

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.OP.No.17664 of 2011
and
M.P.No.1 of 2011

1.Sunil Kurian Mathew

2.Hindustan Coco Cola Beverages Pvt Ltd.
Represented by Sunil Kurian Mathew,
Plot No.18, Bidadi Industrial Area,
Bidadi Hobli, Ramnagar District,
Bangalore-562 109.Petitioners/3rd & 4th Accused

..Vs..

The Food Inspector,
Erode City Municipal Corporation,
Erode.Respondent/Complainant

PRAYER: This petition is filed under Section 482 of the Criminal Procedure Code to grant stay of all further proceedings in pursuance of the criminal complaint in C.C.No.370 of 2010 dated 23.03.2010 pending on the file of the Judicial Magistrate-III, Erode.

b) to quash the complaint in C.C.No.370 of 2010 dated 23.03.2010 pending on the file of the learned Judicial Magistrate-III, Erode.

For Petitioners : Mr.Rahul Balaji for
R.Parthasarathy

For respondents : Mr.T.Shunmuga Rajeswaran
Government Advocate (Crl.Side)

O R D E R

The petitioners/accused 3&4 in C.C.No.370 of 2010 on the file of the learned Judicial Magistrate-II, Erode, filed this petition to quash the proceedings pending against them.

2. The respondent/complainant filed the above complaint as

against the petitioners and others for the violation of Section 2(ix)(j) of Prevention of Food Adulteration Act 1954 (hereinafter referred to as "PFA") and for the Rule 42 (zzz)(1)(iii) of Prevention of Food Adulteration Rules 1955. The learned Magistrate-II, Erode, took the cognizance of the complaint in C.C.No.370 of 2010 and issued summons to the petitioners. Aggrieved over the same, the petitioners have filed the present petition.

3. The case of the complainant is that he was working as a Food Inspector in Erode City Municipal Corporation and on 22.04.2009, he visited the premises of Divya Tea Stall and Bakery located at No.87, Gandhiji Road, Erode, owned by the first accused. After introducing himself, the complainant took samples Fanta Apple Flavoured Sweetened Carbonated Beverage which was displayed for sale in the shop. The complainant purchased three bottles of the said products and obtained the signatures of the accused No.1 in the prescribed format and sent the samples for analysis to the Kings Institute, Guindy, Chennai, on 28.07.2009. The complainant had also issued notice to the petitioners as required under Section 11(i)(a) 14A and 17 (2) of the prevention of Food and Adulteration Act on 04.06.2009. The Public Analyst of the Food analysis Laboratory, Kings Institute, Guindy, Chennai, submitted his report in form 3 with its opinion that the said sample is misbranded since, it was not labeled in accordance with the labeling requirements of Section 2(ix)(j) of PFA Act 1954 and Rule 42 (zzz)(1)(iii) of Prevention of Food Adulteration Rules 1955.

4. An article of food shall be deemed to be misbranded if it contains any chemical preservative without a declarative label stating that fact as per Section 2(ix)(j) of PFA Act. Any extraneous addition of sugar shall be declared on the label as quantity of sugar added as per Rule 42 (zzz) (1)(iii) of the Prevention of Food Adulteration Rules 1955. After obtaining the sanction from the Joint Director, Prevention of Food Adulteration, Chennai, on 25.11.2009, the respondent filed the complaint on 23.03.2010 and the same was taken on file in C.C.No.370 of 2010 by the learned Judicial Magistrate-II, Erode. Hence, the accused 3&4 filed the above petition.

5. Heard Mr.Rahul Balaji, the learned Counsel for the petitioners and Mr.T.Shunmuga Rajeswaran, Government Advocate (Crl.Side), appearing for the respondent/complainant.

6. The learned Counsel for the petitioners submits that the complaint has been filed in a mechanical manner without any application of mind, based on the report of the Public Analyst. The report of the Public Analyst is self contradictory as it has recorded that the label on the sample states in its ingredients

"permitted class II preservative (211)" but even then, it is stated that there is misbranding as nature of the preservative used has not been specified. The complainant has failed to disclose the exact ingredients of the offence said to have committed by the petitioners and it is filed in a vague manner as there is misbranding as per rule 42 (zzz)(1)(iii) in the box itself, the quantity of sugar addedgms/100 grams is mentioned. He would further submit that the complaint was filed belatedly after two years and no explanation has been offered for the same. Though, the report of Public Analyst was obtained on 21.05.2009, the complaint was filed on 23.03.2010 and therefore, the petitioners valuable right as guaranteed under Section 13(2) of the Prevention of Food Adulteration Act has been denied to the petitioners. In support of his contention, the learned Counsel for the petitioners has also relied upon the judgments of this Court as well as the Hon'ble Supreme Court in G.Sivakumar Vs. Food Inspector, Coimbatore, reported in (2009) 2 MLJ (Crl) 1035, Baskar vembu vs. State (2008) reported 3 MLJ (Crl) 779, Girishbhai Dhayabhai Shah Vs.C.C.Jani reported in (2010) 2 SCC (Cri) 270 and Bhushan Prasad Vs. K.Ravichander reported in (2009) 1 MLJ (Crl) 843.

