THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL PETITION No.10858 of 2013

ORDER:

This petition is filed by the petitioners – A3 and A4 under Section 482 Cr.P.C. for quashing the proceedings against them in CC No.279 of 2011 on the file of the VII Additional Judicial Magistrate of First Class, Warangal, Warangal District.

2. The case of the prosecution, in brief, was that on 22.11.2010 at 3.00 PM, the complainant i.e. the Food Inspector, Division – II, Warangal District along with his attender visited M/s. Prem Sweet House, Kits Point, Erragattugutta, Hasanparthy Mandal, Warangal District, shop of A1, and purchased three sealed pet bottles (each 600 ml) of Sprite Sweetened Carbonated Beverage for Rs.72/- @ Rs.24/- per each bottle from A1 and sent the three bottles for analysis on 22.11.2010 along with Form-VII. As per the label declaration of the manufacturer, notice in Form-VI was sent to A4 company on 22.11.2010. A3 was the Quality Assuring Manager / Nominee of the A4 company - M/s.Hindusthan Coca-Cola Beverages (P) Ltd., Moulali, Hyderabad. The Public Analyst, vide report dated 10.12.2010 opined that the contents of sample did not confirm to the standards of total plate count and therefore, adulterated. The Director accorded consent for prosecution on 07.03.2011. The complaint was filed by the Food Inspector, Division-II, Warangal District, before the Court of VII Additional Judicial Magistrate of First Class, Warangal on 17.08.2011 and cognizance was taken by the said Court against A1

to A4 for the offence under Section 16(1)(a)(i) read with 7(1) and 2(1)(a)(m) of the Prevention of Food Adulteration Act, 1954 (for short ‘PFA Act’). Notice under Section 13(2) of the PFA Act was issued to the accused on 16.09.2011.

3. Heard the learned counsel for the petitioners and the learned Public Prosecutor.

4. The learned counsel for the petitioners submitted that the complaint was filed after an unreasonable and unexplained delay of 8 months and 7 days from the date of receipt of the Analyst’s report dated 10.12.2010. The shelf life of the beverage was only 2 ½ months from the date of packing and it had elapsed even before issuance of notice under Section 13 (2) of the PFA Act. As per Section 13 (2) of the PFA Act, the accused has a right to make an application before the Court within a period (10) days from the date of receipt of the copy of the report, got the sample of the article of the food analysed by the Central Food Laboratory. After lapse of 2 ½ months shelf life period, the product might not retain the specific qualities and the standards prescribed. Hence, even if the sample was analysed by the Central Food Laboratory, the correct standards could not be obtained. Thus, the right conferred on the accused under Section 13 (2) of the PFA Act became illusory and frustrated. The delay in serving the Analyst’s report defeated the valuable right of the accused to send the remaining sample to the Central Food Laboratory. He further contended that the petitioners - A3 and A4 were impleaded only on

the basis of label declaration, which was wholly impermissible in law. In view of the specific provision under Section 14 A of the PFA Act, without any material to establish the fact that the product in question was manufactured by the petitioners, it was not open to the respondent to implead them. Without ascertaining the details of the manufacturer from the purchaser from whom the product in question was purchased and in the absence of any proof of purchase or to connect the petitioner as manufacturer, the prosecution against the petitioners was an abuse of process of law and hence, the same was liable to be quashed on this ground.

5. Learned Public Prosecutor reported to decide the petition on merits.

6. Perused the record. The record would disclose that the Food Inspector visited the shop of A1 on 22.11.2010 at 3.00 PM and purchased 3 sealed pet bottles (each 600 ml) of Sprite Sweetened Carbonated Beverage sample for Rs.72/- @ Rs.24/- per each bottle from A1, paid the cash and obtained cash receipt from A1 and divided the purchased three sealed bottles into three parts and sent one part of the sealed sample to the Public Analyst on the same day and deposited the remaining two samples with the local Health Authority, Warangal District Headquarters, Warangal for safe custody on the same day. Basing on the label, the complainant sent letter under Section 14 A of the PFA Act in Form-VI to A4 (represented by A3) for ownership or nominee/business particulars. As no reply was given by A4, the

complainant obtained nominee particulars of A4 from the Head Office i.e. IPM. The Public Analyst, after analysis of the sample gave report on 10.12.2010 to the local Health Authority, Warangal District. He opined that the sample did not confirm to the standards of the total plate count and therefore, it was adulterated. The local Health Authority received the said report and forwarded the same to the complainant. The complainant sent a report to the Director, Institute of Preventive Medicine and Food (Health) Authority, A.P., Hyderabad seeking written consent under Section 20 (1) of the PFA Act. The Director, Institute of Preventive Medicine and Food (Health) Authority issued written consent for launching prosecution against A1 to A4 vide order dated 07.03.2011. The complainant filed the private complaint against A1 to A4 under Section 16 (1) (a) (i) read with Section 7 (i) and 2 (ia) (m) of the PFA Act for selling adulterated Sprite Sweetened Carbonated Beverage.

