

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.4300 of 2011

ORDER:

Petitioners/A3 and A4 seek to quash the proceedings against them in C.C.No.835 of 2010 on the file of Additional Judicial First Class Magistrate, Tiruvuru registered for the offences under Sections 7(i), 2 (ia) (m) punishable under Section 16(1)(a)(i) of Prevention of Food Adulteration Act, 1954 (for short “the Act”)

2a) The Food Inspector, Division III, Machilipatnam filed complaint alleging that on 20.10.2009 at about 10.15 AM, he inspected M/s.Bangalore Ayyangars Bakery situated at Vissampeta village. At that time A1—sale incharge was present and transacting the business whereas A2—proprietor was absent. LW2 was taken as mediator in whose presence the complainant inspected the bakery shop and found approximately 6 kgs. of Aadhaar Bakewell Interestirified Vegetable Oil present in the paper box with label declaration. On enquiry, A1 informed that said oil was intended to prepare biscuits and breads which was kept for sale for human consumption. Suspecting the quality of said vegetable oil, the Food Inspector purchased 1500 grams for Rs.90/- and obtained cash receipt from A1. The label declaration on the paper box showed that the net weight 15 Kgs. MRP Rs.850/- packed on Aug, 09, Batch No.215-2/57s, best before use six months from packing, Mfd.& Pkd. by Acalmar Oils and Fats Limited, Regd. Office Aparna Crest, 4th Floor, Road No.2, Banjara Hills, Hyderabad-500033, A.P.

b) After following due procedure, three samples were taken from the purchased oil and panchanama was drafted and signatures of A1, LW2 (mediator) were obtained. One part of the sample along with Form-VII memorandum was sent to public analyst, State Food Laboratory, A.P., Hyderabad on 21.10.2009 under intimation to Local (Health) Authority, Machilipatnam. The remaining two parts along with Form-VII memorandum in duplicate with specimen impression of the Food Inspector was submitted to Local (Health) Authority. On 21.10.2009, LW1 sent notice under Section 14A of the Act along with Form-VI to A3 and A4 to furnish the particulars of food product basing on the label declaration.

c) On 01.12.2009 the analyst sent report opining that the sample does not conform to the standards of BRR, Melting point, Baudouin test and Vitamin-A and hence it was adulterated.

d) The Food Inspector obtained permission for prosecution from Director, Institute of Preventive Medicine and Food (Health) Authority, A.P., Hyderabad on 16.09.2010. The prosecution was launched on 30.11.2010.

Hence, the instant petition.

3) Heard arguments of Sri S.Nirajan Reddy, learned senior counsel for Sri Rama Rao Immaneni, learned counsel for petitioners and learned Additional Public Prosecutor (AP) for respondent.

4) Severely fulminating the criminal proceedings as being violative of mandatory procedure laid down under the Act, learned senior counsel Sri

S.Niranjan Reddy would argue, in this case the food article i.e. Aadhaar Bakewell Interestirified Vegetable Oil was packed on 09.08.2009 and its life was six months. However, the intimation under Section 13(2) of the Act was given to the petitioners only on 06.12.2010 and therefore they were deprived of their valuable right under Section 13(2) of the Act to seek permission of the trial Court to send the sample to Central Food Laboratory for second analysis. Since the life time of the oil was expired long prior to the date of filing of complaint as well as sending notice under Section 13(2) of the Act, there was manifest violation of the provision under Section 13(2) of the Act. Hence, the criminal proceedings against the petitioners are liable to be quashed. He placed reliance on the judgment of this Court in *R.Hari Hara Reddy and another vs. State of A.P.*¹.

5) Learned APP argued that no prejudice was caused to the petitioners and the complaint was filed well within time and there was no violation of the provision under Section 13(2) of the Act.

6) I gave my anxious consideration to the above submissions of respective counsel. The chronology of the events in this case would scaffold the arguments of petitioners. The Food Inspector inspected the premises of A1 on 20.10.2009 and collected samples of Aadhaar Bakewell Interestirified Vegetable Oil on the apprehension that it was adulterated and unfit for human consumption. The label fixed on the paper bag container of the said vegetable oil denotes *inter alia* that it was packed on 09.08.2009 and it was best for use before six months from packaging. So, it is needless to emphasize that the life

¹ 2017 (2)ALD (CrI.) 662 (AP)

span of the subject oil was upto 09.02.2010 after which it would get degenerated and render itself unfit for human consumption and also for chemical analysis.

