

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.6455 of 2017

ORDER:

The petitioners are the A.1 to A.3 of C.C.No.8 of 2012 on the file of the Junior civil Judge's Court, Bapatla. The 2nd respondent-Food Inspector is the complainant. It is on his private complaint for the alleged offences punishable u/sec.7(i),2(i)a (a) and (m) punishable u/sec.16(1)(a)(i) of the prevention of Food Adulteration Act,1954(for short, 'the Act'), the learned Magistrate has taken cognizance.

The averments in the private complaint, dt.02.11.2011 are that the A.1 by name Cheemakurthi Venta Rao is Proprietor of Sri Naga Vijaya Sai General Stores, D.No.7/114,Main Bazar, Pedannadipadu village and Mandal, Guntur District, A.2 by name Bandaru Venkata Krishna Murthy, Production Chemist and Nominee of M/s Foods, Fats & Fertilizers Limited, Tanuku road, Tadepalligudem, West Godavari District, and A.3 is the Firm Supra, on 24.09.2010 at 12.30noon, the 2nd respondent-defacto-complainant who was notified as Food Inspector for the local area of Entire State of Andhra Pradesh, vide G.O. Ms. No. 146, Health, Medical & Family Welfare(L-1) dt.18.05.2004 along with his staff K.Vinod Babu visited the A.1's General Stores, for inspection and at the time of inspection the A.1 was present and transacting the business and disclosed his identity and purpose of visit to the A.1 proprietor concerned, and secured K.Ramababu(L.W.2) proprietor of Tirumala Venkateswara Medicals, to act as mediator and in the presence of them found 30 sealed packets of 200ML each Vanaspathi (3F brand) meant for sale to public for human

consumption by printing on the sealed packets is as “Vanaspathi, Tasty way to Good Health 3F®, made from Vegetable Oils only way to give healthy made by vegetable oils only and the net contents, retail price, the batch number, date of packing (made in July,2010) and period best before(6 months) therefrom and on suspicion as adulterated purchased 6 packets having paid the amount in the presence of the witnesses and notice in Form No.6 served on A.1 and the sealed packets were divided into 3 equal parts of 2 packets in each placed in 3 empty dry clean plastic tin scribed and tied with twine thread affixed labels with note on each sample by pasting with gum and sealed with wax by each tin wrapped separately in fairly thick brown paper under cover of panchanama and on the next day on 25.09.2010 sent one sample with memorandum in Form-7 in public analysis by registered parcel acknowledgement due in a sealed cover handed over to the gazette Food Inspector Guntur for safe custody on that day and based on label declaration, notice in Form No.14A with Form-VI sent to A.3 represented by A.2 for furnishing nominee business particulars and also reminded again with no reply. The Public Analyst report received shows sample does not confirm to the standard of melting point and vitamin-A test thereby adulterated.

On receiving the analyst report, the defacto-complainant obtained written consent for prosecution on 09.02.2011 since A.1 sold adulterated Vanaspathi oil in sealed packets manufactured and marketed by A.2 and A.3. The main contention in the quash petition is that the petitioners are falsely implicated and the prosecution is unsustainable apart from analyst report, dt. 01.11.2010 received on 03.11.2010,whereas, the prosecution

launched one year later on 02.11.2011 with no explanation even after three months time taken to obtain sanction to launch prosecution taking of further 9 months even life of item is only 6 months from the date of manufacturing i.e. in July, 2010 and at any cost its life expires by June, 2011. Though the analyst report received well before, for the delay in prosecution taking away the right of asking for second opinion from the available samples 2 and 3, the prosecution is unsustainable.

Whereas, the learned Public Prosecutor says there is nothing to quash the proceeding but for by directing the accused to face trial.

The service of notice to the accused after expiry of life of the food item in question is nothing but taking away the valuable right of accused for sending the second sample to Food Laboratory for second analyst and report is nugatory. Hence the prosecution is unsustainable as per the expressions of this Court in **Mohd.Ali Mirza Vs. State of A.P.rep. by the Food Inspector, Division-I,Kurnool, Kurnool District¹**, and also in **Food Inspector, Amudalavalasa Nagar Panchayat, Amudalavalasa Vs. Talluri Ramamohana Rao²**, and also from several other expressions of this Court. particularly once life of the product expired by the time, the analyst report received and basing on that prosecution launched by intimation of product is adulterated from which the accused loose the opportunity of sending the other viable sample for second opinion to Central Lab in preference, the prosecution ultimately will not survive thereby there is nothing to continue to subserve the ends of justice.

¹ 2016(2)ALT CrI.421(AP)

² 2012(1)ALD CrI.958

Having regard to the above and in the result, the Criminal Petition is allowed by quashing the proceedings in C.C.No.8 of 2012 on the file of the Junior civil Judge's Court, Bapatla, against the petitioners/A.2 and A.3 and they are acquitted and their bail bonds shall stand closed.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date:04.10.2017

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