

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.OP.No.22864 of 2009

1. R.K.Agarwal
Manager-Quality Assurance,
Wochardt Ltd.
Wockhardt Towers,
Bandra Kurla Complex,
Bandhra (east),
Mumbai-400 040. ...Petitioner/8th Accused
2. Wochardt Ltd.
Represented by Nominee R.K.Agarwal,
Wockhardt Towers,
Bandra Kurla Complex,
Bandhra (east),
Mumbai-400 040.Petitioner/9th 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 call for the records in C.C.No.389/09 on the file of the learned Judicial Magistrate-II, Erode and to quash the same.

सत्यमेव जयते

For Petitioners : Mr.V.Suresh

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

O R D E R

The petitioners/accused 8 and 9 in C.C.No.389 of 2009 on the file of the learned Judicial Magistrate-II, Erode, filed this petition to quash the proceedings pending against them.

2. The case of the complainant is that he was working as a Food Inspector in Erode City Municipal Corporation and on 14.11.2008, he visited the premises of Deepa Medicals-B, D.No.306, Brough Road, Erode, in which A1 to A5 are one of the partners, A6 and A7 are Distributing Agencies and the petitioners/A8 and A9 are manufacturers. After introducing himself, the complainant took samples of "Easum Baby Cereal" food powder in 3 sealed packs, 400 gms each for analysis and obtained the signatures of the accused No.1, who was incharge of the shop in the prescribed format and sent the samples for analysis to the Kings Institute, Guindy, Chennai, on 15.12.2008. The complainant had also issued notice to the 6th to 9th accused as required under Section 11(a), 14(a) and 17(2) of the prevention of Food and Adulteration Act, 1954 and 12 of Prevention of Food and Adulteration Act 1955. 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 adulterated since it contains Yeast and mould count to the extent of 5.0×10^6 CFU Nucor Spp. isolated and identified which shall be absent as per Appendix-B to PFA Rules 1965. All the samples are Misbranded since it is not labeled in accordance to the requirement of Rule 49(19) of PFA Rules, 1955 and the sale is in contravention as per Sec.7(v) of PFA Act 1954. After obtaining the sanction from the Director, General of Health Service, PH (Food) Section on 04.08.2009, the respondent filed the complaint on 24.08.2009 and the same was taken on file in C.C.No.389 of 2009 by the learned Judicial Magistrate-II, Erode. Aggrieved over the same, the petitioners/A8 and A9 have filed the above petition.

3. Heard Mr.V.Suresh, the learned Counsel for the petitioners and Mr.T.Shunmuga Rajeswaran, Government Advocate (Crl.Side), appearing for the respondent/complainant.

4. The learned Counsel for the petitioners submits that the respondent/complaint has committed a gross error in assessing whether the product (Easum) alleged to have been adulterated under the Appendix-B of the PFA Act or Proprietary food under Rule 37-A. The Government of India while according approval clarified to the product "Easum" shall be sold as proprietary food under Rule 37-A only till the standards for the processed cereal based complimentary food with single cereal like Rice and Ragi prescribed under the Rules and therefore, the alleged offence in the complaint that the product not as per Appendix-B of the Act does not arise as it is a proprietary food under Rule 37-A. He would further submit that the complaint was filed belatedly after 8 months and no explanation has been offered for the same. Though, the report of Public Analyst was obtained on 15.12.2008, the complaint was filed on 24.08.2009

and thereby the respondent has violated Section 11(4) Prevention of Food Adulteration Act 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. Hence, he prays to quash the proceedings pending against the petitioners.

5. 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. He further admitted the fact that above food falls under 37-A. As per the report of the Public Analyst in form 3, the said sample is Adulterated and Misbranded and it falls under Section 16(1)(a)(i) & 7(i)(ii) & (v) of the Prevention of Food Adulteration Act 1954 read with Section 2(ia) (a)(f) & 2(ix)(k) and Rule 49(19) 50(1) of the Prevention of Food Adulteration Rules, 1955. He further submitted that 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 also submitted that as per 11(1)(a) and 14a of Prevention of Food Adulteration Act 1954, every person incharge of the business at the time of offence is chargeable under this complaint and therefore there is no violation as projected by the petitioners and the petition is liable to be dismissed.

