

SMT. JUSTICE T. RAJANI

CRIMINAL PETITION No.12249 OF 2011

ORDER:

The present Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 is filed by the petitioners - accused Nos.3, 2 and 1, respectively, seeking to quash the proceedings against them in Calendar Case No.19 of 2011, on the file of the Additional Judicial Magistrate of First Class, Karimnagar, registered for the offence under Sections 7 (i) punishable under Section 16 (1) (a) (i) of the Prevention of Food Adulteration Act, 1954 (for short 'Act').

2. Heard the learned counsel for the petitioners and the learned Public Prosecutor appearing for the respondent.

3. The case of the prosecution is that on 27.03.2010 at about 5.00 P.M., the Food Inspector inspected M/s. Matha Agencies, represented by its proprietor, petitioner No.3 herein and after following due formalities, took the sample of flavoured Milk (Badam Milk) MTR found in the premises of the said firm and sent it to the Public Analyst, State Food Laboratory, Hyderabad in a sealed cover on 29.03.2010 for test/analysis. The Public Analyst sent his report on 07.05.2010, stating that sample does not conform to the standard of yeast and mould count and is, therefore, adulterated.

4. The learned counsel for the petitioners submits that the inspection was done on 27.03.2010, whereas a notice under Section 13

of the Act was issued on 25.01.2011, by virtue of which, the right of petitioners available under Section 13 (2) of the Act was defeated. He also relies on the order of a learned Single Judge of this Court in **M/s. Swastiks Masalas Pickles & Food Products Pvt. Ltd. v. The State of Andhra Pradesh**¹ contending that prosecution cannot be sustained against the petitioners. The said order runs as follows:

“6. To substantiate his contention, he relied on a judgment of this Court in **MOHD. YASEEN KHAN V/s. STATE OF ANDHRA PRADESH AND ANOTHER [2010 (1) ALD (Crl.) 73 (AP)]**. In the said judgment, this Court was pleased to consider the inordinate delay of more than one year eight months in giving notice under Section 13 [2] of the Act and found that it would defeat the purpose for which notice under Section 13 [2] of the Act is intended. A notice under section 13 [2] of the Act was given by the Food Inspector to the petitioner-accused enclosing a copy of the Public Analyst Report for the purpose of giving an opportunity to the accused for sending the sample to Central Food Laboratory for second opinion regarding its composition.

7. In this case on hand, not only the inordinate delay, notice under section 13 [2] of the Act is not issued even till date. It is clearly established that the valuable right of the petitioner to send the second sample to the Central Food Laboratory as contemplated under section 13 [2] of the Act is violated and the said inaction on the part of the prosecution in issuing notice under Section 13 [2] of the Act is a fatal to the case of prosecution and it will go to the very root of the matter.

8. Be that as it may, when the second contention of the petitioner that arraying him as A-4 by the prosecution is also

¹. Order, dated 11.10.2017, in Crl. P. No.11908 of 2011

not in consonance with the provisions of Section 20-A of the Act, since the sample is taken from the retailer. The manufacturer can be arrayed as accused and proceeded after trial and satisfaction of the concerned court. Even on this ground also the petitioner cannot be arrayed as A-4 in CC.No. 81 of 2006.”

5. Hence, in view of the same, the present Criminal Petition is allowed and the further proceedings in Calendar Case No.19 of 2011 on the file of the Additional Judicial Magistrate of First Class, Karimnagar, against the petitioners - accused Nos.3, 2 and 1 are hereby quashed.

Consequently, Miscellaneous Petitions, if any, pending in the present Criminal Petition stand closed.

November 12, 2018
Mgr



SMT. T. RAJANI, J