

THE HON'BLE MS. JUSTICE J. UMA DEVI

CrI.P.No. 2088 of 2011

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.243 of 2009 on the file of the I-Additional Judicial First Class Magistrate, at Kothagudem, Khammam district in which cognizance is taken for the offences under Section 7(i) and 2 (ia) (m) and 14-A punishable under Section 16(1)(a)(i) of Prevention of Food Adulteration Act, 1954 (for short “the Act”).

2. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor, representing the State.

3. The petitioners herein are A2 and A3 in C.C. No. 243 of 2009. They are the manufacturers of the product involved in the case, which is “Nandini Good Life Cow’s Pure Milk” and the said product is lifted from the shop of A1-Kukkadapu Rama Rao, i.e., M/s. Sri Kanaka Durga Kirana Merchant, Main Road, Chandrugonda village and Mandal, Khammam district.

4. The facts which are not in dispute are that the Food Inspector inspected the premises of A1 and lifted the sample of the product on 4.6.2008 after complying with the statutory requirements. The sample so seized was sent to the Public Analyst on 5.6.2008 and on 19.04.2010 the Public Analyst gave his report opining that the sample is adulterated. Consent to launch prosecution against the accused was issued by the competent authority on 25.11.2010. Even before that, i.e. by 10.11.2008 the shelf life of the product was expired. The complaint was filed on

6.3.2009. Notice under Section 13(2) of the Act was not given to the accused immediately after obtaining of the written consent dated 25.11.2008. All these things happened long time after the expiry of the shelf life of the product.

5. The contention of the petitioners is two fold, firstly, the petitioners/A2 & A3 being manufacturers cannot be prosecuted along with A1; and secondly, due to the delay on the part of the complainant, the valuable right of defence available to the petitioners is denied, as there is no chance of getting the product re-analysed or re-tested since the shelf life of the product had expired by 10.11.2008 much prior to the filing of the complaint.

6. The learned Additional Public Prosecutor submits that right of the petitioners to defend them from the case has not been infringed or curtailed as contended by them since no application as such is filed by them within the stipulated period to send the sample for re-analysis.

7. The petitioners, in support of their aforementioned contentions, have relied on the judgment of a Division Bench of this Court in **Mathew Xavier v. State of A.P.**¹, which was rendered by following the ratio laid down by the Supreme Court in **Omprakash Shivprakash V. K.I.Kuriakose** (2000 (1) ALD (CrI) 633 (SC) and **Municipal Corporation of Delhi V. R.Sahai** (AIR 1979 S.C., 1544).

8. Before commencement of the discussion on the issue in controversy, I think it appropriate to extract the relevant provisions of law. Section 14-A and 20-A of the Act, which read as under:-

¹ 2009 (2) ALD (CrI) 685 (A.P.)

“14-A. Vendor to disclose the name etc., of the person from whom the article of food was purchased – Every vendor of an article of food shall, if so required, disclose to the food inspector the name, address and other particulars of the person from whom he purchased the article of food.

20-A. Power of Court to implead manufacturer, etc. – Where at any time during the trial of any offence under this Act alleged to have been committed by any person, not being the manufacturer, distributor or dealer of any article of food, the Court is satisfied, on the evidence adduced before it, that such manufacturer, distributor or dealer is also concerned with that offence, then, the Court may, notwithstanding anything contained in sub-Section (3) of Section 319 of the Code of Criminal Procedure, 1973, or in Section 20 proceed against him as though a prosecution had been instituted against him under Section 20.”

9. The law on this subject is well settled. A Division Bench of this Court in ***Mathew Xavier’s*** case (1st supra) on referring to the decisions of the Supreme Court in ***Omprakash Shivprakash v. K.I.Kuriakose*** (2000 (1) ALD (CrI) 633 (SC) and also in ***Municipal Corporation of Delhi v. R.Sahai*** (AIR 1979 S.C., 1544) laid down the law on the subject as under:-

“The above decision of the Supreme Court puts the issue beyond any pale of doubt. While a joint trial of the manufacturer, distributor, dealer and vendor is permissible, but none the less if the link is missing amongst each of them the only recourse that is available is to examine the evidence that has come on record during the trial, which if permits the manufacturer, distributor and dealer also to be prosecuted, then the power under Section 20A has got to be exercised. It has therefore to be understood

that at the first instance, unless the Food Inspector has picked up the sample for analysis, right from the place where it is manufactured itself, he has to necessarily prosecute the manufacturer or dealer or distributor or agent only upon prima facie establishing their link to the alleged adulterated food article which has been sold or offered for sale. Therefore, at the initial stage itself the manufacturer or distributor or dealer cannot be straight away prosecuted on the strength and basis of the information gathered in terms of Section 14A of the Act.”

10. The learned Counsel appearing for the petitioners has also placed on record a decision of the learned Single Judge of this Court in Criminal Petition No.5050 of 2010, dated 10.08.2010, the facts of which are similar to the case on hand.

11. In view of the aforementioned settled principles of law, I have no hesitation to hold that launching of the prosecution against the petitioners herein, who are said to be the manufacturers of the product along with the retailer is unsustainable in law.

12. The other contention of the petitioners is that the complaint is liable to be quashed for another reason that the delay caused in filing of the complaint grossly affected their right of defence provided to them under the statute since they lost the opportunity of getting the product re-analysed by sending it to the Central Food Laboratory within shelf life of the product.

13. The learned counsel for the petitioners submits that in similar several cases this Court quashed all further proceedings on the ground that the complaint was filed long time after expiry of shelf life of the

product and because of the delay in lodging of the proceedings, the accused lost the opportunity of sending the sample for re-analysis by sending to the Central Food Laboratory for examination.

14. Similar view was taken by the learned single Judge of this Court in CrI.P.No.8407/2012, dated 25.11.2014. The learned single Judge, upon referring to various authorities of this Court and the Supreme Court, held that due to inordinate delay in filing the complaint the valuable right of defence conferred on the accused under Section 13(2) of the Act was grossly infringed.

15. In CrI.P.No.4237/2012 a learned single Judge of this Court on 23.07.2014 held that due to the delay, if any, caused in filing of the complaint, no useful purpose will be served by sending the sample to the Central Food Laboratory and accordingly, all further proceedings against the accused in STC No.59/2011 on the file of Judicial First Class Magistrate, Kaikaluru were quashed. In this case also, the product lifted was milk and it was manufactured by the petitioners herein, namely, “Nandini Good Life Cows Pure Milk.

16. Same opinion was expressed by the learned Single Judges of this Court in CrI.P.No.3819/2011, dated 23.9.2015 and CrI.P.No. 777 of 2011, dated 7.10.2015

17. In the instant case also the shelf life of the product expired much prior to the launching of the proceedings against the petitioners. The petitioners were deprived of their right to defend provided under Section 13 (2) of the Act by getting the sample re-analysed due to the delay caused in serving of the notice. Applying the principles of law laid

down in the aforementioned cases, the proceedings initiated against the petitioners by the complainant can be quashed.

18. In the light of the aforementioned discussion made by me, the Criminal Petition is hereby allowed and the proceedings in C.C.No.243 of 2009 on the file of the I-Additional Judicial First Class Magistrate, at Kothagudem, Khammam district against the petitioners/A2 & A3 are hereby quashed.

Miscellaneous applications, if any pending, shall stand closed.

Dt.12.10.2017
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JUSTICE J. UMA DEVI