

HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL PETITION No.11275 of 2011

ORDER:

Heard counsel for the petitioners and learned Public Prosecutor.

The present criminal petition is filed by the petitioners, who are accused Nos.2 and 3 in C.C.No.293 of 2009 on the file of the Judicial First Class Magistrate, Badrachalam, Khammam District, for the offences under Sections 7(i) and 2 (ia)(m) and 14-A of Prevention of Food Adulteration Act, 1954 (for short, "the Act") punishable under Section 16(1)(a)(i) of the Act for selling adulterated Cow's Pure Milk Good Life Ready to Drink (UHT) Processed, to quash the same.

The facts of the case are that the State represented by the Food Inspector, Division III, Khammam District, filed a complaint against the petitioners herein and another stating that on 12.11.2008 at about 10.30 a.m. along with his office subordinates visited the premises of M/s. Bhrammadevera Srinivasa Rao, General Merchant, Bhadrachalam Village and Mandal, Khammam District, for inspection. At that time, accused No.1 was present and transacting the business and claimed that he is the proprietor of the shop. Thereafter, he informed accused No.1 about the purpose of his visit and secured the presence of LW.2 by name, Kotha Ramaiah, and on inspection of the premises, he found a stock of 310 cartons containing sealed Tetra Packets each 200 ml labeled

as Nandini Cow's Pure Milk Good Life Ready to Drink (UHT) Processed and on enquiry, the vendor disclosed that he is the dealer of the above said society and he purchased the stock directly from the manufacturer and kept for sale for human consumption. LW.1 suspected the said packets as adulterated and with an intention to lift sample for analyses purpose, purchased 6 x 200 ml Nandini Cow's Pure Milk Good Life Ready to Drink UHT Processed from the said stock and paid Rs.42/- and obtained cash receipt and immediately issued Form-VI notice on the vendor informing him that the said sample of milk will be sent to Public Analyst, Hyderabad, for analysis. On 14.11.2008, one part of the sample along with a copy of the memorandum in Form-VII was sent to the Public Analyst and another copy of memorandum in Form-VII was sent to Public Analyst under the intimation to Local (Health) Authority, Khammam District. On the same day, the remaining two parts of the sample along with two copies of Form-VII were handed over to the Local Health Authority, Khammam District for safe custody. The Public Analyst, after causing the analysis of the said sample, delivered the report of analysis along with a covering letter, dated 19.12.2008, opining that the sample does not conform to the standards of yeast and mould count and it is therefore adulterated. Basing on the available information, on 07.01.2009, LW.1 submitted detailed report along with the relevant copies of the documents to the Director and Food (Health) Authority,

Andhra Pradesh, Hyderabad for necessary orders. On perusal of the report and the copies of the relevant documents, the State Food (Health) Authority, Andhra Pradesh, Hyderabad, accorded written consent under Section 20(1) of the Act for launching prosecution against the accused, which include the petitioners herein as accused Nos.2 and 3, for selling adulterated milk vide written consent order, dated 05.03.2009. Basing on the same, on 23.04.2009, the complaint was filed before the Judicial First Class Magistrate, Badrachalam, Khammam District under the provisions of the Act and the Rules made thereunder vide C.C.No.293 of 2010. The said case was taken on file against accused Nos.1 to 3 for the offence under Section 16(1)(a)(i) of the Act for violation of Section 7(i), 2(ia)(m) of the Act, on 11.06.2009 and the matter was posted to 15.07.2009. Aggrieved by the registration of the said complaint, the present criminal petition is filed by the petitioners.

The petitioners have specifically averred in the criminal petition that the Food Inspector purchased the Tetra Packets of M/s. Kolar District Cooperative Milk Producers Societies Union Limited on 12.11.2008 disclosing the manufacturing date as 02.11.2008 and the best before use is 180 days i.e., the complaint has to be filed on or before 02.05.2009 to enable the accused to exercise their statutory rights under Section 13(2) of the Act.

Admittedly, the Food Inspector filed a complaint on 23.04.2009 before the Judicial First Class Magistrate at Bhadrachalam, Khammam District. After filing of the complaint, the said Court taken the case on file against accused Nos.1 to 3, which include the petitioners herein, registered the case as C.C.No.293 of 2009 and issued summons on 11.06.2009 directing the accused to appear before the Court on 15.07.2009. It is relevant here to mention that the shelf life period of Nandini Cow's Pure Milk Good Life Ready to Drink was 180 days from the date of manufacture and expires on 02.05.2009. After the time the State analyst submitted a report on 07.01.2009 and by the summons were issued to the accused enabling them to appear before the Court, the shelf life period of the sample to be sent for the Central Laboratory for analysis expired. By the time the petitioners received the summons from the Court, their valuable right to send the second sample to the Central Laboratory under Section 13(2) of the Act already expired.

Therefore, the prosecution launched against them is contrary to the mandatory procedure contemplated under the provisions of the Act and more particularly it is barred by limitation. For the purpose of appreciation, Section 13(2) of the Act contemplates as under:

“Section 13(2):- On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the

persons from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under section 14A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.”

A formal understanding of the above said provision would indicate that Section 13(2) of the Act confers a valuable right on the accused under which provision the accused can make an application to the Court within a period of 10 days from the receipt of a copy of the report of the Public Analyst to get the samples of food analysed in the Central Food Laboratory and in case the sample is found by the Central Food Laboratory unfit for analysis due to decomposition by passage of time or for any other reason attributable to the lapses on the side of prosecution, that valuable right would stand forfeited without there being any mistake or lapse on the part of the accused, as such, that would amount to prejudice to the rights of the accused entitling him to acquittal. Further, even if there is any delay, such delay will not *per se* be fatal to the prosecution case where the sample continues to remain fit for analysis in spite of the delay because the accused is in no way prejudiced on the merits of the case in respect of such delay.

However, in the case on hand, the sample was purchased by the Food Inspector on 12.11.2008 and the label

on the pack clearly discloses the manufacturing date as 02.11.2008, which is best before 180 days, that means the expiry period is on or before 02.05.2009 before which a complaint has to be filed to enable the accused to exercise the statutory rights under Section 13(2) of the Act. Admittedly, in the case on hand, the complaint was filed on 23.04.2009 and by the time summons were issued after registering the case on 11.06.2009, the shelf life of the product already expired and in the process depriving the statutory right of the accused under Section 13(2) of the Act.

Learned counsel for the petitioners to support his contentions relied on a judgment of this Court in CrI.P.No.8407 of 2012, dated 25.11.2014, wherein this Court relying on a Bench Judgment and the inordinate delay caused in filing the complaint and thereby deprivation of valuable right conferred on accused No.2 and 3 therein under Section 13(2) of the Act and because of the violation of mandatory requirement under Section 11(4) of the Act, held that no purpose would be served by continuing the prosecution against the petitioners/accused Nos.2 and 3 therein. In the case on hand, the admitted facts also reveal that by virtue of the complaint filed by the Food Inspector and by the time the summons are issued on 11.06.2009, the shelf life of the sample already expired and the valuable right of the petitioners under Section 13(2) of the Act are deprived and they were not able to sent the second sample for Central

Laboratory. Under these circumstances, continuation of criminal proceedings against the petitioners would amount to abuse of process of the Court and even if the prosecution is continued, no useful purpose would be served.

In the result, the criminal petition is allowed and the proceedings in C.C.No.293 of 2009 against the petitioners on the file of the Judicial First Class Magistrate, Badrachalam, Khammam District are hereby quashed.

Miscellaneous petitions, if any, shall stand closed.

JUSTICE P. KESHAVA RAO

Date: 24.10.2017.
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