 and 4 and complainant is the State of Andhra Pradesh, represented by Food Inspector, Division II, Office of the Gazetted Food Inspector, Anantapur, who has filed the complaint against accused Nos.1 to 4 for the offences under Section 7(i), 2(ia)(m) and punishable under Section 16(1)(a)(i) of Food Adulteration Act, 1954.

3. The contents of the complaint are that the accused No.1 is the Proprietor of a Kirana Shop situated at Main Bazar, Guttur Village, Penukonda Mandal, Anantapur District, who stored and sold adulterated Good Life Pure Cow Milk (tetra pack) manufactured by accused No.4. Accused Nos.2 and 3 are the Divisional Managers (Dairy) and Nominee and responsible persons to conduct the business of accused No.4.

4. The case of the prosecution is that on 06.03.2009 at 6.30 P.M., the Food Inspector, Anantapur and his officials visited the shop of accused No.1 and conducted inspection and collected three samples of milk and obtained cash receipt. On the packets, the date of manufacture was shown as 27-2-2009 and best for use before 90 days from the date of manufacture. The officers sealed

the samples as per the procedure and affixed labels. On 7-3-2009 one sample was sent to the Public Analyst, State Food Laboratory, Hyderabad and remaining two samples were kept with the Gazetted Food Inspector, Ananthapur. On 18-3-2009, the Gazetted Food Inspector, Anantapur has received a letter from the Public Analyst stating that the sample was damaged. In pursuance thereof, on 20-3-2009, another sample was sent to the Public Analyst. It is stated that on 26-5-2009 the Public Analyst Report dated 2-5-2009 was received by Lw.1-the Food Inspector, Division II, Office of Gazetted Food Inspector, Anantapur. In the report, the Public Analyst opined that “the sample does not conform to the standard of Yeast & Mould Count and is therefore adulterated.”

5. On 2-6-2009, Lw.1 sent a reminder letter to the accused No.4 to furnish certain particulars with regard to the sample. On 29-10-2009, Lw.1 received particulars from accused No.4, stating that accused Nos.2 and 3 are the nominees and responsible persons on behalf of the company vide their letter dated 24-10-2009. On 25-8-2009, Lw.1 submitted detailed report to the Director and Food (Health) Authority, Hyderabad through the Gazetted Food Inspector and Local (Health) Authority, Anantapur. Further, on 27-12-2009 Lw.1 submitted the information of Manufacturer and nominee particulars to the Director of Food (Health) Authority, Hyderabad for further proceedings. On 20-3-2010, Lw.1 received the letter dated 10-3-2010 from the Director and Food (Health) Authority, Hyderabad according written consent for institution of prosecution against the accused Nos.1 to 4 for the offence committed under Section 7(i), 2(ia)(m) and

punishable under Section 16(1)(a)(i) of Food Adulteration Act, 1954 for sale of adulterated Good Life Pure Cow Milk (tetra pack) bearing Code and Serial No.34/ATP/DII/15702/2009. In pursuance thereof, the complainant-Lw.1 has filed the complaint before the Court below and the same has been taken on file as STC.No.5 of 2010.

6. Heard the learned counsel for the petitioners and the learned Public Prosecutor representing the State of Andhra Pradesh.

7. The sanction for prosecution was issued after 60 days from the date of report of Public Analyst and without issuing mandatory notice under Section 13(2) of the Prevention of Food Adulteration Act, 1954 to the accused. The complainant purchased the milk (tetra pack) on 6-3-2009 and on the label of milk packet, it is printed the date of manufacturing as 27-2-2009 and best for use before 90 days. It clearly indicates that the milk is fit for consumption and for the purpose of analysis, the date of expiry is 27-5-2009. Section 13(2) of the Prevention of Food Adulteration Act, 1954 enables the authorities to exercise their statutory right within 90 days i.e., on or before 27-5-2009. The complainant filed the complaint on 17-4-2010 and it is beyond 90 days and after expiry of self life of the food product. Initiating any action after 27-5-2009 is in clear violation of Section 13(2) of the Act and depriving the right conferred upon the accused under the statute. It became necessary for the Departmental Officers to act in a pragmatic manner in the light of the duration stated in the statute. As the statute provides a reasonable opportunity upon the trader to

prove his innocence within the four corners of the statute and the officers cannot deprive the legitimate right conferred upon them by the statute. The opportunity of communication in writing is necessary by duly intimating the trader to know about the standards of food product, which the trader is dealing with. If a reasonable opportunity is not accorded to the trader and if the doors are shut, it amounts to clear violation of principles of natural justice and the action of the authorities ends in arbitrariness.

8. A similar provision i.e., Rule 27 (1) of the Andhra Pradesh (Grant of licence to sell Toddy, Conditions of Licence and Tapping of Excise Trees) Rules 2007, deals with drawl of three samples and sending the same to the Regional Excise Laboratory of Excise Department and to proceed against the licensee as per law after obtaining the analysis report. The statute provides for communication to be made by the authorities to the licensee to get one of the samples tested and analysed if desired in the event of the correctness of analysis report of the Excise Laboratory is doubted. A fair chance is accorded under the statute and the communication in writing becomes mandatory and in the absence of the communication in writing and taking further action amounts to depriving of right conferred upon the licensee under the statute.

