

SMT JUSTICE T. RAJANI

CRIMINAL PETITION Nos.8545 and 8546 of 2011

COMMOM ORDER:

These petitions are filed, seeking for quash of the proceedings against the petitioners, who are A1 to A3, in C.C.Nos.65 and 66 of 2011 on the file of the Court of Additional Judicial Magistrate of First Class, Ponnur, Guntur District. The offences alleged against the petitioners are under Section 7(i), 2(ia)(a) of P.F.Act and punishable under Section 16(1)(a)(i) of Prevention of Food Adulteration Act, 1954.

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

3. The counsel for the petitioners submits that as per the case of the prosecution the cotton seed oil, which was in a tanker in the manufacturing unit, was lifted for sampling and hence, it cannot be considered as a finished product. The averments in the complaint show that the tanker was in the premises of the manufacturing unit and the same would support the contention of the counsel for the petitioners.

4. Apart from that, the date of inspection was 16.06.2010 and the samples were lifted on 16.06.2010. The undisputed shelf life of the cotton seed oil is six months, which ends on 16.12.2010. The counsel for the petitioners submits that the

notices in the complaint were received by the petitioners only on 08.02.2011.

5. Further, this Court in *R. HARI HARA REDDY V. STATE OF ANDHRA PRADESH*¹ held that the inordinate delay in filing the complaint would deprive the valuable right offered on the accused under Section 13(2) of the Act. Because of the violation of the mandatory requirement, no purpose would be served by continuing the prosecution against the accused.

6. The decision of the Supreme Court in *STATE OF HARYANA v. UNIQUE FARMAID (P) LTD.*² is also on the same lines. The contention therein that in the absence of the statutory time limit the shelf life of the sample was not relevant, was rejected. Relevant portion at paragraphs 11 and 12 observed as follows:

“11. Sub-section (1) of [Section 30](#) which appears to be relevant only prescribes in effect that ignorance would be of no defence but that does not mean that if there are contraventions of other mandatory provisions of the Act, the accused have no remedy. Procedure for testing the sample is prescribed and if it is contravened to the prejudice of the accused, he certainly has right to seek dismissal of the complaint. There cannot be two opinions about that. Then in order to safeguard the right of the accused to have the sample tested from Central Insecticides Laboratory, it is incumbent on the prosecution to file the complaint expeditiously so that the right of the accused is not lost. In the present case, by the time the respondents were asked to appear before the Court, expiry date of the insecticide was already over and sending of sample to the Central Insecticides Laboratory at that late stage would be of no consequence. This issue is no longer *res integra*. [In State of](#)

¹ 2017(2) ALD (CrL.) 662

² (1999) 8 SCC 190

Punjab v. National Organic Chemical Industries Ltd. [(1996) 11 SCC 613] this Court in somewhat similar circumstances said that the procedure laid down under Section 24 of the Act deprived the accused to have sample tested by the Central Insecticides Laboratory and adduce evidence of the report so given in his defence. This Court stressed the need to lodge the complaint with utmost dispatch so that the accused may opt to avail the statutory defence. The Court held that the accused had been deprived of a valuable right statutorily available to him. On this view of the matter, the court did not allow the criminal complaint to proceed against the accused. We have cases under the Drugs and Cosmetics Act, 1940 and the Prevention of Food Adulteration Act, 1954 involving the same question. In this connection reference be made to decisions of this Court in State of Haryana v. Brij Lal Mittal [(1998) 5 SCC 343] under the Drugs and Cosmetics Act, 1940; Municipal Corporation of Delhi v. Ghisa Ram [AIR 1967 SC 970]; Chetumal v. State of Madhya Pradesh & Anr. [(1981) 3 SCC 72] and Calcutta Municipal Corporation v. Pawan Kumar Saraf, [(1999)] 2 SCC 400] all under the Prevention of Food Adulteration Act, 1954.

12. It cannot be gainsaid, therefore, that the respondents in these appeals have been deprived of their valuable right to have the sample tested from the Central Insecticides Laboratory under sub-section (4) of Section 24 of the Act. Under sub-section (3) of Section 24 report signed by the Insecticide analyst shall be evidence of the facts stated therein and shall be conclusive evidence against the accused only if the accused do not, within 28 days of the receipt of the report, notify in writing to the Insecticides Inspector or the Court before which proceedings are pending that they intend to adduce evidence to controvert the report. In the present cases Insecticide Inspector was notified that the accused intended to adduce evidence to controvert the report. By the time the matter reached the court, shelf life of the sample had already expired and no purpose would have been served informing the court of such an intention. The report of the Insecticide Analyst was, therefore, not conclusive. A valuable right had been conferred on the accused to have the sample tested from the Central Insecticides Laboratory and in the circumstances of the case accused have been deprived of that right, thus, prejudicing them in their defence.”

7. In the light of the above legal position and since the shelf life of the cotton seed oil is expired, this court opines that continuation of further proceedings against the petitioners would be an abuse of process of law.

8. Accordingly, the criminal petitions are allowed and the further proceedings against the petitioners, who are A1 to A3, in C.C.Nos.65 and 66 of 2011 on the file of the Court of Additional Judicial Magistrate of First Class, Ponnur, Guntur District, are hereby quashed.

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

August 29, 2018
LMV



T. RAJANI, J