

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.3251 OF 2017

ORDER:

The present Criminal Petition is filed requesting to quash the proceedings in C.C. No.697 of 2017 on the file of the Judicial Magistrate of First Class, Dharmavaram, under Section 482 of the Criminal Procedure Code, 1973 (for short, 'the Code').

2. The petitioner is arraigned as accused No.3 in the aforesaid Calendar Case, and he alleged to have committed the offences punishable under Section 420 read with Section 34 of IPC and Section 109 of IPC and Sections 51 and 57 of Food Safety and Standards Act, 2006.

3. The 2nd respondent lodged the complaint with Station House Officer, Bathalapalli, Anantapur, on 25.4.2015 alleging the offences punishable under Section 420 read with Section 34 of IPC and Sections 51 and 57 of Food Safety and Standards Act, 2006 against the present petitioner, who is arraigned as accused No.3 along with two others.

4. Substantially the allegations levelled in the complaint are that on credible information on 24.4.2015 at about 8.00 p.m. he, accompanied by the Sub-Inspector of Police and two mediators visited the house of one Bodimalla Krishna Reddy (accused No.1) in the Calendar Case, located in M. Cherlopalli Village, Bathalapalli Mandal and found that he was in possession of two bags of chemical powder named 'VENSA MALTO DEXTRINE' and when the said person tried to skulk away, he was taken into custody and on interrogation in the presence of mediators he said to

have admitted that for about 13 years he has been running Milk Dairy by collecting milk from the farmers and sell the same to Dairy and public. It is alleged that the said person told them since the milk collected from the farmers was marginally decreased and his business was not running well he decided to increase his business and having learnt that there is some chemical powder available in the market and if the same is mixed in water and mixed in milk it would look like pure milk and it would be difficult to find variation in the milk and further that the milk would produce good result even if checked with Lactometer, he searched and contacted Mr. Chandra Sekhar Reddy (accused No.2) of Varadhapuram Village, who is also running Milk Dairy and has shown him some white chemical powder called 'SNF powder' available in 25 kg weight packet at the cost of Rs.1,300/- and it was available at 'Kumar Agencies, Kamala Nagar, Ananthapuramu, which is being run by Mr. K. Gopala Krishna (accused No.3), who is the petitioner herein. Thus, the 1st accused contacted the petitioner herein (accused No.3) and started purchasing chemical powder and using it to mix in the water and then into milk and preparing adulterated milk, and the petitioner herein having knowledge about both accused persons have been using chemical powder for the purpose of milk and he was selling the same to the public.

5. It is stated in the complaint that the Inspector of Police seized two bags of chemical powder (VENSA MALTO DEXTRINE) and one milk can in green colour marked with name 'Heritage' marked as '353' containing with adulterant milk from the possession of the accused No.1 and thus, the confessional statement was recorded in the presence of mediators at

8.00 p.m. on 24.4.2015. Thereafter accused No.2 was taken into custody and his confessional statement was recorded, by seizing two bags of chemical powder (VENSA MALTO DEXTRINE) along with another bag, which was containing only about 5 kgs of powder, and that he has dispatched 3 cans of adulterated milk marked as '208' to 'Tirumala Dairy', Gutluru Village, Dharmavaram Mandal in the presence of mediators, and the same was recorded at 10.00 p.m. on 24.4.2015. The said three cans were also seized.

6. So far as the allegations against accused No.3 are concerned, when the team visited 'Kumar Agencies, Kamala Nagar, Ananthapuramu, along with Food Safety Designated Officer, where the petitioner (accused No.3) is running shop and enquired him about selling of the chemical powder he too admitted the same stating that actually the powder is being used in the preparation of ice-cream and bakery products, but, recently some of the milk vendors taking some powder for their business and he used to sell the same. Investigating officer seized 280 bags of the said chemical powder in the presence of mediators under a cover of panchanama at 2.00 pm on 25.4.2015.

7. Samples of Cow milk and chemical powder (VENSA MALTO DEXTRINE) seized by the team were sent to Food Analyst, State Food Laboratory, Hyderabad, for chemical examination by the Food Safety Designated Officer and the Chemical Analyst issued report opining that the same is 'sub standard'. The Food Safety Designated Officer, Ananthapuramu, has sent report to the Station House Officer, Bathalapalli P.S., and basing on the SFL Report which revealed that preserved samples of

‘VENSA MALTO DEXTRINE’ are “not unsafe” and thereafter, on completion of investigation, charge sheet was laid against the accused persons.

8. Heard Sri N.Rangareddy, the learned counsel for the petitioner, and the learned Assistant Public Prosecutor for the State of Andhra Pradesh.

9. The submission of the learned counsel for the petitioner is that when the Food Safety Designated Officer, Anantapur District, basing on the report of the Analyst that the sample drawn and sent for testing ‘VENSA MALTO DEXTRINE’ is 'not unsafe' (genuine) and directed the police authorities to release the said stock seized from the petitioner, the Inspector of Police, who is the investigating officer, has no jurisdiction to lay the charge-sheet.

10. Second submission is that the 2nd respondent - Circle Inspector of Police, Dharmavaram, has no jurisdiction in Food Safety and Standards Act, 2006, to seize the stock and it is only the Food Inspector concerned who can file a complaint before the concerned Magistrate to take action against the accused persons. It is also his submission that Section 420 of I.P.C. has absolutely no application to the case on hand. Incidentally, the name of the petitioner has been included in the charge-sheet for extraneous reasons. Hence, request to quash the charge-sheet against the petitioner herein.

11. The learned Assistant Public Prosecutor for the State of Andhra Pradesh strongly resisted the above request. It is his submission that the report of the Analyst also indicates that the sample is '**sub-standard**'. Therefore, it cannot be said that the proceedings are liable to be quashed on

the mere ground that the report of the analyst indicates that the sample tested is 'not unsafe'.

12. At the outset, it is to be stated that neither the copy of the Analyst Report is placed for perusal of the Court nor the statements recorded under Section 161 of the Code by the Police.

13. A perusal of the material on record, at this stage, would indicate that the petitioner has knowledge that the accused Nos.1 & 2 have purchased 'VENSA MALTO DEXTRINE' powder from his shop for the purpose of preparing sub-standard adulterated cow milk and selling the same to the public and milk dairies to make wrongful gain to themselves and wrongful loss to the consumers. As regards jurisdiction to lodge the complaint by the Inspector of Police/2nd respondent concerning contraventions of the Special Act and the other contentions raised by the learned counsel as to result of the Food Analyst can be examined during trial and the same can be canvassed before the learned Magistrate. The charge-sheet was already laid in the Calendar Case and it is coming up for trial.

14. For the aforesaid reasons, the present Criminal Petition is dismissed.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 30.06.2017
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