

SMT JUSTICE T.RAJANI

CRIMINAL PETITION No.8969 OF 2011

ORDER:

1. This Criminal Petition, under Section 482 of Cr.P.C., is filed by the petitioners/A-5 and A-6 seeking to quash the proceedings in C.C. No.324 of 2006, pending on the file of the Court of Judicial First Class Magistrate, Kothapet, East Godavari District (for short, 'the trial Court'), registered for the offence punishable under Section 7(i) and 2(ia) of the Prevention of Food Adulteration Act, 1954 (for short, 'the Act').

2. Heard learned counsel for the petitioners and learned Public Prosecutor, appearing for the sole respondent - State.

3. Learned counsel for the petitioners submits that the petitioners herein are the manufacturers of the food items which were seized and tested by the officials and they were found to be adulterated and, hence, according to Section 20 of the Act, they cannot be prosecuted unless there is satisfaction recorded by the Court which is trying the offence. In that regard, the learned counsel relies on the order of this Court, dated 11.10.2017, in Criminal Petition No.11908 of 2011; wherein this Court by considering Section 20-A of the Act, held as follows:

“8. Be that as it may, when the second contention of the petitioner that arraying him as A-4 by the prosecution is also 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 C.C. No.81 of 2006.”

4. Apart from the above, learned counsel also relies on another order of this Court in Criminal Petition No.8514 of 2009, dated

03.03.2016, wherein this Court, by considering that the right under Section 13(2) is defeated, quashed the proceedings against the petitioners therein, who are A-2 to A-4 in the instant case. Further, this Court in the said order, observed as follows:

“7 A.1 has been running a kirana shop in Gopalapuram village of Ravulapalem Mandal, A.2 is the proprietor of Devi Prasad Agencies, Tadepalligudem, A.3 is the Managing Partner of Sri Vijayawada Distributors, Vijayawada, A.4 is the firm and A.5 and A.6 are manufacturers of Swastic Masalas Pickels and Food Products.

8 On 18.11.2005 at about 1.30 PM the Food Inspector inspected the Kirana Shop of A.1 situated at D.No.10-101, Gopalapuram Village, Ravulapalem Mandal and found 10 sealed packets of Swastic Golden Sambar Powder (each packet containing 100 gms) in an almyrah along with other food articles. On enquiry A.1 disclosed that the said Swastic Golden Sambar Powder packets were kept for sale to the public for human consumption. A.1 disclosed that he purchased the same from A.2 *vide* Bill No.2099 dated 18.11.2005 and submitted the bill. On suspicion, the Food Inspector purchased six sealed packets (each containing 100 gms) from A.1 by paying Rs.72/-. The Food Inspector served Form-IV notice on A.1 informing about his intention of taking samples for sending them to Public Analyst, Hyderabad. The Food Inspector packed the purchased items as per the procedure contemplated under the Act. On 19.11.2005 the Food Inspector sent one of the samples to the Public Analyst, Hyderabad for analysis and report. A.2 disclosed through his letter dated 03.04.2006 that he purchased Swastic Golden Sambar Powder from A.4. After completion of necessary formalities, the Public Analyst delivered the report to the Local Authority. As per the report, the sample contains common salt, which was not declared on the label. After obtaining necessary sanction, the Food Inspector filed complaint on 04.10.2006 before the trial Court. Hence, the petition.

9 There is no mention in the entire complaint that the petitioners have adulterated the Swastic Golden Sambar Powder. The petitioners are only vendors. The only allegation against the

petitioners is that the label does not disclose that the said Sambar powder contains common salt.

10 It is not the case of the Food Inspector that A.1 to A.4 have manufactured the Swastic Golden Sambar Powder. It is also not the case of the Food Inspector that the petitioners have opened the packets and mixed some other material like salt etc. At this juncture, the learned counsel for the petitioners has drawn my attention to the ratio laid down by this Court in **Smt. A. Pavani Vs. State of A.P**¹ wherein this Court held as under:

“5. In **Amar Chand And Ors. v. State of Punjab** {1984 (1) Prevention of Food Adulteration Cases 167}, it was held, by placing reliance on Section 14 of the Act, that a bill, cash memo or invoice in respect of sale of any article of food given by manufacturer or distributor or dealer to the vendor thereof shall be deemed to be warranty given by such manufacturer, dealer or distributor. The accused placed reliance on the Photostat copy issued by the manufacturer which indicated that packets containing chilli powder were sold to the accused petitioner. It was held that the accused petitioner had purchased chilli powder under legal and valid warranty.

6. Section 19(2) of the Prevention Food Adulteration Act, 1954 gives exemption for certain persons and it reads as follows:

19 (2). A Vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves-

(a) that he purchased the article of food-

(i) in a case where a licence is prescribed for the sale thereof, from a duty licensed manufacturer, distributor or dealer,

(ii) in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.

¹ 2006 FAJ 463

7. In view of the law laid down by the Supreme Court and the Punjab and Haryana High Courts, the accused, who have produced the bill to show that he purchased the food article from the manufacturer or distributor and he sold it in the same form without manipulating the packets supplied to him, is not liable to be prosecuted by virtue of Section [19\(2\)](#) of the Act. As the petitioner is a distributor, she is protected under Section [19\(2\)](#) of the Act, therefore, the prosecution against her is liable to be quashed.”

11 The facts of the case on hand are almost identical to the facts of the case cited supra. Even if the allegations made in the complaint are prima facie taken to be true and correct, no case is made out against the petitioners. Hence the case against A.2 and A.4 is liable to be quashed.”

5. In the light of the above legal position and also the reasons mentioned by this Court in the aforementioned paragraphs, the Criminal Petition is allowed and all further proceedings against the Petitioners/A-5 and A-6 in C.C. No.324 of 2006 pending on the file of the Court of Judicial First Class Magistrate, Kothapet, East Godavari District, are hereby quashed.

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

T. RAJANI, J

Date: 06.11.2018.
Dsh

SMT JUSTICE T.RAJANI**77****09112018****CRIMINAL PETITION No.8969 OF 2011**

Date. 06.11.2018

DSH