

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO. 9344 OF 2012

ORDER:

This criminal petition is filed by A-2 & A-3 in C.C.No.346 of 2011 on the file of Judicial First Class Magistrate, Anaparthi, East Godavari District, for the offences punishable under Section 16 (1-A)(i) of Prevention of Food Adulteration Act, 1954, alleging the contravention of Section 7(i), 2(ia)(j) of Prevention of Food Adulteration Act, 1954 read with Rule 29 of Prevention of Food Adulteration Rules, 1955.

The brief facts of the case are that the defacto complainant inspected the shop of the accused on 25.02.2011 and collected the sample of 'Good Morning Tea' on suspicion of adulteration. The defacto complainant, after following necessary procedure sent the said samples to the Public Analyst at Hyderabad and therefore, the Public Analyst in its report No.63/2011 dated 02.04.2011 opined that the sample contained added synthetic food colours and iron filings, therefore, found adulterated. Thereafter, the Food Health Authority accorded written consent vide proceedings R.C.No.2088/F2/2011 dated 05.07.2011 for prosecuting A-1 i.e. Siriviseti Durga Bhavani, Proprietor of M/s Teja Traders, Pasalapudi Village, East Godavari District and M/s South Assam Tea Company, A-3 and Dilip Kumar Sethia, Managing Director as A-2 for sale of adulterated 'Good Morning Tea'. The Food Inspector, Division-I, East Godavari District filed the complaint before the

Court of Judicial First Class Magistrate, Anaparthi, East Godavari District and the same was registered as C.C.No.346 of 2011.

The main ground on which the present petition is filed is that, by the date of lifting the sample and sending the samples to analyst, the Food Adulteration Act was repealed, thereby, proceedings under Prevention of Food Adulteration Act are not maintainable.

Learned counsel for the petitioner Sri A. Prabhakar would draw the attention of this Court to Section 97 of The Food Safety and Standards Act, 2006, which deals with Repeal and Savings and it postulates as follows:

“Section 97 Repeal and savings:-

With effect from such date as the Central Government may appoint in this behalf, the enactment and Orders specified in the Second Schedule shall stand repealed: Provided that such repeal shall not affect:

- (i) the previous operations of the enactment and Orders under repeal or anything duly done or suffered there under; or
- (ii) any right, privilege, obligation or liability acquired, accrued or incurred under any of the enactment or Orders under repeal; or
- (iii) any penalty, forfeiture or punishment incurred in respect of any offences committed against the enactment and Orders under repeal; or
- (iv) any investigation or remedy in respect of any such penalty, forfeiture or punishment, and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed.

(2) If there is any other law for the time being in force in any State, corresponding to this Act, the same shall upon the commencement of this Act, stand repealed and in such case, the provisions of section 6 of the General Clauses Act, 1897(10 of 1897) shall apply as if such provisions of the State law had been repealed.

(3) Notwithstanding the repeal of the aforesaid enactment and Orders, the licences issued under any such enactment or Order, which are in force on the date of commencement of this Act, shall continue to be in force till the date of their expiry for all purposes, as if they had been issued under the provisions of this Act or the rules or regulations made thereunder.

(4) Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act or Orders after the expiry of a period of three years from the date of the commencement of this Act.

Thus, in view of Section 97, the ordinance was repealed. However, this Food Adulteration Act was repealed by notification dated 29.07.2010 vide S.O.1855(E) issued by Ministry of Health and Family Welfare notifying Section 97 (Repeal and Savings). Thus, by the date of lifting samples and analysing the food item etc, the Food Adulteration Act was not in force and when the Act was repealed, no proceedings be filed under the repealed Act and the Court cannot proceed further on such complaint under repealed Food Adulteration Act. Therefore, the entire proceedings are vitiated, as the Act is not in force, in view of the notification dated 29.07.2010 vide S.O.1855(E) issued by Ministry of Health and Family Welfare. Consequently, the proceedings shall not be continued against the present petitioners/Accused 2 & 3.

In **State of Haryana v. Bhajan Lal**¹ the Apex Court considered in detail the provisions i.e. Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

¹ 1992 Supp. (1) SCC 335

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

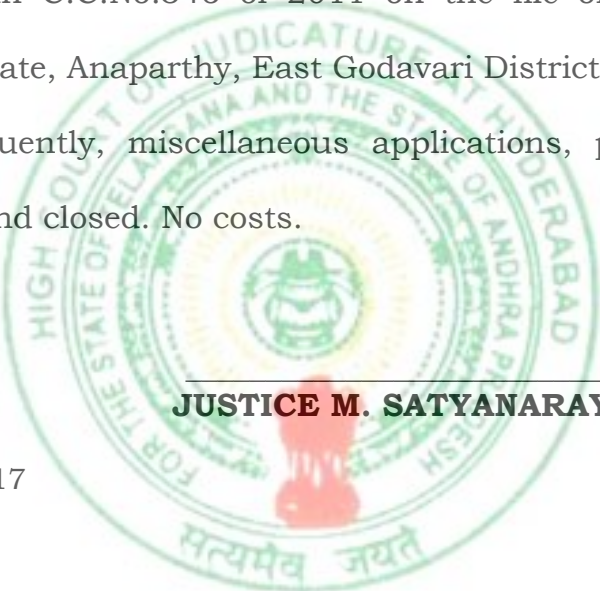
(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

In view of guidelines 1, 6 & 7, criminal proceedings cannot be allowed to be continued, as the proceedings are initiated by abuse of process of the law.

In view of the law declared by the Apex Court, I find that the complaint is short of requirements to constitute an offence and that apart, in view of the guidelines prescribed in **Bhajan Lal's** case, the proceedings in crime are liable to be quashed. Accordingly, the criminal petition is allowed.

In the result, the criminal petition is allowed by quashing the proceedings in C.C.No.346 of 2011 on the file of Judicial First Class Magistrate, Anaparthi, East Godavari District.

Consequently, miscellaneous applications, pending if any shall also stand closed. No costs.



JUSTICE M. SATYANARAYANA MURTHY

Date:03.04.2017

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