7. Per contra, the learned government Advocate submits that the complaint is filed as per the law and all this statutory requirements as per the Act and Rules have been strictly complied with. The Public Analyst after analysis in form 3 submitted his report that the sample is misbranded that the declaration for extraneous addition of chemical preservative as well as the declarative to the quantity of sugar added were not mentioned. An article of food is deemed to be misbranded if it contains a chemical preservative without a declaratory label as per Section 2(ix)(j) of PFA Act 1954 and every package of food which contain artificial sweetener shall carry label with the quantity of Sugar added in it as per Rule 42 (zzz) (1)(iii) of PFA Rules 1955 and there is no delay in launching the prosecution and the petitioners did not prefer any application for re-analysis before the trial Court within 10 days from the service of notice under Section 13(2) of PFA Act. Having unavailed the opportunity, the petitioners cannot raise the defense by referring Section 13(2) of the PFA Act. It is further submitted that the respondent/complainant is a Competent Officer as required under the Act that the Municipal Sanitary Inspector has been appointed as Food Inspector under the PFA Act vide G.O.No.3591 Health Gazette dated 07.12.1955 and G.O. Ms. No.571 Health Indian Medical Homeopathy And Welfare Department dated 10.05.1995 and therefore there is no violation as projected by the petitioners and the petition is liable to be dismissed.

8. This Court paid its anxious consideration to the rival submissions and also pursued the available records.

9. The respondent complainant visited the first accused's shop on 22.04.2009 and collected the samples and issued the notice in form 6 as required under Section 11 (1) (a), 14(a), 17 (2) of the PFA Act. The public Analyst gave his opinion that the said sample is found to be misbranded since, it is not labeled in accordance with the requirements of Section 2(ix)(j) of PFA Act and Rule 42 (zzz) (1)(iii) PFA Rules 1955.

10. Section 13(2) of the Prevention of Food Adulteration Act, 1954 reads as follows;

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.

11. The Public Analyst report was obtained in this case on 21.05.2009, and the complaint was filed only on 23.03.2010 after ten months and this opportunity as provided under Section 13(2) was denied to the petitioners. There is no explanation for lodging this complaint belatedly after ten months when the Public analysis Report was very much available with the complainant as on 21.05.2009.

12. It is relevant to extract the following judgments that has been relied upon by the learned Counsel for the petitioners cited supra;

1. This Court in Bhushan Prasad Vs. K.Ravichander reported in (2009) 1 MLJ (Cri) 843 held as follows;

I. "Since the Prevention of Food Adulteration Rules lay down that the sample should be sent to the Public Analyst in a dry and clean container, it is not open to the Food Inspector to send the sample in the form of a packet which is likely to be tampered with."

II. "According to Section 13(2) of Prevention of Food Adulteration Act, 1954, on receipt of the Analyst Report the Local Health Authority shall, after the institution of prosecution, forward the copy of the analyst report to the accused concerned and to inform such persons that they may make an application before the Court within 10 days from the date of receipt of the copy of the report to get the other portion of the sample of article to be analysed by Central Food Laboratory. Complaint itself being filed after the expiry of the product, and as such the sample has become unfit for further analysis by the Central Food Laboratory and thereby the petitioners have lost their valuable right to get the sample examined by the Central Food Laboratory which resulted in grave prejudice to the accused."

2. In Baskar Vembu Vs. State reported in (2008) 3 MLJ (Cr1) 779, it is held as follows;

I. "when the sample sent to the Public Analyst was found to be adulterated, there is no doubt that the report of the Analyst is admissible in evidence. At the same time, there cannot be any doubt that there is a right available to the accused by virtue of Section 13(2) of Prevention of Food Adulteration Act, 1954 to get another sample available with the local Health Authority analysed by the Central Food Laboratory by making an application to the Court within ten days from the date of receipt of copy of the Public Analyst 's Report."

