

Mohd.Ali Mi Vs. State of a.P.,Rep.By the Food Inspector,

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Court : Andhra Pradesh

Decided On : Dec-06-2014

Judge : A.Ramalingeswara Rao

Appellant : Mohd.Ali Mi

Respondent : State of a.P.,Rep.By the Food Inspector,

Advocate for Pet/Ap. : Sri. G.Satyanarayana Prasad

Judgement :

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO WRIT PETITION No.26198 of 2006 06-12-2014 Mohd.Ali Mirza. Petitioner State of A.P.,Rep.by the Food Inspector, Division-I,Kurnool, Kurnool District.Respondent Counsel for petitioner: Ms.C.Sindhu Kumari Counsel for the Respondent : GP for Medical Health ?. CITATIONS:

1. AIR 1967 SC970THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO WRIT PETITION No.26198 of 2006

ORDER

: Heard the learned Senior Counsel Sri G.Satyanarayana Prasad appearing for the petitioner and the learned Government Pleader for the respondent.

2. The petitioner is the Manager of a Hotel situated in Srisailam. On 31.08.2004, the Food Inspector inspected the hotel and found three cases (card boxes) of

Vanaspathi and 20 kgs. of black pepper stocked in a plastic gunny bag and suspected that they were adulterated. He purchased three Vanaspathi packets and 750 grams of black pepper and sent them for analysis. On 28.10.2006 the petitioner received a notice stating that a case under the provisions of the Prevention of Food Adulteration Act, 1954 (for short, the Act), and the Rules made thereunder was filed against him and the hotel, before the learned Judicial First Class Magistrate, Atmakur, and it was registered as C.C.No.128 of 2006. Along with the said notice a report stated to have been submitted by the Public Analyst about the black pepper was enclosed. It was further stated that the petitioner was at liberty to apply and send the other two samples stated to have been deposited by him with the local health authority to the Central Food Laboratory, Pune in Maharashtra State. Challenging the registration of C.C.No.128 of 2006, the present Writ Petition was filed on the ground that the procedure prescribed under Section 11 of the Act was not followed and similarly Section 13 of the Act was also violated.

3. The respondent filed a counter affidavit admitting the averments made by the petitioner. Though a notice along with the analysis report was served on both the accused, they did not avail the opportunity by sending the samples to the Central Food Laboratory, Pune in Maharashtra State for analysis purpose. It was further stated that there is no lapse of time for filing the complaint and serving the notice under Section 13(2) of the Act. The present Writ Petition was not maintainable without availing the opportunity under Section 13(2) of the Act. The complaint was filed under Section 2(ia)(h) of the Act read with Rule 44AAA of the Prevention of Food Adulteration Rules, 1955 (for short, the Rules). The sample of black pepper was collected for analysis purpose by paying its cost as per Section 10(3) of the Act, but the remaining stock was not seized. In case of non-seizure there is no need for production of the remaining two parts of the samples before the Magistrate as soon as possible and in any case not later than seven days after the receipt of the report of the Public Analyst. Hence Section 11(4) of the Act is not attracted. In the instant case the complaint was filed on 12.09.2006 and it was taken on file on 28.10.2006. The notice was dispatched on 30.10.2006 and the same was served on the petitioner. Hence, the proceedings are within time only.

4. Learned Senior Counsel for the petitioner submits that the criminal proceedings are liable to be quashed on the point of limitation and relied on a decision of the Supreme Court in *Municipal Corporation of Delhi v. Ghisa Ram*. He also submits that the prosecution cannot be launched against the petitioner, who is not a manufacturer and when the goods are not meant for sale.

5. The facts in this case reveal that the hotel was inspected on 31.08.2004 and the samples were sent on 01.09.2004 to the Public Analyst, who submitted his report on 07.10.2004 opining that the sample contained the mineral oil which is injurious to health, and it was, therefore, adulterated. A sanction for prosecution was obtained by the respondent on 04.07.2005 from the competent authority. The case was registered as C.C.No.128 of 2006 and a notice was issued on 28.10.2006. The relevant portion of the complaint before the learned Judicial First Class Magistrate, Atmakur, Kurnool District, reads as follows: On 31.08.2004 at 11:15 AM LW1 along with his office attender T.Venkateswarulu under the supervision of Asst.Food Controller, Zone-IV, Kadapa, during the Krishna pushkaram, conducted surprise visit of Kitchen-cum-store room of M/s.Ilapuram Hotel, situated in Gangasadan premises Srisailam Devasthanam, Srisailam (V&M) Kurnool District. At the time of visit Accused-1 was present & managing the Hotel. On enquiry Accused-1 disclosed himself as manager and responsible for the Management of the said Hotel. In the presence of the witness LW1 introduced himself and then inspected the kitchen store room. During the inspection LW1 found 3 cases (Card Boxes) and 20 kgs stock in a plastic gunny bag, and enquired about the nature and purpose of Vanaspathi and 20 Kg. Stock in plastic gunny bag as black pepper, both were meant for preparation of food article for the Hotel to be sale to the Public for human consumption and the stock used to be purchased by their Head Officer at Vijayawada and the bills also kept with head office only. The same will be submitted later, after getting from Head Office. On suspicion of adulteration 2 vanaspathi packets were purchased for Rs.132/- and 750 gms of black pepper for Rs.60/- and paid its cost and obtained cash receipt. First the Vanaspathi sample was lifted for analysis purpose and completed the sampling work. The above purchased 750 gms of black pepper was divided into three equal parts by making it homogeneous and placed into 3 separate clean dry and empty plastic container. They were caped tightly and then the mouths of the containers were tied with