7a) Be that it may, the Food Inspector send one part of the sample along with Form-VII memorandum to public analyst, State food Laboratory, A.P., Hyderabad for analysis.

b) On 21.10.2009, under intimation to Local (Health) Authority remitted the remaining two parts along with Form-VII memorandum to Local (Health) Authority, Machilipatnam.

c) Further, the Food Inspector issued notice under Section 14A of the Act along with Form-VI to petitioners/A3 and A4 requesting them to furnish the particulars of food item basing on the label declaration on 21.10.2009.

d) The public analyst after analysis of the sample oil delivered report No.400/2009 along with covering letter to the Gazetted Food Inspector and Local (Health) Authority, Machilipatnam on 01.12.2009.

8) To the above extent, it must be noted, the events went in an orderly manner. However, even though the public analyst report was received on 01.12.2009 informing that sample does not conform to the standards of BRR, Melting point, Boudouin test and Vitamin-A and hence it was adulterated, the Food Inspector and also his higher authorities have not taken immediate action to launch prosecution within the shelf life of the sample oil, as we will find that the Food Inspector applied for sanction and the Director, Institute of

Preventive Medicine and Food (Health) Authority accorded sanction belatedly vide Rc.No.8525/F2/2009 dated 16.09.2010. Thereafter, the Food Inspector filed complaint before the Additional Judicial First Class Magistrate, Tiruvuru on 13.11.2010 and the said Court without losing any time took cognizance of the case on 01.12.2010. Thereafter, the Local (Health) Authority, it appears, sent statutory notice under Section 13(2) of the Act to the accused informing them about the launching of the prosecution and registration of the case on 01.12.2010 and further informing that if the accused are so desired, they may make an application to the trial Court within the period of 10 days from the date of receipt of notice under Section 13(2) of the Act to get the sample of food article which was preserved with Local (Health) Authority, Machilipatnam analyzed by Central Food Laboratory, Pune. The said notice, it appears, was sent by the Local (Health) Authority on 06.12.2010 i.e. long after the shelf life of the sample oil became extinct. Thus, the mandatory notice under Section 13(2) was issued in stead of during extant period of the sample, it was sent after it became extinct rendering the said notice otiose on one hand and denuding the valuable right of petitioners to request the Court to refer another sample available with Local (Health) Authority to the Central Food Laboratory, Pune.

9) It should be noted that the Legislature having considered the fact that once the Analyst report declared food article is adulterated, the accused would virtually lose the vigor of his contention, accorded the last opportunity to him in the form of Section 13(2) to enable him to request the Court to refer another sample to Central Food Laboratory, Pune for analysis. Thus, Section 13(2) is a

sacrosanct provision which must be followed scrupulously by all concerned before the shelf life of the concerned food article is expired.

10) In the instant case, though the life of the sample oil was expired by 09.02.2010, the prosecution itself was launched belatedly on 30.11.2010 and notice under Section 13(2) of the Act was sent to the accused with a further delay on 06.12.2010. The above procedural violation, it must be said, crumbles the prosecution case as the accused was deprived of valuable opportunity to refer the sample oil to the Central Food Laboratory, Pune. Hence, continuation of criminal proceedings would amount to abuse of process of court.

11) In similar circumstances, in *R.Hari Hara Reddy*'s case (1 supra) a learned single Judge of this Court while quashing the proceedings against the accused for the offence under Food Adulteration Act observed thus:

“A reading of the Division Bench decision of this Court would show that delay is per se not fatal to the prosecution case in cases where the sample continues to remain fit for analysis in spite of the delay and when no prejudice is caused to the accused. In the case on hand, the packing label cautions that the content of the packet, i.e., the food article, which is milk, is best for use before 180 days from the date of its manufacture. Section 13(2) of the Act confers a valuable right on the accused. Under the said provision the accused can make an application to the Court, within a period of 10 days from the receipt of a copy of the report of the Public Analyst by them, to get the samples of food analyzed in the Central Food Laboratory. And, in case the sample is found by the Central Food Laboratory unfit for analysis due to decomposition or degeneration by passage of time or for any other reason attributable to the lapses on the side of prosecution, that valuable

right provided under the said provision would stand denied. That would constitute prejudice to the accused entitling him to acquittal. Therefore, in the facts and circumstances of the case, it cannot be said that no prejudice has been caused to the petitioners-A2 and A3 and therefore, the ratio in the Division Bench judgment of this Court is not helpful to the respondent-State. It is common knowledge that the product, being milk, would get putrefied after the period of expiry mentioned on the label of the packet/the sample. Thus, in the well considered view of the Court, the accused A2 and A3 are, therefore, deprived of their valuable right under Section 13(2) of the Act to seek permission to send the sample for second analysis to the Central Food Laboratory.”

12) In the result, this Criminal Petition is allowed and proceedings in C.C.No.835 of 2010 on the file of Additional Judicial First Class Magistrate, Tiruvuru against the petitioners/A3 and A4 are quashed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Date: 05.10.2018
Murthy

U. DURGA PRASAD RAO, J