II. "In a case where the accused does not choose to exercise the right available under Section 13(2) of Prevention of Food Adulteration Act, 1954 the case against him could be decided on the basis of the report of the Public Analyst. But, in a case where the accused exercises the right by making an application to send the sample for analysis to the Central Food Laboratory and at that point of time, the sample of the food article has so deteriorated and decomposed that no analysis is possible and thereby the

right of the accused is frustrated, the conviction by the trial Court or the prosecution launched cannot be sustained. Further, when such denial of right is due to the deliberate conduct or inordinate laches on the part of the prosecution, no weight could be given at all to the report of the Public Analyst."

III. "When the authority decides to initiate the prosecution, utmost care and caution must be exercised and notice must be issued to the accused concerned 1 without any lapse of time so that he can exercise the option of sending the second sample to the Central Food Laboratory for receiving the opinion, which is conclusive and final."

3. The Hon'ble Supreme Court in *Girishbhai Dhayabhai Shah Vs. C.C.Jani* reported in (2010) 2 SCC (Cri) 270, it is held that;

"on receipt of the public analysis report under Sub section 13 (1) that the article of food is adulterated a prosecution can be launched and the copy of the report can be supplied to the accused. Sub section (2) indicates that if he so desires make an application to the Court within 10 days from the date of receipt of a copy of the report to get the sample of article analysed by the Central Food Laboratory. The belated complaint prevented the accused from applying for analysis of the second sample."

4. This Court in *G.Sivakumar Vs. Food Inspector, City Municipal Corporation, Coimbatore* reported in (2009) 2 MLJ (Crl) 1035, it is held that;

"The right of the accused in analysing the sample taken by prosecution to the local health authority or to the Central Food Laboratory at the instance of the accused should be done in a quickest possible time, where there is deliberate delay in launching the prosecution would tantamount to denial of valuable right of the accused". In that case, the prosecution was launched after six months after the report of analysis received in form 3."

13. Applying the above principles laid down by the Hon'ble

Supreme Court and this Court, this petition is allowed. Accordingly, the proceedings pending against the petitioners in C.C.No.370 of 2010 on the file of the learned Judicial Magistrate, Erode, is hereby quashed. Consequently, connection miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

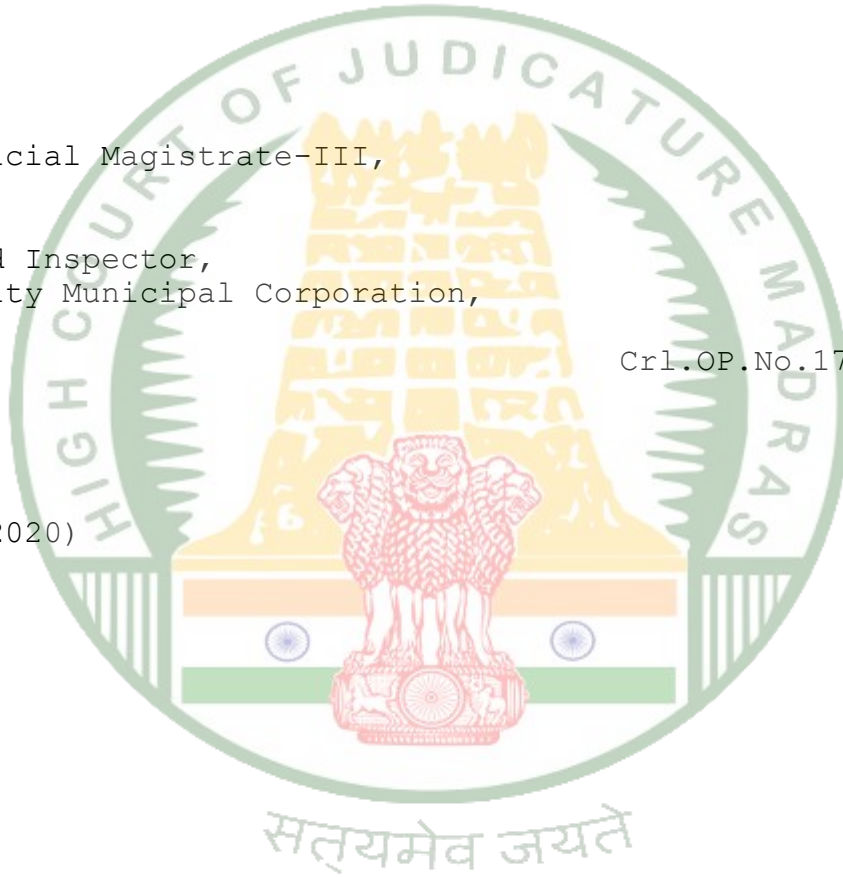
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To

- 1.The Judicial Magistrate-III,
Erode.
- 2.The Food Inspector,
Erode City Municipal Corporation,
Erode.

CrI.OP.No.17664 of 2011

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