6. This Court paid its anxious consideration to the rival submissions and also perused the available records.

7. The respondent complainant visited the shop of the accused 1 to 5 on 14.11.2008 and collected the samples and issued the notice in form 6 as required under Section 11(a), 14(a), 17(2) of the PFA Act, 1954 and 12 of Prevention of Food Adulteration Act, 1955. The public Analyst gave his opinion that the said sample is found to be adulterated and misbranded.

8. 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.

9. The Public Analyst report was obtained in this case on 15.12.2008 and the complaint was filed only 24.08.2009 after 8 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 8 months when the Public Analyst Report was very much available with the complainant as on 15.12.2008.

10. It is relevant to extract the following judgments relied by the Counsel for the petitioners in this regard;

1. This Court in Bhushan Prasad, Manager, Quality and Regulatory Operations of the General Mills India Private Ltd., Mumbai and another Vs. K.Ravichander reported in (2009) 1 MLJ (Cr1) 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."

11. 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.389/09 on the file of the learned Judicial Magistrate, Erode, is hereby quashed.

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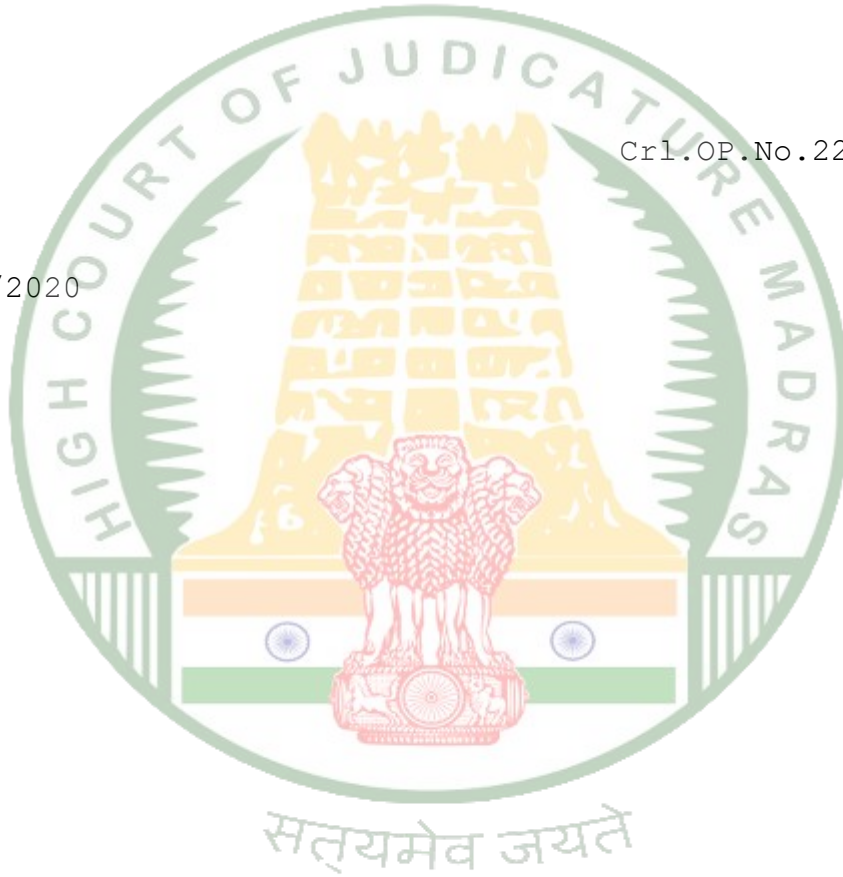
1.The Judicial Magistrate-II,
Erode.

2.The Public Prosecutor,
High Court, Madras-104.

+lcc to M/s.Shivakumar & Suresh, Advocate Sr.105344

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