

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHARA PRADESH**

CRIMINAL PETITION No. 1296 of 2011

Between:

Gudipudi Surya Gopala Srinivasa Rao and another

.....Petitioners

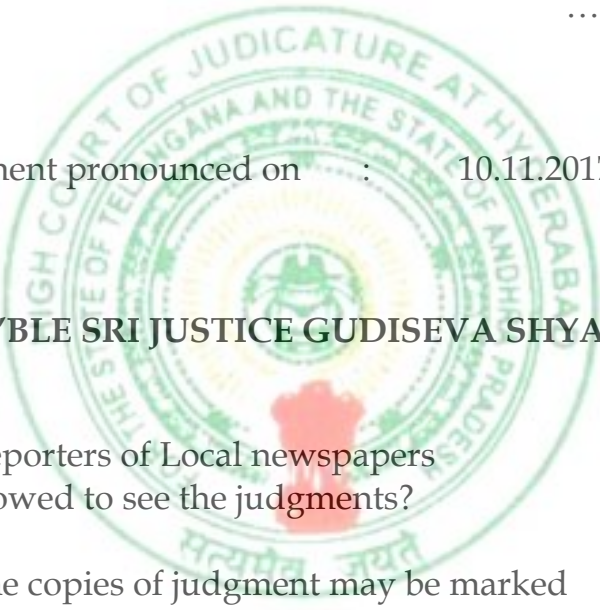
AND

1. State of Andhra Pradesh, and another

.....Respondents

Date of Judgment pronounced on : 10.11.2017

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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1. Whether Reporters of Local newspapers : Yes / No
May be allowed to see the judgments?
 2. Whether the copies of judgment may be marked : Yes / No
to Law Reporters/Journals:
 3. Whether The Lordship wishes to see the fair copy : Yes / No
Of the Judgment?

GUDISEVA SHYAM PRASAD, J

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No. 1296 of 2011

% 10.11.2017

Gudipudi Surya Gopala Srinivasa Rao and another

.... Petitioners

Versus

\$ 1. State of Andhra Pradesh, and another

..... Respondents.

< GIST:

> HEAD NOTE:

! Counsel for the Petitioners : Ch. Dhanamjaya

^ Counsel for the Respondents : Public Prosecutor (A.P.)

? Cases referred

¹ 2009 (2) ALD (CrI) 692 = 2009 ALT (CrI) 3-178

² 2008 (2) ALD (CrI.) 56 (AP)

³ 2008 (2) ALD (CrI.) 715 (AP)

⁴ 2007 (3) ALT (CrI.) 113 (A.P.)

⁵ 2011 (2) ALD (CrI.) 868 (AP)

⁶ Criminal Petition No.940 of 2011

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**CRIMINAL PETITION No. 1296 of 2011****ORDER:**

This criminal petition is filed under Section 482 Cr.P.C. seeking to quash the proceedings in C.C.No.135 of 2010 on the file of the Judicial Magistrate of First Class, at Gajapathinagaram, Vizianagaram District.

2. The 2nd respondent-Food Inspector has filed a complaint against the petitioners/accused alleging that on 06.05.2008, at 4.30 PM, when he visited G.V.L. Ice Factory, along with his staff, he found that ice is being manufactured with water for the purpose of selling the same to the public for the purpose of drinking and storage of fish in the chemical factories. The complainant purchased ice and packed it in three containers and sent one sample for analysis to the Public Analyst along with Form VII. The Local (Health) Authority received the report from the Public Analyst dated 16.06.2008 stating that the sample sent to him is adulterated and, therefore, the 2nd respondent obtained sanction and filed complaint on 08.07.2010.

3. Heard Sri P.A. Nageswar Rao, learned counsel for the petitioners, and Sri Naresh Byrapaneni, learned Public Prosecutor representing the State of Andhra Pradesh.

4. Learned counsel for the petitioners argued that the petitioners have not committed any offence and they are falsely implicated in the present case and, therefore, sought for quashing of proceedings against them. It is further submitted that water is excluded specifically from the definition of food and drinks under Section 2(v) of the Prevention of Food Adulteration Act, 1954 (for short, 'the Act'), and mere conversion of water into ice without

adding any substance to it will not bring ice within the purview of Section 2(v) of the Act. Learned counsel placed reliance on a decision of this Court in **B.V.R. Reddy v. State of A.P¹**, and submitted that this Court has considered a similar issue in that case and quashed the proceedings, holding that ice is not a food article and hence the provisions of the Act do not apply to the instant case. It is further submitted that notice under Section 13(2) of the Act was served on the petitioners on 26.11.2010, and the said notice was not sent by registered post along with copy of the analysis report received in Form III from the Public Analyst within the stipulated time of 10 days of receipt of the report from Public Analyst. It is further submitted that there is inordinate delay in serving the Section 13(2) notice, thereby, the petitioners have lost their valuable right to get the sample analysed by the Central Laboratory. Learned counsel has also placed reliance in **S.V.V. Satyanarayana Reddy v. State of A.P²**, **Radheshyam Lohiya and another v. State of Andhra Pradesh³**, **C.Rama Murthy and another v. State of Andhra Pradesh re. by the Food Inspector, Division I Ranga Reddy District⁴**, and **M. Jaipal Reddy and another v. State of Andhra Pradesh⁵**. He has also placed reliance on the decision of this Court in **Sangani Venkateswara Rao v. The State of A.P., rep. by its Public Prosecutor and another⁶**, wherein this Court observed in paragraphs 4 and 5 as under:

