

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.939 of 2018

ORDER :

The petitioner is A.2/Ms.Hinustan Unilever Limited, among two accused including one Dogiparthi Tirumala Venkata Satyanarayana Swamy, Proprietor of M/s.Sri Mohana Krishna Agencies, Vinukonda, Guntur District.

2. The private complaint filed by the Food Inspector, Division III, Guntur, against the accused persons in C.C.No.184 of 2014 for the alleged time and place of the occurrence, dated 23.04.2011, at 4.00 p.m. in the shop of A.1 supra of the sale of the adulterated mixed fruit jam (Kissan), thereby punishable under Section 7(i), 2(ia) of PFA Act, 1954 read with Rule 55 of PFA Rules, 1955 and Section 16(1-A) of PFA Act, 1954.

3. The sum and substance of the accusation in the private complaint is that in the presence of P.Mallikarjuna Rao of Vinukonda, who acted as mediator, the complainant B. Srinivas, Food Inspector, for the local area of the entire State vide G.O.Ms.No.47, Health, Medial and Family Welfare (L12), dated 14.02.2008, purchased from the shop of A.1 the said Kissan fruit jam that was manufactured by A.2 entity supra, which was on 23.04.2011 at 4.00 p.m. by disclosing his identity as Food Inspector in the presence of the mediator supra having found in the shop of A.1, 20 glass jars kept in almyrah rack for sale from the disclosure by A.1 for human consumption having

suspected of the same, 3 sealed bottles purchased, each 200 grams, having paid Rs.135/- to A.1 covered by cash receipt and issued notice under Form-VI to A.1 informing about the purchase and being sent to the public analyst, State Food Laboratory (SFL), Hyderabad for analysis. The paper slips issued and signed by Local (Health) Authority on the three samples bearing Code No.ZIII/GTR/VNK/14159/2011 pasted on the sample bottles running around and signatures of A.1 and LW.2 taken on each of the sample and duly tagged by taking all precautions and obtained attestation of A.1 and LW.2 in the proceedings and sent notice to the manufacturer A.2 under Section 14 of the Act with Form-VI to furnish business particulars and proprietor/manufacturing partner of the company. On 25.04.2011 one part of the bottle sample with memorandum in Form VII sent to the public analyst, SFL, Hyderabad, by parcel with postal receipt under intimation to Local (Health) Authority. Remaining two parts of the sample bottles handed over to the Local (Health) Authority, Zone-III, Guntur, by acknowledgment, dated 25.04.2011.

4. It is further averred that after causing analysis of the sample delivered report in Form III bearing Code No.138 of 2011, dated 26.05.2011, the Local (Health) Authority, Guntur, on 01.06.2011 the public analyst having analyzed opined that the sample contains excess Benzoic, therefore it is found adulterated. The Food Inspector/LW.1 sent reminder to the manufacturer A.2 on 06.06.2011 and from A.2 company Regional Legal Manager letter received by the Food

Inspector to provide details of sampling, batch number and month and year of manufacture, vendor's name and address, to provide the particulars sought and at the request of the Regional Legal Manager, Food Inspector sent the complete details of the sample of Kissan Mixed Fruit Jam that was lifted on 23.04.2011 on 21.09.2011. On 01.08.2011 the Food Inspector sent detailed report to the Director, Institute of Preventive Medicine, Public Health Labs. & Food (Health) Administration, Narayanguda, Hyderabad, for necessary orders and received permission for launching of prosecution against the accused by Rc.No.2225/F3/2011, dated 22.07.2011, for selling the adulterated Kissan Mixed Fruit Jam for the offences supra.

5. The contentions in the quash petition mainly are that there is a violation of Section 13 of the Act.

6. Here coming to the sustainability of the contention regarding violation concerned, Kissan Mixed Fruit Jam net 200 grms. manufactured on 06.03.2011 with Batch No.A1187 manufactured by M/s.Hindustan Unilever Limited/A.2 address at Nasik and it mentions best before 12 months from packing. It is to say the shell life is up to 05.03.2012 in counting the one year. The complaint filed referred supra was dated 07.01.2014 with seal of the Court in taking cognizance for the offences supra as C.C.No.184 of 2014 by posting the matter from 01.07.2014 to 19.08.2014 by issuing summons to the accused persons. It is to say analyst report, dated 01.06.2011, not

even sent to accused before launching of the prosecution, but for if at all subsequently and to say by that time the shelf life of the product expired long before. That is the purport of the expression of this Court in **R. Hari Hara Reddy and another v. State of Andhra Pradesh**¹, mainly referring to Section 13(2) of the Act particularly at para 8 by referring to a Division Bench judgment of this Court in **Handi Instant Foods, Chennai v. State of Andhra Pradesh**² and the subsequent expression of the Apex Court in **Girishbhai Dahyabhai Shah v. C.C.Jani and another**³. The Division Bench observations reproduced in R. Hari Hara Reddy's case supra, para 8 reads that referring to Section 13(2) of the Act that 'delay though not *per se* not fatal to the prosecution in cases where sample continues to remain fit for analysis in spite of the delay and when no prejudice is caused shown to the accused.'

7. Coming to the case on hand, the food article is best for use before 180 days from the date of manufacture. Section 13(2) of the Act confers a valuable right on accused where under he can of case wherein to make an application to the Court within period of 10 days from the date of receipt of the report of the public analyst to get the sample analyzed by Central Food Laboratory (CFL) and in the case sample is found by CFL unfit for analysis due to decomposition or degeneration by passage of time for any reason attributable to the

¹ 2017 (2) ALD CrI.662

² 2007 (1) ALD (CrI.) 316 (AP)

³ 2009 (15) SCC 64

lapses of the prosecution agency, valuable right provided under this provision to the accused would stand denied that would constitute prejudice to the accused entitling him to acquittal. It is in observation thereby that in view of the same valuable right deprived of the accused to can seek permission to send the second sample to the CFL, the prosecution can be quashed for no purpose by its continuation. As also referred Girishbhai Dahayabhai Shah's case where it is after the sample collected on 08.04.1988 of curd with delay of 15 months in serving public analyst report in the mean time shell life completed thereby accused lost the opportunity to send the second sample to the CFL as it is not fit for being analyzed by then, the Supreme Court there by set aside the conviction judgment of the High Court confirmed and acquitted the accused.

8. Having regard to the above, in the case on hand it is long after the shell life of the product expired, the prosecution launched and subsequently if any the analysis report submitted from which the accused deprived of his opportunity to ask for sending the second sample to the Central Laboratory that is a prejudice, thereby the prosecution cannot be continued.

9. Accordingly, the criminal petition is allowed quashing the proceedings against the petitioner/A.2 in C.C.No.184 of 2014 pending on the file of the Judicial Magistrate of First class, Vinukonda at

Guntur District. The bail bonds of the petitioner/A.2 shall stand cancelled.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

2nd November 2018.

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