7. Learned counsel for the petitioners relied upon the judgment of this Court in **Ruchi Infrastructure Ltd., Kakinada v. State of A.P. and another**[1], wherein it was held:

> " Section 11(4) of the Act mandates that an article of food seized under Sub-section 4 of Section 10 and any adulterant seized under Sub-section 6 of Section 10 shall be produced before a magistrate as soon as possible and in any case not later than seven days after the receipt of the report of the Public Analyst. However, the seized sample, admittedly, was not produced before the court within seven days as required under Sub-section 4 of Section 11, but was placed before the court on 02.05.2006 when the complaint was filed. Thus, there has been a clear violation of the mandatory stipulation contained under Section 11(4) of the Act regarding production of the sample before the court. It is also not disputed that the label

[1] **2008 (1) ALD (Crl.) 197 (AP)**

> contains a caution that it is best for use before 18 months thereby indicating that the contents of the sample would be in tact without undergoing any process of degeneration or decomposition for a period of 18 months from the date of manufacture. In the present case, the sample was placed before the court almost more than 1½ years after it was taken and the report of the Public Analyst was received. The inordinate delay of more than 1 ½ years in producing the sample before the court from the date of taking the sample and also from the date of receipt of the Public Analyst report would certainly cause prejudice to the accused which is detrimental to his defence, inasmuch as there is every likelihood of the contents getting degenerated or decomposed. There is absolutely no explanation afforded by the respondent for the abnormal delay in production of the sample before the court, especially, when the packing label cautions that the contents are best for use before 18 months only. The accused is, therefore, deprived of his valuable right under Section 13(2) of the Act to seek permission to send the sample for second analysis to the Central Food Laboratory."

8. In the present case also, the shelf life of the product was only 2½ months from the date of manufacture i.e. on 30.10.2010. The samples were drawn on 22.11.2010. The report of the Public Analyst was received on 10.12.2010. The consent was given by the Director on 07.03.2011, after expiry of the shelf life of the product. The complaint was filed on 17.08.2011 and a notice under Section 13 (2) of the PFA Act was issued to the Accused on 16.09.2011. Thus, there was a delay of 8 months and 7 days from the date of receipt of the Analyst's report dated 10.12.2010. Under Section 13 (2) of the PFA Act, the accused has a right to make an application to the Court within 10 days from the date of receipt of a copy of the report of the Public Analyst to get the sample of the article of the food analysed by the Central Food Laboratory. The delay in serving the Analyst's report defeated the valuable right of the accused.

9. This Court in **Konda Suryanarayana and others v. State of A.P.**[2]**,** by relying on the judgment of the Hon'ble Apex Court in **Nebi Raj v. State (Delhi Administration) [AIR 1981 SC 611]** observed that:

> "... for a period of 2 years 9 months after receipt of analyst report, the Food Inspector kept quiet without filing the complaint and without serving the copy of the analyst report. Therefore, the accused has lost his valuable right of sending the remaining sample to the Central Food Laboratory because no useful purpose would be served by sending the sample vanaspathi for analysis after a period of 2 years 9 months"

and quashed the charge sheet in the said case.

10. Learned counsel for the petitioners also relied upon the judgment of this Court in **P. Gopalakrishna and another v. Food Inspector, Division-III Office of the Assistant Food Controller Zone-I, Visakhapatnam and another**[3] wherein it was held that:

> 5. "Even according to the complaint, label declaration is to the effect that the product was manufactured on 1.6.2006 and it is best before 12 months from the date of the manufacture. The shelf life of the product expired on 1.6.2007 and the complaint was filed on 20.8.2007, nearly two months after the shelf life. The Central Food Laboratory examined the sample on 7.1.2008, nearly 7 months after the expiry of shelf life. Because of the delay, there must have been variation in the standards prescribed. Two reports have given different results. As the complaint and notice under Section 13(2) of the Act was given after shelf life of the product, the petitioners could not apply to the Central Food Laboratory within the period of shelf life. Though the Public Analyst report is dated 10.11.2006, the complaint was filed only on 20.8.2007. Petitioners who are said to be manufacturers of the product lifted by the Food Inspector, can be proceeded against only if the provisions of the 14-A of the Act are complied with. Since there is nothing on record to show that the products purchased by the Food Inspector was supplied by the petitioner to Accused No.1 and since admittedly A-1 did not produce any bill and has not disclosed the name and addresses of the supplier of the product lifted by the Food Inspector from him, it cannot be said that they supplied the product to accused No.1 for public sale. So, Accused No.1 assuming that all the allegations in the complaint are true, the