'4. The contention of the learned counsel for the petitioner/accused is that the fact that the ice cubes were inspected and samples were taken is not in dispute, but he contended that the said product do not attract the provisions of the Prevention of Food

¹ 2009 (2) ALD (CrI) 692 = 2009 ALT (CrI) 3-178

² 2008 (2) ALD (CrI.) 56 (AP)

³ 2008 (2) ALD (CrI.) 715 (AP)

⁴ 2007 (3) ALT (CrI.) 113 (A.P.)

⁵ 2011 (2) ALD (CrI.) 868 (AP)

⁶ Criminal Petition No.940 of 2011

*Adulteration Act for the reason that the ice is a flexible article and is not a food article and the water is excluded specifically from the definition of food and drinks under Section 2(v) of the Act. The learned counsel for the petitioners/accused relied on a decision of this Court in **B.V.R.Reddy vs. State of A.P**⁷ in support of his contentions.*

5. In the above said decision, learned single Judge of this court, after referring various authorities on the subject, has categorically held that ice cannot be brought within the purview of the Prevention of Food Adulteration Act in view of the specific exclusion of water from the definition of food under Section 2(v).

On these grounds, the learned counsel for the petitioners sought for quashing the proceedings in C.C.No.135 of 2010.

5. At the outset, it would be relevant to extract the provision under Section 2(v) and Section 13(2) of the Act, which read as under:

2(v): “food” means any article used as food or drink for human consumption other than drugs and water and includes—

- (a) any article which ordinarily enters into, or is used in the composition or preparation of, human food,**
- (b) any flavouring matter or condiments, and**
- (c) any other article which the Central Government may, having regard to its use, nature, substance or quality, declare, by notification in the Official Gazette, as food for the purposes of this Act.**

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

⁷ 2009 ALT (CrI) 3-178

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.

6. In the instant case, it is evident from the record that the Food Inspector has collected the samples and sent them to Public Analyst on 07.05.2008, and the Analyst's report dated 16.06.2008 was received by him on 19.06.2008. Thereafter, he has sent a letter to the Director, Institute of Preventive Medicine, on 24.10.2008 seeking consent and the Director has given consent on 31.01.2009, and the complaint has been filed on 08.07.2010. Therefore, from the date of collection of sample till the date of filing complaint, there is a delay of 26 months. As rightly contended by the learned counsel for the petitioners, there is violation of Section 13(2) of the Act. It is obvious that ice cannot be brought within the purview of food article in view of the specific exclusion of water from the definition of food and drinks under Section 2(v) of the Act. Therefore, the proceedings against the petitioners in C.C.No.135 of 2010 are liable to be quashed.

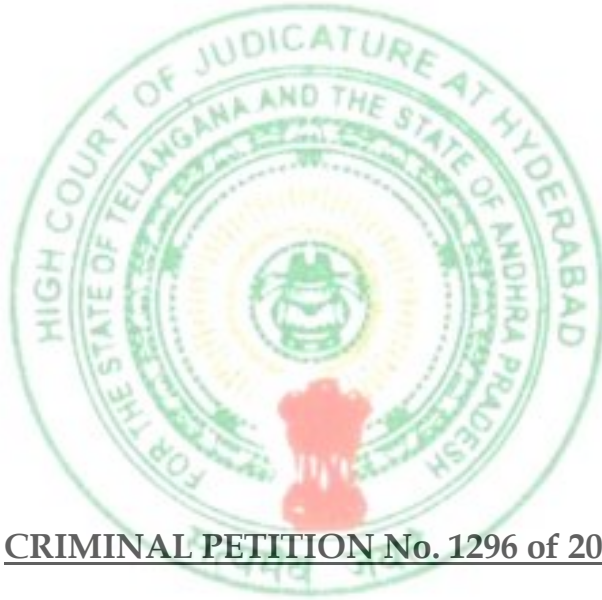
7. **IN THE RESULT**, the criminal petition is allowed, quashing the proceedings against the petitioners in C.C.No.135 of 2010 on the file of Judicial Magistrate of First Class, at Gajapathinagaram, Vizianagaram District. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

10th November, 2017

KSM

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



CRIMINAL PETITION No. 1296 of 2011

10th November, 2017

KSM