The relevant provision is extracted as under:-

“27. (1) Drawal of the samples:-

Any Prohibition & Excise Officer, not below the rank of Sub-Inspector of Prohibition & Excise or Food Inspector appointed under the prevention of Food Adulteration Act, 1954, shall be competent to inspect at any time and to take samples from the toddy possessed by the Licensee or any other person. for the purpose of analysis. Such Officer shall take three (3) samples in the presence of the licensee or his Agent or other person in charge of the Licenced premises or who is found selling toddy in the said premises. After conducting a panchanama. The samples shall be sent to the Court having jurisdiction with a requisition

to send, one of the samples expeditiously to the Chemical Examiner of the Prohibition & Excise Department having jurisdiction in the region, in which licensed premises are situated or to any independent laboratory as instructed by the Commissioner for Chemical Examination. If the sample sent to the Chemical Examiner/Laboratory is damaged in transit or otherwise before the completion of the analysis, the Court may be requested by the concerned officer to send a second sample to the Chemical Examiner/Laboratory. If the Licensee desires that the sample should be sent for analysis, to an independent laboratory he may apply to the prohibition and Excise superintendent within three (3) days of the drawl of sample. In case, where Licensee or any one of his Nowkarnama holder was not present at the time of taking of sample, the Licensee may apply to the concerned Prohibition & Excise Superintendent within seven (7) days from the date of communication of drawl of sample. The application should be accompanied by demand draft for an amount sufficient to cover the analysis charges. If no such application is filed within the requisite time limit, the Licensee shall not be entitled to seek analysis thereafter. On receipt of the application within the time and with requisite Demand Draft, the concerned officer shall request the court to send a sample to the independent laboratory;

Provided that any adverse analysis report will constitute sufficient cause for the purpose of exercising the power under Section 31 of the Act, by the authority granting licence or permit to safeguard the public health.

Provided further that the officer requesting the court to send a sample to an independent laboratory on the application of the Licensee has to indicate the name of the independent laboratory to the Court

Explanation: Independent Laboratory means any laboratory over which the Government of Andhra Pradesh has no control.

(2) Manner of Packing, Sealing, Labeling and Addressing the Samples:-

All samples of toddy taken under sub-rule (1) shall be packed, fastened and sealed in the following manner, namely:-

(a) The stopper shall first be securely fastened so as to prevent relevant leakage of the contents in transit.

(b) The bottle, jar or other container shall then be completely wrapped in fairly strong thick paper. The ends of the paper shall be neatly folded in and affixed by means of gum or other adhesive.

(c) A proper slip of the size that goes round completely from the bottom to top of the container bearing the signature and code of the inspecting officer, shall be pasted on the Wrapper, the signature or the thumb impression of the person from whom the sample has been taken being affixed in such a manner that the paper slip and the wrapper both carry a part of the signature or thumb-impression:

Provided that in case, the person from whom the samples have been taken refuse to affix his signature or thumb-impression, the signature or thumb-impression of the witnesses shall be taken in the same manner;

(d) The paper cover shall be further secured by means of strong twine or thread both above and across the bottle, jar or other container, and the twine or thread shall then be fastened on the paper cover by means of sealing wax on which there shall be at least four distinct and clear impressions of the seal of the sender, of which one shall be at the top of packet, one at the bottom and the other two on the body of packet. The knots of the twine or thread shall be covered by means of sealing wax bearing the impression of the seal of the sender.

(3) Manner of Dispatching the Samples:-

The samples after following procedure laid down in sub rule (2) shall be forwarded to the Court as specified in sub rule (1) immediately after the drawl of the samples but not later than the succeeding day by any suitable means. A copy of the specimen impression of the seal, used to seal the sample shall be sent to the Chemical Examiner separately by registered post or delivered to him or to any person authorized by him.

(4) Contents of one or more similar sealed containers having identical labels to constitute the quantity of a sample:-

Where toddy is sold or stocked for sale or for distribution in sealed containers having identical labels of declaration, the contents of one or more such containers as may be required to satisfy the minimum quantity necessary for conducting analysis as deemed sufficient by the Chemical Examiner shall be treated as part of the sample. The quantity of sample sent for analysis shall be considered as sufficient unless the Chemical Examiner reports to the contrary.

(5) Spot Test by Prohibition & Excise Officers:-

It shall be lawful for an officer of and above the rank of Prohibition and Excise Sub Inspector to subject the toddy or any other substance that is available in the Licenced premises or in its vicinity to Chemical Examination by a test conducted on the spot in order to find out prima facie whether the toddy has been adulterated with dugs or chemicals in order to enhance its intoxicating quality.

Provided that it shall be the responsibility of the Licensee to report forthwith in the nearest Prohibition and Excise Station any possession, storage or sale of toddy by unauthorized persons within the area/locality where he holds licence."

9. The authorities confer the privilege of conducting business upon the licencees/traders and in the process of implementing the regulatory measures, their action of performing duties should not be a colourable exercise, violating the rights conferred under the constitution of India.

10. The rights conferred under Section 13(2) of the Act in issuing the statutory notice in view of the long delay have been infringed and thereby, the accused lost the valuable right in getting the

sample analysed by the laboratory of his choice i.e., Central Food Laboratory as indicated under the statute.

11. In the similar circumstances, this Court in **P.Chandrakanth Vs. State of Andhra Pradesh**¹, **Instant Foods, Chennai Vs. State of Andhra Pradesh**², **Girishbhai Dahyabhai Shah Vs. C.C.Jani and another**³ and Criminal Petition No.4762 of 2006, dated 01.11.2006 dealt in detail with regard to the valuable right conferred upon the trader under the statute and the manner in which the authorities have to implement the law in drawal of samples and after obtaining samples to proceed with the prosecution and in the said process, no prejudice would be caused.

12. In the light of the above discussion, this Criminal Petition is allowed and the proceedings in STC.No.5 of 2010 on the file of the Judicial Magistrate of First Class, Penukonda, Anantapur District are quashed. As a sequel, the Miscellaneous Petitions pending if any shall stand closed.

T.AMARNATH GOUD

Date: -11-2017
Shr.

¹ 2002 (2) ALD Criminal 113 AP

² 2007 (1) ALD Criminal 316 AP

³ 2009 (15) SCC 64