

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL PETITION No.11274 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.93 of 2010 on the file of the I Additional Judicial First Class Magistrate, Badrachalam, Khammam District, for the offences under Sections 7(i) and 2 (ia)(m) of Prevention of Food Adulteration Act, 1954 (for short, "the Act") punishable under Section 16(1)(a)(i) of the Act for selling adulterated Nandini Good Life Cows Pure Milk Ready to Drink (UHT) Processed Milk for human consumption, 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 13.02.2009 at about 5.30 p.m. he along with his office subordinates visited the premises of M/s. B. Srinivas Rao, consignee agent, Temple road, 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, S. Srinivas Rao, and after inspection of the premises, he found a stock of 100

cartons containing sealed Tetra Packets each 200 ml and on enquiry, accused No.1 stated that it is Nandini Good Life Cows Pure Milk Ready to Drink (UHT) Processed Milk and kept for sale for human consumption and that he do not have the purchase bill. LW.1 suspected the said packets as adulterated and with an intention to lift sample for analyses purpose, purchased three six packets from the said stock of milk and paid Rs.39/- and obtained cash receipt and immediately issued Form-VI notice on accused No.1 informing him that the said sample of milk is sent to Public Analyst, Hyderabad, for analysis and obtained his acknowledgement. On 14.02.2009, one part of the sample along with a copy of the memorandum in Form-VII was sent to the Public Analyst. On the same day, the remaining two parts of the sample along with two copies of memorandum 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 bearing analytical report No.58 of 2009, dated 24.03.2009, along with a covering letter addressed to the Local (Health) Authority, Khammam, opining that the sample does not conform to the standards of yeast and mould count and it is therefore adulterated. The said report was forwarded to LW.1 for taking further action. Basing on the available information, 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 30.05.2009. On perusal of the report and the copies of the relevant documents, the Director and State Food (Health) Authority, Andhra Pradesh, Hyderabad, accorded written consent under Section 20(1) of the Act for launching prosecution against accused Nos.1 to 3, which include the petitioners herein as accused Nos.2 and 3, for selling adulterated milk vide written consent order, dated 27.08.2009. Basing on the same, the complaint was filed before the I Additional Judicial First Class Magistrate, Badrachalam, Khammam District under the provisions of the Act and the Rules made thereunder vide C.C.No.93 of 2010. 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 13.02.2009 disclosing the manufacturing date as 10.01.2009 and the best before use is 180 days i.e., the complaint has to be filed on or before 10.07.2009 to enable the accused to exercise their statutory rights under Section 13(2) of the Act.

Admittedly, the Food Inspector filed the complaint on 08.02.2010 i.e., beyond 180 days printed on the label, which discloses that the shelf life of the product is only 180 days and thus depriving the statutory rights of the petitioners for

sending the second sample to the Central Laboratory under Section 13(2) of the Act. 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 13.02.2009 and the label on the pack clearly discloses the manufacturing date as 10.01.2009, which is best before 180 days, that means the expiry period is on or before 10.07.2009 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 08.02.2010 i.e., beyond 180 days printed on the label, which discloses that the shelf life of the product already expired by the date of filing of the complaint. 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 the shelf life of the sample already expired by the date of the complaint and the valuable rights of the petitioners under Section 13(2) of the Act are deprived of and thereby they were not able to send the second sample for Central Laboratory. Under these circumstances, continuation of criminal proceedings against the accused 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.93 of 2010 against the petitioners on the file of the I Additional 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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