

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.01.2019

CORAM:
THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.12653 of 2010
and
M.P.No.1 of 2010

[Orders Reserved on 02.11.2018]

1.K.Nasar Beik
2.K.R.Ravichandran
3.Yentop Vanaspathi ... Petitioner / A1 to A3

Vs.

M.Lakshmana Perumal
Food Inspector Incharge
Thiyagadurgam Town Panchayat
Villupuram District ...Respondent /Complainant

PRAYER: Petition is filed under Section 482 of Criminal Procedure Code, praying to call for the records relating to C.C.No.593 of 2010, on the file of Judicial Magistrate, Kallakurichi and quash the same.

For Petitioners : Mr.Ramesh Kumar
For Mr.T.Muruganantham
For Respondent : Ms.V.Saratha Devi
Govt.Advocate (crl.side)

ORDER

This Criminal Original Petition has been filed praying to quash the proceedings in C.C.No.593 of 2010, on the file of the learned Judicial Magistrate, Kallakurichi.

2. The short facts of the case are as follows:-

On 18.02.2009, the respondent visited the shop of the 1st petitioner, served Form VI and purchased 3 packets of Yentop Vanaspathi, each pack weighing 500 gms. Out of which, a packet was sent to the Public Analyst, Coimbatore, on 18.02.2009, for analysis and kept the remaining packets in the Office. On 20.03.2009, a report was received by the respondent from the Public Analyst, Coimbatore, stating that the food does not confirm to the standard prescribed for Vanaspathi with respect to the melting point, which is more than the maximum limit for Vanaspathi. Hence, the complaint.

3. The learned counsel appearing for the petitioner would submit that on a private complaint, a case has been registered against the petitioner under Section 16(I)(a)(i) and & 7(I) r/w 2(ia)(a) & (m) of Prevention of Food Adulteration Act, 1954. He would further submit that shelf-life of the sample is only for a period of six months. Section 13(2) of the said act, Notice was received with Form III and report of the Analyst from the respondent on 02.03.2010 and at that time, the shelf-life of Vanaspathi got expired. Thereafter, the petitioners cannot send the sample to any other Laboratory, for confirmation of the test results. The learned counsel would further submit that in similar circumstances, this Court, in the decisions in C.Suresh and Others Vs. The State reported in (2005 (1) CTC 645) and in M.Chinnachamy and 3 others V. R.Satyanarayanan reported in (2001 (4) CTC 274), had quashed the complaints.

4. The learned Government Advocate (crl.side) appearing for the respondent, relying on the averments made in the counter affidavit filed by the respondent, has contended that on 18.02.2009, at about 4.10 p.m., the respondent visited the shop of the 1st petitioner, served Form VI and purchased 3 packets of Yentop Vanaspathi, each pack weighing 500 grams, for Rs.60/-. Out of which, he sent one packet to the Public analyst, Coimbatore on 18.02.2009, for Analysis and kept the remaining two packets in the Office. On 19.02.2009, the respondent sent the Form VI to the 3rd petitioner by Certificate of Posting. The respondent, on 09.04.2009, 16.06.2009 and 03.12.2009 sent Form VIII respectively to the petitioners 1 to 3. Therefore, the respondent strictly followed the procedures laid down in the said Act. Hence, she prayed for dismissal of the Criminal Original Petition.

5. I have heard the learned counsels appearing on either side and perused the materials available on record.

6. The points to be decided in this case are that;

(i) Whether any undue delay in launching the prosecution, wherein the valuables right of the petitioners, seeking for the second analysis, has been deprived of?

(ii) Whether the mandatory provisions under Section 13(2) of Prevention of Food Adulteration Act, 1954, has been complied with or not?

7. Before dealing with the points raised for deciding the present case, it is quite better to refer Section 13(2) of Prevention of Food Adulteration Act, 1954, which reads as follows:-

"13(2): On receipt of the report of the result of the analysis under Sub-section (1)

to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the persons from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under Section 14A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the Court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory."

8. In this case, on 18.02.2009, when the respondent caused inspection to the shop of 1st petitioner had seen five packets of 500 gms., of 'Ventag Vanaspathi' kept for sale and of which, he had purchased three packets for the purpose of taking them as samples and thereafter, packed and sealed individually, assigning the serial and code numbers and had sent the same to the Public Analyst. The samples had not been mixed and harmonized. Further, on 19.02.2009, he had sent Notice to the manufacturer viz., the 3rd respondent and the Analyst's Report was received on 20.03.2009 and nomination in Form VIII request had been sent on 09.04.2009, which was received by the 3rd respondent on 16.06.2009 and the nomination was made by the 3rd respondent on 12.08.2009 and the complaint was filed on 03.12.2009. Though the Public Analyst Report was received as early as on 20.03.2009, Notice under Section 13(2) of the said Act, has been sent only on 26.02.2010, after a delay of nearly 11 months. Knowing well that the Vanaspathi Packets discloses the shelf-life of the sample is only for a period of six months and the shelf-life had expired on the date of filing of the complaint ie., on 03.12.2009, the Notice under Section 13(2) of the said Act, has been issued to the petitioner only on 02.03.2010, after filing of the complaint, by the time, the receipt of such notice, the shelf-life of the goods had expired and in any event, the quality of the samples would have deteriorated and become unfit for analysis.

9. In the above facts and circumstances of the case on non-compliance of Section 13(2) of the Prevention of Food Adulteration Act, has been deprived the petitioners' valuable rights and as such, serious prejudice had been caused to the

petitioners, the proceedings against the petitioners are liable to be quashed.

10. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.593 of 2010, on the file of Judicial Magistrate, Kallakurichi, stands quashed. Consequently, the connected miscellaneous is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

MPK

To

1.The Judicial Magistrate,
Kallakurichi.

2.-do- Thro' Chief Judicial Magistrate,
Villupuram.

3.The Food Inspector In charge
Thiyagadurgam Town Panchayat
Villupuram District

4.Public Prosecutor,
Madras High Court,
Madras

+1cc to Mr.T.Muruganantham, Advocate, S.R.No.6012

CrI.O.P.No.12653 of 2010

GJII(CO)

rrs 01/03/2019

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