

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.438 OF 2009

ORDER:

This Criminal Revision Case is filed by the petitioners-A1 to A4, under Sections 397 and 401 Cr.P.C., challenging the order, dated 03-02-2009 in CrI.M.P.No.2175 of 2008 in C.C.No.212 of 2007 on the file of the Judicial Magistrate of I Class, Razole.

2. Though the matter was listed on 10-08-2017, there was no representation on behalf of the petitioner; therefore, the Registry was directed to list the case today under the caption 'for dismissal'. Even today also, there is no representation on behalf of the petitioners; therefore, this Court is inclined to dispose of this revision on merits.

3. As seen from the record, the contention of the petitioners is that the Central Food Laboratory and State Food Laboratory have given divergent opinions; therefore, it is a fit case to discharge the petitioners and the same was not considered by the trial Court in right perspective. It is the further contention of the petitioners that if the order of the trial Court is allowed to stand, it would amount to miscarriage of justice. **Per Contra**, learned Additional Public Prosecutor representing the State of Andhra Pradesh submitted that as per the report of the Central Food Laboratory and State Food Laboratory, the sample contains total ash more than 8% and hence does not conform to the standards of Chillies and Capsicum (Red Chilli) powder as per Prevention of Food Adulteration Rules, 1955 and also contravenes Rule 42 (ZZZ) (17). He further submitted that even as per the report of the State Laboratory, the sample does not conform to the standard of non-volatile ether

extract and hence, it is adulterated as per Section 2 (a) (m) of the Prevention of Food Adulteration Act, 1954 (the PFA Act). He further submitted that there is no illegality or irregularity in the orders of the trial Court, which warrants interference of this Court.

4. The points that arise for consideration, in this revision, are:

- 1) Whether the trial Court is justified in dismissing Crl.M.P.No.2175 of 2008 in C.C.No.212 of 2007 filed by the petitioners under Section 239 Cr.P.C.?
- 2) Whether there is any illegality, irregularity or impropriety in the order of the trial Court, which warrants interference of this Court while exercising the revisional jurisdiction under Sections 397 and 401 Cr.P.C.?

5. Since both the points are inter-linked with each other, this Court is inclined to answer both the points simultaneously, in order to avoid re-capitulation of facts.

6. A perusal of the record reveals that the petitioners are facing trial in C.C.No.212 of 2007 on the file of the Judicial Magistrate of I Class, Razole, for the offence punishable under Section 7 (i) and 2 (ia) (m) of PFA Act. While things stood thus, the petitioners herein, who are A1 to A4, filed the above Crl.M.P. under Section 239 Cr.P.C. for discharge. The trial Court after considering the material available on record, dismissed the said petition by order, dated 03-02-2009. Hence, this revision.

7. In **State of Himachal Pradesh V Krishan Lal Pardhan**¹, the apex Court held thus:

“For scrutiny within the limits of Section 239 Cr.P.C., all that is required at the stage of framing of charges is to see whether a *prima facie* case regarding the commission of certain offences is made out. The question whether the charges will eventually stand proved or not can be determined only after the evidence is recorded in this

¹ AIR 1987 SC 733

case, which cannot be decided on merits without giving the prosecution an opportunity to adduce evidence against the accused.”

In **State of J&K v. Romesh Chander**², the apex Court held thus:

“It is now settled law that the charge-sheet constitutes prima facie evidence constituting the offence for proceeding further in the matter. Necessarily, therefore, the Court has to look into the relevant law and the allegations made in the charge-sheet and then consider whether any offence has been committed to frame charges for trial before discharging the accused. Since the High Court has not done that, we think it proper that the High Court should reconsider the matter and dispose of it in accordance with law. All the contentions raised by the learned counsel on either side are left open. It is open to the counsel to argue the matter in the High Court.”

Let me consider the facts of the case on hand in the light of the above legal principle. A perusal of the record reveals that the Food Inspector visited the premises of the petitioners and seized chilli powder. The Food Inspector, after following the due procedure, drawn the sample and sent the same to the Central Food Laboratory. After analyzing the contraband, the Director, Central Food Laboratory, Pune, submitted report, the relevant portion of which reads as follows:

“I am of the opinion that the sample contains total ash more than 8% and hence does not conform to the standards of Chillies and Capsicum (Red Chilli) powder as per P.F.A. Rules, 1955 and also contravenes Rule 42 (ZZZ) (17) of the above mentioned rule.”

8. The petitioners herein filed an application to send the sample to the office of the Chief Public Analyst, State Food Laboratory, Nacharam, Hyderabad. After following the due procedure, the Public Analyst submitted a report with the following observation.

“I am of the opinion that the sample does not conform to the standard of non-volatile ether extract and hence, it is adulterated as per Section 2 (a) (m) of the PFA Act, 1954”

² (1997) 1 SCC 90

9. A perusal of both the reports *prima facie* reveals that the chilli powder seized from the premises of petitioners is an adulterated one. Whether there is any conflict between the above referred two reports or not has to be decided at the time of full-fledged trial. The report of the public analyst *prima facie* supports the prosecution version.

10. It is needless to say that while deciding the petition filed under Section 239 Cr.P.C., the Court has to consider whether the material placed before it is *prima facie* sufficient to proceed further or not. If the material placed before the Court is not sufficient to frame the charges, the Court can discharge the accused.

11. It is settled principle of law that the Court cannot conduct roving enquiry at the time of framing of charges. The reports of the Central Food Laboratory as well as State Food Laboratory are *prima facie* sufficient to proceed further against the petitioners.

12. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited *supra*, I am of the considered view that there is a *prima facie* material against the petitioners to proceed further. The trial Court considered the material on record in right perspective and dismissed the petition. The trial Court assigned reasons, much less, cogent and valid reasons while dismissing the petition. Therefore, there is no illegality or irregularity in the order passed by the trial Court, which warrants interference of this Court while exercising the revisional jurisdiction under Sections 397 and 401 Cr.P.C. Hence, the revision lacks merits and bona fides and is liable to be dismissed.

13. Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any pending, in this revision shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 17-08-2017.

Hsd

