

**IN THE HIGH COURT OF JUDICATURE FOR THE STATE OF TELANGANA
AND ANDHRA PRADESH AT HYDERABAD**

**WEDNESDAY THE ELEVENTH DAY OF OCTOBER
TWO THOUSAND AND SEVENTEEN**

PRESENT

HONOURABLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL PETITION NO. 11908 OF 2011

Between:

M/s. Swastiks Masalas Pickles &
Food Products Pvt. Limited,
Bommasandra Industrial Area,
Anekal Taluk, Bangalore,
Rep. by its Manager, T. Ramulu Petitioner/A-4

V/s.

The State of Andhra Pradesh
Represented by its Food Inspector,
O/o.Gazetted Food Inspector,
Ananthapur District.
Represented by its Public Prosecutor
High Court, Hyderabad. Respondent/Complainant

Counsel for Petitioner

V.V. N. Narayana Rao

Counsel for Respondent

:

Public Prosecutor

The court made the following

:

[order follows]

HONOURABLE SRI JUSTICE P. KESHAVA RAOCRIMINAL PETITION NO. 11908 OF 2011**ORDER:**

Heard the counsel for the petitioner and the learned Public Prosecutor for the respondent.

2. In the present Criminal Petition, the petitioner, who is arrayed as A-4, challenging the proceedings lodged against him in CC.No. 81 of 2006 on the file of the Court of Judicial Magistrate of First Class, Ananthapur, Ananthapur district, registered for the offences punishable under section 16 [1] [a] 7 [i] and [v] 2 (ia) (I) of Prevention of Food Adulteration Act, 1954 and Rule 50 of PFA Rules, 1955 and the same be quashed.

3. The factual matrix of the present case is that the Food Inspector on 15/9/2001 at about 11:00 a.m. has taken sample of MTR instant Gulab Jamun mix from the premises of A-1 and sent it for the State Public Analyst. On examination, Public Analyst submitted a report on 22/10/2001 stating that the sample contains "Salmonella", a pathogenic organism, and is, therefore adulterated.

4. After submission of the report by the Public Analyst, on 18/5/2002 the prosecution is launched. In 2006, the cognizance of the offence was taken and in 2011 summons are issued. It is relevant to mention that Swastiks Super Fine Instant Gulab Jamun Mix is best before twelve months from the date of manufacture. In the present case, the date of manufacture of Gulab Jamun mix in the month of August 2001. However, though the Public Analyst report is submitted on 22/10/2001, notice under section 13 [2] enabling into send the second sample for the Central Food Laboratory is denied. Whereby and whereas his valuable right to prove that he is not guilty of the offences charged against him is denied. He has also contended that the Gulab Jamun Mix was taken from the premises of A-1. Admittedly a retailer, however, the petitioner who is arrayed as A-4 is the manufacturer of the said Gulab Jamun Mix. The petitioner contended that when the sample is taken from retailer, whereby at any time during the trial of the offence under the act alleged to have been committed by manufacturer, distributor or retailer of any article of the Food Code on the evidence adduced before it that such manufacturer, distributor or retailer has knowledge of the offence then the Court may initiate proceedings against him under section 20 of the Act, as though the

prosecution has instituted against him under section 50 of the Act. Basing on that he submitted that straight away the petitioner, who is the manufacturer cannot be arrayed as “accused” without there being any trial without the satisfaction of the concerned court. Even on this ground also the proceedings initiated are liable to be quashed.

5. A perusal of the contents of complaint, report of the Public Analyst and the petition, it appears that after submission of Public Analyst Report on 22/10/2001, there is inordinate delay in issuing notice under section 13 [2] of the Act. From a perusal of the record it will not disclose that notice under section 13 [2] of the Act is not issued till date, therefore, the petitioner sought to quash the proceedings initiated against him.

6. To substantiate his contention, he relied on a judgment of this Court in **MOHD. YASEEN KHAN V/s. STATE OF ANDHRA PRADESH AND ANOTHER** ¹. In the said judgment, this Court was pleased to consider the inordinate delay of more than one year eight months in giving notice under Section 13 [2] of the Act and found that it would defeat the purpose for which notice under Section 13 [2] of the Act is intended. A notice under

¹) 2010 [1] ALD [CrI.] 73 [AP]

section 13 [2] of the Act was given by the Food Inspector to the petitioner-accused enclosing a copy of the Public Analyst Report for the purpose of giving an opportunity to the accused for sending the sample to Central Food Laboratory for second opinion regarding its composition.

7. In this case on hand, not only the inordinate delay, notice under section 13 [2] of the Act is not issued even till date. It is clearly established that the valuable right of the petitioner to send the second sample to the Central Food Laboratory as contemplated under section 13 [2] of the Act is violated and the said inaction on the part of the prosecution in issuing notice under Section 13 [2] of the Act is a fatal to the case of prosecution and it will go to the very root of the matter.

8. Be that as it may, when the second contention of the petitioner that arraying him as A-4 by the prosecution is also not in consonance with the provisions of Section 20-A of the Act, since the sample is taken from the retailer. The manufacturer can be arrayed as accused and proceeded after trial and satisfaction of the concerned court. Even on this ground also the petitioner cannot be arrayed as A-4 in CC.No. 81 of 2006.

9. In view of the above conclusion on the above points urged by the petitioner's counsel, the prosecution does not stand for scrutiny in the eye of law.

10. In the result, the Criminal Petition is allowed. Initiating the proceedings against the petitioner in CC.No. 81 of 2006 on the file of the Court of Additional Judicial Magistrate of First Class, Ananthapur be and is hereby quashed.

11. As a sequel, miscellaneous petitions if any, pending in this Criminal Petition shall stand closed.



JUSTICE P. KESHAVA RAO.

HONOURABLE SRI JUSTICE P. KESHA VA RAO.

CRIMINAL PETITION NO. 11908 OF 2011.
[ALLOWED]



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