

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.8410 OF 2018

ORDER:

This criminal petition is filed by the petitioners/accused Nos.2 and 3 under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.455 of 2017 on the file of the Judicial First Class Magistrate at Bellampally, Adilabad District, registered for the offence punishable under Section 3 (1) (ZZ) (iii), 21, 26 (2), (1) of Food Safety Standards Act, 2006 (for short "F.S.S.Act").

The complainant is Food Safety Officer, Adilabad District filed a complaint before the Magistrate alleging that on 03.06.2013 at about 01.00 p.m. he visited M/s. Maruthi Bakery, Main Road, Bellampally, Adilabad District belonging to the Accused by name Anil Kumar Mishra, Proprietor of M/s. Maruthi Bakery. At that time, the Accused was present in the bakery and found transacting business. The Food Safety Officer disclosed his identity and purpose of visit of the bakery, on enquiry accused disclosed his identity, as Anil Kumar Mishra, proprietor of the bakery. Complainant inspected the said bakery in the presence of one witness and found approximately 8 bottles of Maaza Fruit Drink which is kept for sale for human consumption. The Maaza bottle contains label declaration as follows:

***"Maaza Fruit Drunk, ready to serve fruit drink,
Manufacture Date 12-05-2013, 600 ml Qty. a production of
the Cocacola company, Mrp. Rs. 321-, Batch No. 92, VJ Rs.
321- 22:28 best before from the date of Manufacturing 6
months, Cocacola Beverages Atmakur Village, Mangalagiri
Mandal, Guntur District 522 503 (A.P)."***

Then Food Safety Officer suspected that the said Maaza Fruit Drink as adulterated, purchased 4 bottles from the above said stock and paid Rs.128/- towards the cost of the Maaza Fruit Drink 'and obtained cash receipt for the same attested by LW-2. Thereafter, complainant prepared Form V-A and served to the Food Business Operator under acknowledgement informing him that the purchased Maaza bottles and they will be sent to the Food Analyst, Hyderabad for analysis.

Later, the purchased Maaza Fruit Drink was divided into 4 equal parts of one bottle 600 ml each placed. A label is pasted to each sample Maaza Fruit Drink bottle. The each sample bottle is separately wrapped in a fairly thick brown paper, ends folded inside neatly and pasted with gum. A paper slip which is issued and signed by the Food Safety Officer, Adilabad District bearing Code and Serial No.017A/03285/2013, is pasted to each sample container around, from bottom to top and obtained the signature of Food Business Operator and LW-2 in such a manner that the paper slip and wrapper both carries a part of the signatures.

On 04-06-2013 one part of the sample together with a copy of memorandum in Form VI bearing the specimen impression seal used to seal the sample packet was sent to the Food Analyst State Food Laboratory, Hyderabad by Registered post bearing No.RN163983475IN, Dated 04-06-2013 under intimation to the Food Safety Designated Officer.

Complainant also sent separate memorandum form - VI bearing specimen impression seal used to seal the sample packet was sent to the Food Analyst State Food Laboratory, Hyderabad by Registered parcel bearing No. RN163983365IN, Dated 04-06-2013

in a sealed cover. On the same day, he handed over the 2nd and 3rd parts of sample along with 2 copies of Memorandum in Form - VI deposited as per rule 2.4.1 (10) (ii) of FSS Rules, 2011 with the Food Safety Designated Officer Adilabad District for safe custody and acknowledged the receipt.

On 04-06-2013 the 4th part of the sample along with the copy of Memorandum in form No.VI was deposited with the Food Safety Designated Officer for safe custody.

The Food Analyst report disclosed that the Maaza Fruit Drink kept for sale of human consumption is unsafe. In Food Analyst report No. 380/2013, Dated 22-06-2013 it is opined that the sample does not conform to the standard of yeast & Mold Count.

On the basis of the said report, the complainant filed complaint before the Magistrate.

The petitioner filed the present petition raising several contentions, one among them is that the complaint is hit by Section 77 of F.S.S. Act and other grounds are not necessary in view of the specific ground urged by the petitioner.

Sri S.Leo Raj, learned counsel for the petitioner, would draw the attention of this Court to the dates of commission of offence, filing complaint while contending that no Court shall take cognizance of an offence under F.S.S.Act after one year from the date of commission of an offence under Section 77 of F.S.S. Act and unless the time is extended by the Commissioner of Food Safety as provided under proviso annexed to Section 77 of F.S.S.Act and he placed reliance on the judgment of Apex Court

rendered in “**Sirajul v. State of Uttar Pradesh**”¹ in support of his contentions.

