

SMT. JUSTICE T.RAJANI

CRIMINAL PETITION No.10900 of 2011

ORDER:

This criminal petition is filed under Section 482 Cr.P.C., seeking to quash the proceedings in C.C.No.1343 of 2002 on the file of Judicial First Class Magistrate, Jaggaiahpet, Krishna District, registered for the offences under Sections 2(ix)(k), 7(ii) & 16(1)(a)(i) of Prevention of Food Adulteration Act, 1954 and Rule 50 of Prevention of Food Adulteration Rules, against the petitioners/A1 and A2.

2. Heard learned counsel for the petitioners/A1 and A2 and learned Public Prosecutor for the respondent-State.

3. Learned counsel for the petitioners submits that this Court, by virtue of the order dated 21.11.2011 passed in CrI.P.No.6500 of 2008, quashed the proceedings against A3 and A4 in the aforesaid case and that as the petitioners/A1 and A2 also stands on the same footing, the proceedings against them are liable to be quashed.

4. The relevant portion of the order dated 21.11.2011 passed in CrI.P.No.6500 of 2008 is extracted hereunder:

“The food article in question is tea powder said to have been manufactured by both these petitioners. It must be mentioned herein that the 2nd petitioner is a partnership firm and the 1st petitioner is its Managing Partner. The sample of tea powder in question was lifted by the Food Inspector on 21-4-2004 from the shop of A.1 and A.2 at Jaggaiahpet. The Public Analyst Report which is dated 23-5-2001 is issued by one K.Suryanarayana Murthy of the Public Health Laboratory of A.P. State Food Control Laboratory, at Hyderabad. His report reads that he came to the conclusion that sample of tea powder does not contain batch number on the label and it is therefore misbranded. In the complaint, it is pleaded

that the petitioners are guilty of the aforesaid offences, only on the ground that the tea sold at by them is misbranded as opined by the Public Analyst. No other offence is alleged.

3. Sri K.Vasudeva Reddy, learned counsel appearing for the petitioners relied upon a decision of our Supreme Court given in DWARKA NATH AND ANOTHER v. MUNICIPAL CORPORATION OF DELHI¹ and contended that mere non-mention of batch number on the label as contemplated under Rule 32(e) of the Rules framed under the Act cannot be a ground to prosecute the manufacturer and therefore, the case should be quashed. His contention is that in the aforesaid Supreme Court decision, it has been held that the Central Government has no power to merely prescribe that batch number should be mentioned without giving other details, such as the date of manufacture of batch and date of expiry and other details and that therefore, it is *ultra vires* the Act itself.

4. Para 21 in the above judgment reads as follows:

"There is no definition of the expression "batch number" or "Code number" either in the Act or the Rules. It is also admitted that even assuming that the batch or code number has to be given, there is no further obligation to specify in the label the date of packing and manufacture of the article of food or the period within which the article of food has to be utilized, used or consumed. In the absence of any obligation to give the particulars mentioned by us above, the public or the purchaser will not be able to find out even the freshness of the contents of a container. Therefore, it follows that merely giving an artificial batch number or code number will not be of any use to the public or to the purchaser. In view of all these circumstances, we are of the opinion that rule 32 (e) is beyond the rule making power even under S.23(1)(d) of the Act. The appellants could not be convicted for any violation of cl.(e) of R.32 as the said provision, as pointed out above, is invalid."

5. In the above Supreme Court decision, food article in question was Ghee and the complaint was that it did not contain batch number. After considering the provisions of the Act and the Rules and the wording in which Rule 32 (e) stipulating requirement of showing batch number on the label, their Lordships have held that mentioning of mere batch number does not serve any purpose and therefore, the said rule is *ultra vires* the power of the Central Government under the Act. In other words, what follows is that in view of the aforesaid Supreme Court decision, mere non-mention of the batch number on the label of the product by itself cannot be a ground for prosecution.

6. The above decision is of 1971 and on an earlier occasion, the Additional Public Prosecutor was granted time at his request to verify the legal position as it is now. Sri A.S.Vasudevan, representing Additional Public Prosecutor submits that he has verified the case law and stated across the

¹ AIR 1971 SC 1844

Bar that the above Supreme Court decision still holds good and there is no change in the rule position. In the present case, I have already mentioned that the analyst gave his opinion that the tea powder is misbranded merely on the ground that the label does not contain batch number. In view of this, it is clear that applying the principle laid down in the above Supreme Court decision, the prosecution cannot be allowed to be continued'.

5. Considering the said submission and by virtue of the order dated 21.11.2011 passed in Crl.P.No.6500 of 2008, further proceedings against the petitioner/A1 and A2 are quashed.

6. Accordingly, the Criminal Petition is allowed, quashing the proceedings in C.C.No.1343 of 2002 on the file of Judicial First Class Magistrate, Jaggaiahpetta, Krishna District, against the petitioners/A1 and A2. Miscellaneous applications, if any, pending in this criminal petition shall stand closed.

31st October, 2018.
sj

T. RAJANI, J

