

HONOURABLE JUSTICE G.SRI DEVI

CRIMINAL PETITION No. 262 of 2019

ORDER:

Petitioners-A1 to A3 seek to quash the proceedings initiated against them in C.C.No.1136 of 2017 on the file of the VI-Additional Metropolitan Magistrate-cum-Judicial Magistrate of First Class, Special Mobile-VI Additional Junior Civil Judge, Cyberabad at L.B.Nagar, registered for the offences punishable under Sections 3(1)(zz)(iii), 26(2)(i) and Food Safety and Standards Act, 2006 (for brevity 'F.S.S. Act') read with Regulations 2, 3, 5 of Food Safety and Standards (Prohibition and Restriction of Sales) Regulations, 2011.

The case of the prosecution, in brief, is that on 20.02.2016 at about 1.30 P.M. Food Safety Officer (2nd respondent herein), along with his Office Subordinate and a mediator, inspected M/s Aditya Birla Retail Limited (MORE), Balapur Cross Roads, Saroornagar. At that time, petitioner No.1, who is the Customer Service Supervisor, was transacting the business. On inspection, the 2nd respondent found 24 pieces of Kiwi fruits and 52 pieces of Orange fruits and on suspicion that the said Kiwi fruits and Orange fruits were artificially ripened and kept for sale for human consumption, he purchased 12 pieces of Kiwi fruits and 8 pieces of Orange fruits by paying its price and obtained cash receipts. Thereafter, the 2nd respondent served Form-V-A to the Food Business Operator informing her that the purchased food articles will be sent to the State Food Laboratory,

Hyderabad for analysis. Later, after dividing the purchased food articles into four equal parts as per the procedure prescribed under the Act, one part of the sample along with a Memorandum in Form VI was sent to the Food Analyst for analysis on 20.02.2016. The Food Analyst after analysis of the sample, sent reports of analysis, on 02.03.2016, to the Food Safety Designated Officer, Rangareddy District, wherein it is opined that the samples contain Calcium Carbide, which is prohibited in ripening of fruits as per Regulation 2.3.5 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011 and hence it is unsafe for Kiwi fruit and Orange fruit. Thereafter, the 2nd respondent sent a notice along with the Food Analyst Reports to the Food Business Operator on 10.03.2016. Subsequently, the Food Business Operator preferred an appeal to send the other part of the sample of Kiwi fruit and Orange fruit for analysis to the Referral Laboratory, Ghaziabad on 18.03.2016 and the same was returned. Thereafter, the 2nd respondent sent proposals under Section 36(3)(d) of the Act to the Commissioner of Food Safety for sanction of prosecution orders against the petitioners/accused and after receipt the sanction orders, the 2nd respondent filed the complaint, which was taken on file by the learned Magistrate under the aforesaid offences against the petitioners/accused.

Learned Counsel for the petitioners submits that the trial Court shall not 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 the F.S.S. Act unless the time is extended by the Commissioner of Food Safety as provided under proviso annexed to Section 77 of the F.S.S. Act. He further submitted that in the absence of any such consent to file the complaint within the extended period prescribed under Section 77 of the Act, the complaint is hopelessly barred by limitation. He further submitted that the 2nd respondent having come to the conclusion that the subject analytical report issued by the State Food Analyst is fit for appeal and having issued intimation under Section 46 (4) of the Act by the Designated Officer on 09.03.2016 for submitting the appeal, the 2nd respondent arbitrarily denied the right of appeal without giving any opportunity of hearing to the petitioners. He further submitted that the report of the Food Analyst does not contain that the fruits were ripened with the help of carbide gas. He further submitted that the petitioners have not violated any of the provisions of law more particularly law concerning food.

Learned Additional Public Prosecutor appearing for the respondent/ State supported the proceedings before the learned Magistrate while drawing the attention of this Court to the sanction of prosecution granted by the Commissioner of Food Safety dated 25.10.2016 and received by the 2nd respondent/complainant.

It is not in dispute that the Food Analyst report was issued on 02.03.2016. One year time permitted under Section 77 of the F.S.S. Act to take cognizance of the offence was expired on 19.02.2017, whereas the complaint was filed on 16.03.2017.

Section 77 of the Food Safety and Standards Act, 2006 reads as under:

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

In *Sirajul v. State of Uttar Pradesh*¹ 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 complaint in appropriate cases.” The Apex Court also 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

¹ (2015) 9 SCC 201

482 Cr.P.C. in the interest of justice and to prevent abuse of process of the Court.”

This Court also dealt with an identical issue in CrI.P.No.8410 of 2018 and relying on the judgment of the Apex Court in *Sirajul (supra)* this Court held that “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 the present case, it appears from the record that the report was received on 02.03.2016 from the Food Analyst. Though the sanction for prosecution was obtained on 25.10.2016, the complaint was filed on 16.03.2017. By the date of filing complaint ie., 16.03.2017, one year time permitted under Section 77 of the Food Safety and Standards Act, 2006 to take cognizance of the offence has already been expired by 19.02.2017. Hence, the delay in filing complaint and laches on the part of the prosecuting agency led to quashing of the proceedings. Hence, the proceedings against the petitioners are liable to be quashed.

Accordingly, the Criminal Petition is allowed and the proceedings against the petitioners-A1 to A3 in C.C.No.1136 of 2017 on the file of the VI Additional Metropolitan Magistrate-cum-

Judicial Magistrate of First Class, Special Mobile-VI Additional
Junior Civil Judge, Cyberabad at L.B.Nagar, are hereby quashed.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G.SRI DEVI

09-09-2019

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