twain thread and sealed with sealing wax. Then labels bearing sample particulars were affixed on each sample container then they were separately wrapped with fairly thick brown paper and the ends of the brown paper were folded inside and then affixed with gum. The paper slips signed and issued by the Local (Health) Authority, Zone-IV, Kadapa bearing No.SR/KP/SSD/1402/2004 were affixed on each sample part completely running round from bottom to top. Then the signatures of Accused-1, were obtained on each sample part in such a manner that the paper slip and brown paper carries a part signature. Then they were separately further secured above and across by means of twain thread and four wax seals were affixed at four distinct places i.e., one on top are at bottom and one each on either sides of the sample part by using specimen impressing of LW1. One of the four seals covered knot of the twain thread. A panchanama was drafted then and there regarding the inspection and sampling work, the same was read over to the Accused-1 and the witnesses after knowing the contents of the panchanama they attested it. On the next working day i.e.,1.9.2004 one part of sample along with a copy of Form-VII sent to the Public Analyst under intimation to the Local (Health) Authority, Zone-IV, Kadapa by registered parcel vide postal receipt No.10370 dt.1.9.2004. One more copy of Form-VII having specimen impression seal used in sealing of samples was sent to the Public Analyst separately in a sealed cover by registered post vide postal receipt No.2610 dt.1.9.2004. The remaining other two parts of the samples along with 2 copies of Form-VII were deposited with Local (Health) Authority, Zone-IV, Kadapa for safe custody on 31.8.2004 in person. After causing analysis the Public Analyst State Food Laboratory, Hyderabad delivered a report in Form-III bearing No.550/04 dt.7.10.2004 along with covering letter bearing No.1609/SFL/2004 dt.7.10.2004 wherein the Public Analyst opined that the sample contains mineral oil which is injurious to health. It is therefore adulterated.

6. Section 11(4) of the Act states that an article of food seized under sub-section (4) of Section 10, unless destroyed under sub-section (4A) of that section, and any adulterant seized under sub-section (6) of that section 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. Obviously, sub-section (4) of Section 11 of the Act is not followed, but the averments in the counter affidavit disclose that

since the articles were not seized under sub-section (4) of Section 10, the said sub-section (4) of Section 11 of the Act is not applicable in this case. It is relevant to notice sub-section (2) of Section 10 of the Act, which says that any food inspector may enter and inspect any place where any article of food is manufactured, or stored for sale, or stored for the manufacture of any other article of food for sale, or exposed or exhibited for sale or where any adulterant is manufactured or kept, and take samples of such article of food or adulterant for analysis. The proviso thereof says that no sample of any article of food, being primary food, shall be taken under this sub-section if it is not intended for sale as such food. The primary food is defined under Section 2(xiia) of the Act as, any article of food being a produce of agriculture or horticulture in its natural form.

7. In the instant case, the black pepper, which is alleged to be adulterated is a primary food and in view of the proviso to subsection (2) of Section 10 of the Act, taking of sample of such article of food, if it is not intended for sale as such, is prohibited. Obviously, the petitioner is not intending to sell the black pepper as such. Hence, the sample of such article should not have been taken by the respondent.

8. The facts of the case in Ghisa Rams case (supra) are that one Ghisa Ram was a Halwai dealing in milk and milk products, including Dahi under licence to run his shop in Defence Colony in New Delhi. On 20.09.1961, the Food Inspector of the Municipal Corporation of Delhi visited his shop and took a sample of curd of cows milk for the purpose of testing whether there was any adulteration. It was made into three equal parts. One part was given to Ghisa Ram and the remaining two samples were taken by the Food Inspector, out of which one was sent to the Public Analyst. He gave a report on 23.10.1961. Since the content of non-fatty solids was below the prescribed standard, Ghisa Ram was prosecuted for committing an offence under Section 16 of the Act for contravening Section 7 of the Act. A complaint was filed before the Magistrate and on 04.10.1963, Ghisa Ram applied to the Court that the sample, which had been given to him by the Food Inspector, be sent for examination by the Director of the Central Food Laboratory in accordance with the provisions of Section 13(2) of the Act. When the sample was received by the Director, he reported that the sample of curd sent to

