

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.12.2018

CORAM :

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

CRL.O.P.Nos.25742 & 27063 of 2009
and
M.P.Nos.1 & 1 of 2009

1.A.Nirmal Gadhiya
2.Rajesh S.Jain .. Petitioners in Crl.OP.No.25742/09
Doulat Jain .. Petitioner in Crl.OP.No.27063/09

-Vs-

The State of Tamil Nadu at the
Instance of Mr.A.Saravanan,
Food Inspector, Food & Drugs
Administration, Division 79, Zone VI,
Corporation of Chennai,
Tamil Nadu. .. Respondent in both petitions

COMMON PRAYER: Criminal Original Petitions filed under
Section 482 of the Criminal Procedure Code, to call for the
records in S.M.M.F.No.11 of 2007 on the file of the learned XX
Metropolitan Magistrate, Ripon Building, Chennai and quash the
same.

For Petitioner : Mr.M.Kempuraj

For Respondent : Mr.T. Shanmuga Rajeswaran
Government Advocate (Criminal Side)
(In both petitions)

ORDER

The petitioners in Crl.OP.No.25742 of 2009 are accused
nos.1 & 3 and the petitioner in Crl.OP.No.27063 of 2009 is the
fourth accused in S.M.M.F.No.11 of 2007, on the file of the
learned XX Metropolitan Magistrate at Ripon Building, Chennai,
which was instituted at the instance of the respondent / Food
Inspector, for the violation of Prevention of Food
Adulteration Act, 1954. Challenging the proceedings pending
against them, the petitioners have filed the respective
petitions.

2. Since the issue involved in both the petitions is one
and the same, they are taken up for hearing together and are
disposed of by way of this common order.

3. The case of the prosecution, in brief, is as follows:

3.1. The respondent, on 06.10.2005, at about 03.00 pm, caused a surprise inspection in the premises of M/s.Deccan Park Limited, situated at D.No.36, Royapettah High Road, Chennai - 600 014 and the petitioners are its Directors and purchased 750 grams of Cream. The sample was divided into three equal parts and one was sent to the Public Analyst and the remaining two samples were sent to the Local Health Authority, for analysis.

3.2. The Public Analyst, after analysis, has submitted his report in No.0576, dated 21.10.2005, holding that High fat cream shall contain milk fat not less than 60.0% as per the Prevention of Food Adulteration Rules, 1955, whereas, the sample is found to contain 27.4% of milk fat and hence, the sample is adulterated.

3.3. The Local Health Authority issued notice dated 12.10.2007, under Section 13(2) of the Prevention of Food Adulteration Act, informing the petitioners that the sample was found to be adulterated by the Public Analyst, vide report dated 21.10.2005. The petitioners were also informed about the launching of the prosecution and that within a period of 10 days, they can have their samples analysed by the Central Food Laboratory, by making necessary application before the concerned Magistrate. Aggrieved, the petitioners are before this Court.

4. Sum and substance, the learned counsel appearing for the petitioners has contended as follows:

- The respondent took the samples for analysis on 06.10.2005 and as per the report of the Public Analyst dated 21.10.2005, the sample forwarded to him was found to be adulterated. But, nearly after two years, the Local Health Authority has issued a notice on 12.10.2007, informing the petitioners about the Public Analyst's report as well as the launch of prosecution. There is no reason, whatsoever, for such huge delay.
- Though the Public Analyst gave his report as early as on 21.10.2005, the Local Health Authority has issued notice to the petitioners only on 12.10.2007, ie., after two years, informing them about their right to have their samples analyzed by the Central Food Laboratory. But, after the inexplicable delay of about two years, the 'best before' date of the sample has already been expired and the sample would have also deteriorated and decayed and lost its original ingredients and characteristics. Therefore, the right of the petitioners to have their sample analyzed by the Central Food Laboratory, as per Section 13(2) of the Act has been deprived of.

5. Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent, supporting the complaint, submitted that the samples have been taken properly by the complainant / Food Inspector who is the competent authority,

under the Food Adulteration Act and he is authorised to institute prosecution for offences, as required under Section 20(1) of the Act. The Public Analyst, on examination of the samples drawn, has given a opinion that the sample was found to be adulterated and based on that, the respondent sent a letter to the petitioners seeking their response and after obtaining consent of the Public Health and Preventive Medicine (PFA) Madras, he lodged the complaint, as such, there is no infirmity in the complaint warranting interference.