Learned Public Prosecutor for the State of Telangana supported the proceedings before the Magistrate while drawing the attention of this Court to the sanction granted by the Commissioner of Food Safety dated 27.05.2014 and received by the complainant on 16.06.2014 and requested to dismiss the petition.

In view of the specific ground urged by the learned counsel for the petitioner; considering rival contentions and perusing the material on record, the point that arises for consideration is:

- (1) ***Whether the Magistrate is competent to take cognizance of the offence as alleged in complaint dated 13.07.2014 in view of the bar under Section 77 of F.S.S.Act. If not, whether the proceedings in C.C.No.455 of 2017 on the file of the Judicial First Class Magistrate at Bellampally, against the petitioners are liable to be quashed?***

P O I N T:

It is an undisputed fact that the Food Analyst report was issued on 22.06.2013. One year time, permitted under Section 77 of the F.S.S.Act to take cognizance of the offence was expired on 21.06.2014, whereas the complaint was filed on 13.07.2014.

Section 77 of the F.S.S.Act reads as follows:

“77. Time limit for prosecutions:- Notwithstanding anything contained in this Act, no Court shall take cognizance of

¹ (2015) 9 SCC 201

an offence under this Act after the expiry of the period of one year from the date of commission of an offence.

Provided that the Commissioner of Food Safety may, for reasons to be recorded in writing, approve prosecution within an extended period of up to three years.”

Therefore, the Court shall not take cognizance if the complaint is filed beyond one year from the date of commission of offence except on consent given by Commissioner of Food Safety as per the proviso annexed to Section 77 of the F.S.S.Act.

In the present case, the complaint was filed on 13.07.2014 though one year time from the date of commission of offence was expired on 21.06.2014 and no consent was obtained from the Commissioner of Food Safety to file complaint within extended period up to three years. In the absence of any such consent to file the compliant within the extended time prescribed under Section 77 of the F.S.S.Act, the compliant is hopelessly barred by limitation.

In “**Sirajul v. State of Uttar Pradesh**” (referred supra) the Apex Court held that the “cases covered by statutory bar of limitation may be liable to be quashed without any further enquiry, the cases not covered by the statutory bar can be quashed on the ground of delay in filing of a criminal compliant in appropriate cases.” But, here there is a clear interdict on the power of the Magistrate after expiry of one year period from the date of commission of offence. In the absence of any consent of Commissioner of Food Safety to file complaint within the time permitted under the proviso to Section 77 of F.S.S.Act, the very taking cognizance by the Magistrate after expiry of one year time is

illegal. On this ground alone, the proceedings are liable to be quashed.

In paragraph No.17 of the same judgment, the Apex Court held that “mere delay in completion of proceedings may not be by itself a ground to quash proceedings where offences are serious, but the Court having regard to the conduct of the parties, nature of offence and the extent of delay in the facts and circumstances of a given case, quash the proceedings in exercise of jurisdiction Under Section 482 Code of Criminal Procedure in the interest of justice and to prevent abuse of process of the Court.”

In the present case, it appears from the record though the report was received on 22.06.2013 from the Food Analyst, the consent was obtained on 27.05.2014 and it was received on 16.06.2014. Letter was addressed by Food Safety Designated Officer on 29.06.2013 seeking consent of the Commissioner of Food Safety. But the Commissioner of Food Safety kept the matter pending for more than 11 months without passing appropriate order to file complaint against the petitioners herein. It appears from the record that the authorities concerned are responsible for the delay caused in filing complaint as the Commissioner of Food Safety passed order giving consent to file complaint just one month before expiry of the time to file complaint and to take cognizance. But the consent dated 27.05.2014 from the Commissioner of Food Safety was received by the office of complainant on 16.06.2014, who filed complaint on 13.07.2014 i.e. within one month from the date of receipt of the copy. By the date of filing complaint, one year time permitted under Section 77 of the F.S.S.Act to take

cognizance of the offence was expired. Hence, the delay in filing complaint and laches on the part of the prosecuting agency lead to quashing of the proceedings. Hence, the proceedings against the petitioners herein are quashed.

In the result, the criminal petition is allowed. The proceedings against the petitioners/accused Nos.2 and 3 in C.C.No.455 of 2017 pending on the file of the Judicial First Class Magistrate at Bellampally of Adilabad District are hereby quashed.0 No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

10.09.2018
Ksp



JUSTICE M. SATYANARAYANA MURTHY