

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.28952 & 28953 of 2010
and
M.P.Nos.1& 1 of 2010

[Orders Reserved on 24.09.2018]

M.Balakrishnan ... Petitioner / A2 in both Crl.O.Ps.

Vs.

State Rep.by
The Food Inspector,
City Municipal Corporation,
Coimbatore ... Respondent / Complainant
in both Crl.O.Ps.

PRAYER: Petitions filed under Section 482 of Criminal Procedure Code, praying to call for the records in C.C.Nos.95 & 94 of 2009, respectively on the file of the learned Judicial Magistrate No.1, Coimbatore, and quash the proceedings therein.

For Petitioner : Mr.C.S.Dhanasekaran
in both petitions

For Respondent : Ms.V.Saratha Devi
in both petitions Govt.Advocate (crl.side)

COMMON ORDER

This Criminal Original Petition has been filed praying to quash the proceedings in C.C.Nos.95 & 94 of 2009, respectively on the file of the learned Judicial Magistrate No.1, Coimbatore, quash the proceedings.

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

The petitioner is the proprietor of Canteen, who is A2 in this case; the 1st accused is the incharge of the Canteen and the 3rd accused is the Licensee of Theatre. On inspection, the Food Inspector, City Municipal Corporation, Coimbatore, found that the accused have adulterated the Ice Cream and Corn Puffs respectively, by adding prohibited synthetic colour. Hence, the complaint.

3. Since the issue involved in both the petitions are one and the same this Court being passed a common order.

4. The learned counsel appearing for the petitioner would submit that as per Section 13(2-B) of the Prevention of Food and Adulteration Act, 1954 (in short 'the Act'), the Director of Central Food Laboratory, should send a certificate to the trial Court in the prescribed form within one month from the date of receipt of the sample specifying the result of the analysis. The delay in sending the sample by the trial Court for the analysis to the Central Food Laboratory makes the said sample unfit for analysis. The petitioner was not a manufacture of Ice Cream and Corn Puffs respectively and he purchased those items and sold in the canteen and therefore, the question of adulteration by the petitioner does not arise. Hence, he prayed for quashment of the proceedings in C.C.Nos.95 & 94 of 2009, respectively on the file of the learned Judicial Magistrate No.1, Coimbatore. The learned counsel, invited the attention of this Court to the decision of Hon'ble Apex Court in G.Sivakumar Vs. Food Inspector reported in (2009 (2) MLJ (Crl.) 1035) and also a decision of this Court in Girishbhai Dahyabhai Shah Vs. C.C.Jani and Another reported in (2010 (2) SCC (Crl.) 270) to support his contentions.

5. The learned Government Advocate (crl.side) appearing for the respondent would submit that the petitioner, who is A2, is the proprietor of the Canteen in a Theatre. On inspection, the Food Inspector, City Municipal Corporation, Coimbatore, found that the accused have adulterated the Ice Cream and Corn Puffs respectively, by adding prohibited synthetic colour, which was proved by the Salem Food Analysis Laboratory. The contentions raised by the petitioner are all factual matter, which are gone to be only at the time of trial. Hence, the learned Government Advocate prayed for dismissal of the petition.

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

7. It is seen from the records that samples were taken on 17.12.2008; sent to Analyst on 18.12.2008; Received the Analyst's Report on 23.01.2009 and sanction for prosecution has been obtained on 05.05.2009. Thereafter, the complaint came to be filed on 07.07.2009; The report was sent to the accused on 16.07.2009 and summoned on 27.07.2009. The accused had filed a petition under Section 13(2) of the said Act, on 27.07.2009. The entitlement of the accused in getting second sample examined under Section 13(2) of the Act. The sample of food articles collected could not have retained its qualities beyond a period of six months under controlled condition, being the period of

shelf-life. When there is a deprive of right, on the account by the conduct of prosecution, as a result of which, samples collected could not have retained its qualities under the controlled condition. Futility of further examination of second sample, leading to deprivation of valuable rights conferred on the accused had occurred. In view of such delay in launching prosecution in the present case, the petitioner / accused put to serious prejudice, as he has lost his indefeasible right. Under those circumstances, allowing continuation of proceedings in C.C.Nos.95 & 94 of 2009 respectively on the file of the learned Judicial Magistrate No.1, Coimbatore, would be tantamount to abuse of process of law and as such, the above proceedings are liable to be quashed.

8. In the result, the Criminal Original Petitions are allowed and the proceedings in C.C.Nos.95 & 94 of 2009, pending on the file of the learned Judicial Magistrate No.1, Coimbatore, are quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

MPK

To

1.The Judicial Magistrate No.1,
Coimbatore,

2.The Food Inspector,
City Municipal Corporation,
Coimbatore

3.Public Prosecutor,
Madras High Court,
Madras

Cr1.O.P.Nos.28952 & 28953 of 2010

AK(CO)
GMY(18/02/2019)