6. Heard the learned Counsel appearing for the respective parties and perused the documents placed on record.

7. Admittedly, the sample, which was taken by the respondent for analysis on 06.10.2005, was analyzed between 07.10.2005 and 19.10.2005 and the Public Analyst submitted his report on 21.10.2005. The prosecution has been launched on 03.10.2007, solely on the basis of this report dated 21.10.2005. Since the sample drawn was a Cream, it will not have a prescribed expiry date. But, as rightly contended by the learned Counsel for the petitioners, after a period of two years, the sample would have lost its original characteristics. Had the complaint been lodged immediately, the petitioners would have established their defence, by having their samples analyzed by the Central Food Laboratory.

8. This Court is also informed that Food Safety and Standards Authority of India, being the Statutory Authority, vide communication dated 13.03.2018, proposed to withdraw the cases for violation under the old norms and standards, ie., under Prevention of Food Adulteration Act, 1954, subsequent to the introduction of the New Act, namely, Food Safety and Standards Act, 2006, subject to the satisfaction of the Commissioners concerned and accordingly, several cases instituted under the Prevention of Food Adulteration Act were withdrawn by the State Government.

9. In view of the foregoing discussions, this Court is inclined to quash the proceedings pending as against the petitioners / accused 1, 3 & 4 in in S.M.M.F.No.11 of 2007, on the file of the learned XX Metropolitan Magistrate at Ripon Building, Chennai, and the same is accordingly, quashed. In fine, both the Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

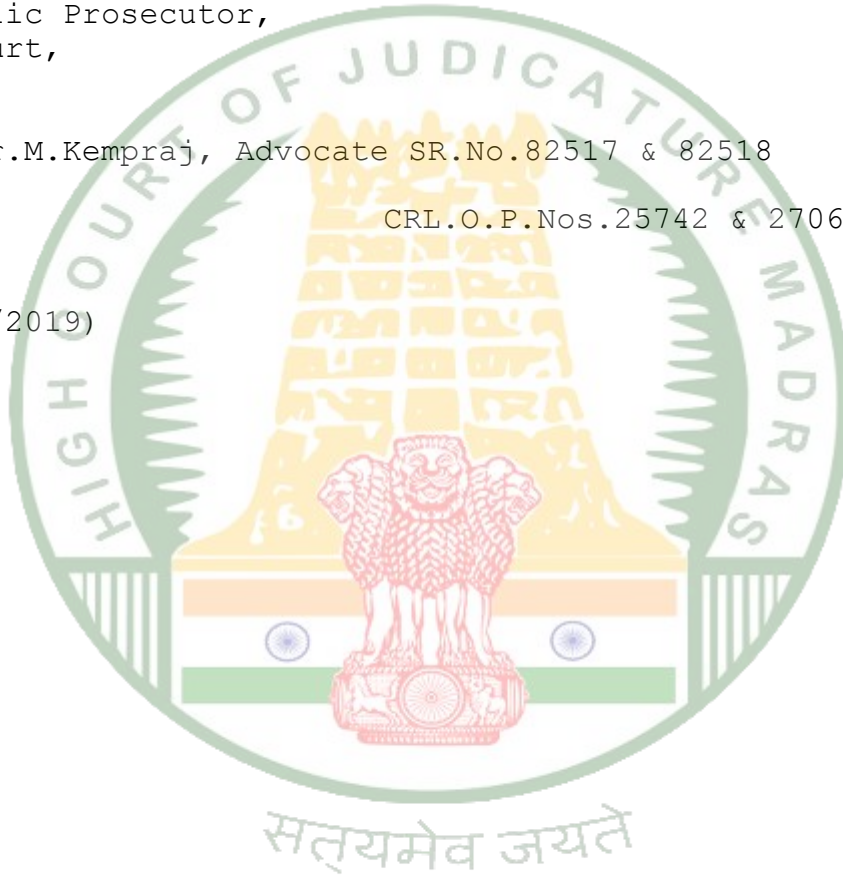
To

- 1.The XX Metropolitan Magistrate,
Ripon Building,
Chennai.
- 2.The Food Inspector, Food & Drugs
Administration, Division 79, Zone VI,
Corporation of Chennai,
Tamil Nadu.
- 3.The Public Prosecutor,
High Court,
Madras.

+2cc to Mr.M.Kempraj, Advocate SR.No.82517 & 82518

CRL.O.P.Nos.25742 & 27063 of 2009

GP (CO)
GMY (27/11/2019)



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