

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.13121 of 2011

ORDER:

This criminal petition is filed, seeking for quash of the proceedings in C.C.No.128 of 2010, against the petitioner, who is A4, on the file of the Special Judicial First Class Magistrate for Railways, Nellore. The offence alleged is under Sections 2(ia)(a)(m) read with 7(1) and Section 17(1)(a)(i) of the Prevention of Food Adulteration Act (for short 'the Act').

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

3. The case of the prosecution is that the inspection of the shop of A1 was conducted on 12.03.2009 and suspecting the quality of Mirinda Orange flavour sweetened carbonated sealed Rexiam cans to be adulterated, the inspecting officer purchased nine sealed cans, which was divided into three parts and one sample was sent to FSL for analysis on 13.03.2009. The public analyst gave his report on 20.04.2009 and the complaint was filed on 30.08.2010. Section 13(2) notice was admittedly sent on 03.08.2011 by which date the shelf life of the sample expired long back. Hence, by the date of filing of the complaint itself, the shelf life of the sample expired.

4. The counsel for the petitioner expressed that there is prejudice caused to the petitioner and by virtue of the delay caused in filing the report and issuing statutory notice, the opportunity provided under Section 13(2) of the Act to send a sample for second analysis is lost. Learned counsel also relies on an order in CRLP.Nos.2184 of 2009 and

batch dated 29.06.2009 and CRLP.No.8407 of 2012 dated 25.11.2014 wherein the Court by considering the similar submissions and by taking into consideration the inordinate delay, not only in issuing notice, but also in launching prosecution against the accused, quashed the further proceeding.

5. There can be no disagreement with the opinion of this Court that the quality of the sample sent by the complainant and the quality of the sample sought to be sent by the accused for second opinion should not vary. That would be possible only when much time is not lost between the period of sending the first sample and the second sample. Such valuable right offered to the accused under Section 13(2) of the Act would get defeated if it is otherwise. The delay in the complaint would result in the two dates getting distanced thereby rendering the exercise of sending any sample for second opinion futile.

6. There is no denial of the dates that were submitted by the petitioner herein. In view of the above, there would not be any purpose served by permitting the prosecution to proceed with the case and it would result in abuse of process of law.

7. This Court in R. HARI HARA REDDY v. STATE OF ANDHRA PRADESH¹ 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.

¹ 2017(2) ALD (CrI.) 662

8. 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 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

² (1999) 8 SCC 190

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.”

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 the further proceedings in C.C.No.128 of 2010, against the petitioner, who is A4, on the file of the Special Judicial First Class Magistrate for Railways, Nellore,

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

November 28, 2018
DSK

T. RAJANI, J