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[2] **2006 Crl.L.J.1870**
[3] **2011 (2) ALD (Crl.)565 (AP)**

> petitioners cannot be said to have committed an offence under the Act, in view of issuance of notice under Section 13(2) of the Act, which was given after shelf life of the product was expired. Therefore, the petitioners could not have been applied for Central Food Laboratory within a period of shelf life. Therefore, the petitioners cannot be said to have committed the offence under the Act and as such no prosecution could be launched against the petitioners only on the basis of label declaration alone and therefore, continuation of proceedings against the petitioners is nothing but abuse of process of the Court. Accordingly, the charge sheet in C.C.No. 88 of 2007 on the file of the Judicial Magistrate of First Class, Araku Valley, Visakhapatnam district is liable to be quashed."

11. The above case is also applicable on the aspect that the mandatory provisions of Section 14-A of the PFA Act, are violated. In the present case also A3 and A4 were charged as per the label declaration found on the product seized by the complainant from the shop of A1. No bills were collected showing that A1 purchased the said product from A3 and A4. No connection between A1 and A4 company was stated in the complaint. On this aspect also, the proceedings are liable to be quashed.

12. Learned counsel for the petitioners relied upon a judgment of this Court in **Pydi Prasada Rao and another v. State of Andhra Pradesh[4],** wherein it was held that:

> "7. However, there is a vital link between the filing of the complaint and the date of the report of the analyst. The learned counsel for the petitioners pointed out that notice u/s. 13(2) the Act was not issued. Section 13 (2) notice is mandatory. Further, Section 13 (2) notice is expected to be issued within 10 days from the date of the report of the analyst. The purpose of notice is to enable the petitioners to seek to send another sample for analysis and report, if necessary, from a different analyst. While so, whereas the analyst analyzed the sample on 30.05.2005, the complaint was laid on 26.04.2007, so much so the petitioners lost their valuable right to seek to send another sample for analysis. Where Section 13 (2) of the Act notice is mandatory and where such a notice admittedly was not issued, the prosecution launched against the petitioners becomes illegal and

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[4] **2011 (2) ALD (Crl.) 185 (AP)**

is liable to be quashed. The contention of the learned counsel for the petitioners that the prosecution violated the provisions of Section 13 (2) of the Act and that the complaint consequently is liable to be quashed deserves to be accepted."

13. The facts of the above case are also applicable to the facts of the present case.

14. Learned counsel for the petitioners also relied upon the judgment of this Court in **M. Jaipal Reddy and another v. State of Andhra Pradesh**[5], wherein it was held that:

"7. As stated supra, the petitioners who are manufacturers of the product lifted by the Food Inspector can be proceeded against only if the provisions of Section 14-A of the Act are complied with. Since there is nothing on record to show that the product purchased by the Food Inspector was supplied by the petitioners to accused Nos.1 and 2 and since admittedly accused Nos.1 and 2 did not produce any bill and for not disclosing the name and address of the supplier of the product lifted by the Food Inspector from them, it cannot be said that they supplied the product to accused Nos. 1 and 2 for public sale. As the respondent has miserably failed to follow the mandatory procedure prescribed under the Act, the proceedings as initiated by the respondent in C.C.No. 746 of 2003 on the file of the Additional Judicial Magistrate of First Class, West & South, Kothapet, Ranga Reddy District has no legs to stand. Therefore, the petitioners cannot be said to have committed any offence under the Act and accordingly, the charge sheet against them is liable to be quashed."

15. Thus, due to violations of the mandatory requirements under Sections 13(2) and 14-A of the PFA Act, the petitioners lost their valuable right to send another sample for analysis and as the charge sheet is filed against them without any bill produced by A1, the proceedings initiated by the respondent in CC No.279 of 2011 on the file of the II Additional Judicial Magistrate of First Class, Warangal, Warangal District has no legs to stand and hence, liable to be quashed.

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[5] **2011 (2) ALD (Crl.) 868 (AP)**

16. In the result, the Criminal Petition is allowed quashing the proceedings in CC No.279 of 2011 on the file of the II Additional Judicial Magistrate of First Class, Warangal, Warangal District, against the petitioners – Accused Nos.3 and 4.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. G. RADHA RANI, J

December 09, 2021
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