

Ruchi Infrastructure Ltd. Vs. the Food Inspector, Division-ii

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Court : Andhra Pradesh

Decided On : Sep-19-2007

Reported in : 2008(2)ALD(Cri)711; 2007(3)ALT(Cri)347

Judge : G.V. Seethapathy, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 2, 7, 10(4), 10(4A), 10(6), 11(4), 13(2) and 16(1); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; Prevention of Food Adulteration Rules - Rule 22

Appeal No. : Criminal Petition No. 4636 of 2007

Appellant : Ruchi Infrastructure Ltd.

Respondent : The Food Inspector, Division-ii

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : M. Rajasekhara Reddy, Adv.

Disposition : Petition allowed

Judgement :

ORDER

G.V. Seethapathy, J.

1. This petition is filed under Section 482 Cr.P.C. seeking to quash the prosecution of the petitioner/A-3 in C.C.No.150 of 2005 on the file of the Judicial Magistrate of First Class, Huzurnagar, for the offences under Sections 7(i) and 2(ia)(m) read with Section 16(1)(a)(i) of the [Prevention of Food Adulteration Act, 1954](#) (for short 'the Act').

2. The case of the respondent-complainant, the Food Inspector Division-I, Nalgonda District, is that on 13.11.2003 at about 11-15 a.m. the Food Inspector along with his attender in the presence of mediators inspected Pragathi Enterprises, situated in Door No. 1-67/2, Main Road, Huzurnagar, and the vendor A-1 was present at the time of inspection and the Food Inspector found about 75 Nos. of Ruchi No. 1 Vanaspathi sealed in 100 ml. Packets and A-1 stated that they are meant for human consumption and kept for sale and suspecting the same to be adulterated, the Food Inspector purchased sample packets of Ruchi No. 1 Vanaspathi after completing the procedural requirements under a panchanama and that on 14.11.2003 the samples were sent to the Public Analyst and that on 17.12.2003 the report of the analyst was received to the effect that the sample does not conform to the standards of Red Units and melting point and is therefore adulterated. Thereafter the complainant obtained permission for prosecution and filed the complaint on 07.6.2005 before the Judicial Magistrate of First Class, Huzurnagar. The learned magistrate has taken the case on file and numbered as C.C.No.150 of 2005. Aggrieved by the same the accused No. 3, who is said to be the manufacturer of Ruchi-1 Vanaspathi, filed the present petition under Section 482 Cr.P.C. seeking to quash prosecution.

3. Learned Counsel for the petitioner and the learned Public Prosecutor appearing for the respondent are heard. Records are perused.

4. Learned Counsel for the petitioner contended that the sample was taken on 13.11.2003 and it was sent for analysis on 14.11.2003 and the report of the Public Analyst was received on 17.12.2003, but the complaint was filed 11/2 years later on 07.6.2005 thereby violated mandatory provisions contained in Section 11(4) of the Prevention of Food Adulteration Act which mandates that the sample shall be produced before the court within a period of seven days from the date of receipt of

the report of the analyst and because of the inordinate delay of more than 11/2 years the accused is deprived of his valuable right under Section 13(2) of the Act to send the sample for re-analysis to the Central Food Laboratory and thereby any amount of prejudice is caused to the accused which is detrimental to his defence. He further contends that as per the Rule 22 of the Prevention of Food Adulteration Rules the minimum quantity of the sample required to be drawn is 250 gms. But, in the present case the Food Inspector has taken the lesser quantity of only 100 ml. and thereby contravened the provisions of Rule 22.

5. It is not disputed that the sample of the alleged adulterant was collected from the premises of A-3 on 13.11.2003 and it was sent to Public Analyst on the next day i.e., 14.11.2003. The report of the Public Analyst was received on 17.12.2003 to the effect that the sample does not conform to the standards of Red Units and melting point; hence, the sample was adulterated. The permission for prosecution was afforded on 15.02.2005. Thereafter, the complaint was filed on 07.6.2005. 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 07.6.2005 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 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 11/2 years after it was taken and the report of the Public Analyst was received. The inordinate delay of more than 11/2 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.

6. In a decision in Naresh Kumar Kedia v. Director, Institute of Preventive Medicine and Ors. 2006 (1) FAC 104 the proceedings are quashed when the prosecution was launched with a delay of nearly one year eight months on the ground that valuable right of the accused has been denied because of the delay. In Konda Suryanarayana and Ors. v. The State of A.P. 2006 (1) FAC 157 the proceedings were quashed observing that no useful purpose would be served by sending the sample for analysis after lapse of two years nine months. In Vinod Namviar, Regional Sales Manager, (Foods) and Ors. v. State of A.P. rep. by Food Inspector 2006 (1) FAC 235 the proceedings were quashed when there was a delay of 27 months in launching the complaint. In Nebh Raj v. The State (Delhi Administration) and Anr. 1980 (2) FAC 191 it was held there is no justification for launching the prosecution with a delay of two years after sample was taken and after obtaining the report of the Public Analyst.

7. In M. Eswaraiah v. State of A.P., Food Inspector, Cuddapah 1999 (1) ALD (Crl.) 42 (AP) this Court held thus:

Further by virtue of Section 11(4) of the [Prevention of Food Adulteration Act, 1954](#) an article of food seized under Sub-section (4) of Section 10, unless destroyed under Sub-section (4-A) 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. P.W.1 categorically stated that he did not comply with the requirement of this provision and no sample was sent to a Magistrate as soon as possible or within 7 days after the receipt of the report of the public analyst. The provisions are statutory and also mandatory. The P.W.1 should strictly comply with the requirements of law. In this case, the provision of Section 11(4) is not complied with. Therefore, for more than one reason, the revision has to be allowed and it is

accordingly allowed.

In a recent decision in *Konda Suryanarayana and Ors. v. State of A.P.* (supra) this Court, following the judgment of the Apex Court in *Nebh Raj v. The State (Delhi Administration) and Anr.* (supra) wherein the practice of launching prosecution more than two years after the sample was taken was deprecated, held that the proceedings are liable to be quashed as there was long delay of three years between the date of taking sample and date of serving analyst report and thereby the valuable right conferred on the accused to send the remaining sample to the Central Food Laboratory was defeated.

8. In view of the principles laid down in the above decisions and in view of the fact that there has been a delay of more than 18 months in filing the complaint thereby depriving the accused of his valuable right under Section 13(2) of the Act because of the violation of the mandatory requirements under Section 11(4) of the Act, it is held that no useful purpose would be served by continuing the prosecution against the petitioners.

9. Accordingly, the proceedings initiated against the petitioner in C.C.No.150 of 2005 on the file of the Judicial Magistrate of First Class, Huzurnagar, are held liable to be quashed and accordingly quashed.

10. In the result, the criminal petition is allowed and the proceedings in C.C. No. 150 of 2005 on the file of the Judicial Magistrate of First Class, Huzurnagar, are quashed.

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