him had become highly decomposed and no analysis of it was possible. Ghisa Ram defended the prosecution by stating that due to delay in launching the prosecution, his right to get a report from the Director of the Central Food Laboratory was defeated and the said defense was accepted by the Magistrate and he was acquitted. The Delhi Bench of the Punjab High Court upheld the said order of Magistrate. The Food Inspector filed an appeal before the Supreme Court. The Supreme Court noted the delay that had taken place in launching the prosecution, as the sample was taken on 20.09.1961 and prosecution was launched on 23.05.1962, seven months after receipt of the report from the Public Analyst dated 23.10.1961. Ultimately, the appeal was dismissed with the following observations: It appears to us that when a valuable right is conferred by s. 13 (2) of the Act on the vendor to have the sample given to him analysed by the Director of the Central Food Laboratory, it is to be expected that the prosecution will proceed in such a manner that that right will not be denied to him. The right is a valuable one, because the certificate of the Director supersedes the report of the Public Analyst and is treated as conclusive evidence of its contents. Obviously, the right has been given to the vendor in order that, for his satisfaction and proper defence, he should be able to have the sample kept in his charge analysed by a greater expert whose certificate is to be accepted by Court as conclusive evidence. In a case where there is denial of this right on account of the deliberate conduct of the prosecution, we think that the vendor, in his trial, is so seriously prejudiced that it would not be proper to uphold his conviction on the basis of the report of the Public Analyst, even though that report continues to be evidence in the case of the facts contained therein. We are not to be understood as laying down that, in every case where the right of the vendor to have his sample tested by the Director of the Central Food Laboratory is frustrated, the vendor cannot be convicted on the basis of the report of the Public Analyst. We consider that the principle must, however, be applied to cases where the conduct of the prosecution has resulted in the denial to the vendor of any opportunity to exercise this right. Different considerations may arise if the right gets frustrated for reasons for which the prosecution is not responsible.

9. In the instant case, the prosecution was launched two and a half years after the taking of sample and even though a notice was issued to the petitioner, he did not

avail the opportunity under Section 13(2) of the Act. Hence, the facts of the above cited case are not similar to the facts of the case before this Court. In the above cited case, the vendor asked for sending the sample for analysis under Section 13(2) of the Act, which could not be done due to lapse of time. In the present case, the petitioner did not avail the opportunity under Section 13(2) of the Act. Since this Court granted stay of prosecution in the year 2007, even if a request is made by the petitioner at this length of time, it would be highly impossible to test the sample.

10. In the circumstances, it has to be seen whether the prosecution is vitiated. The prosecution was alleged to have been launched under Section 2(ia)(h) of the Act, which says that if the article contains any poisonous or other ingredient which renders it injurious to health, it is called as adulterated. Since the black pepper contained mineral oils, it was held to be injurious to health. It is also stated that the prosecution was launched along with the above provisions read with Rule 44AAA of the Rules, which reads as follows:

44. AA.No person shall sell or offer or expose for sale or have in his premises for the purpose of sale under any description, food articles which have been coated with mineral oil, except where the addition of mineral oil is permitted in accordance with the standards laid down in Appendix B.

11. Learned Senior Counsel relied on Section 7 of the Act, which reads as follows:

7. Prohibitions of manufacture, sale, etc. of certain articles of food:- No person shall himself or by any person on his behalf, manufacture for sale or store, sell or distribute:- (i) any adulterated food, (ii) any misbranded food, (iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence, (iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority in the interest of public health; (v) any article of food in contravention of any other provision of this Act or of any rule made thereunder, or (vi) any adulterant.

12. Clauses (iii), (iv) and (v) are applicable in cases of food stored for the purpose of manufacturing of any article of food for sale. In the instant case there is no

allegation that the black pepper is used for the sale of an article of food manufactured therefrom without a licence or it is prohibited by the food authority or the food stored is in contravention of any other provisions of the Act or the Rules made thereunder. If the black pepper is used in the preparation of food items meant for prospective customers and that food item is prohibited or stored without licence then only the prohibition contained in Section 7 of the Act is applicable. In any event, it is not the case of the respondent that Section 7 of the Act is violated.

13. In the circumstances, it has to be taken that the black pepper in its form is primary food, the collection of sample of which is prohibited by the proviso to subsection (2) of Section 10 of the Act. Apart from that, a reading of the provisions of the Act discloses that the Act is intended for prevention of sale of adulterated food, but no offence can be launched against the purchaser, who purchased such article of food. If this type of prosecution is allowed, then every person, who stocks the adulterated goods, is liable for prosecution and several small hoteliers also would be exposed to such threat. The provisions of the Act are intended against the manufacturers, who sell the adulterated food to other persons as contained in Section 7 of the Act. Even the long lapse of time, in view of pendency of this case in this court, is also another circumstance which prompts this court to quash the proceedings.

14. In view of the above, the Writ Petition is liable to be allowed, and the same is, accordingly, allowed quashing the proceedings in C.C.No.128 of 2006 pending on the file of the learned Judicial First Class Magistrate, Atmakur, Kurnool District. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs. _____

(A.RAMALINGESWARA RAO, J) 06.12.2014.