

Naresh Kumar Kedia Vs. Director Institute of Preventive Medicine, Public Health Laboratories and Food (Health) Administration and ors.

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Court : Andhra Pradesh

Decided On : Aug-11-2005

Reported in : 2006FAJ175

Judge : A. Gopal Reddy, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 2, 7, 7(4), 11(4), 13(2), 13(2)(7), 16(1) and 20(1); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

Appeal No. : Criminal Petition No. 1693 of 2005

Appellant : Naresh Kumar Kedia

Respondent : Director Institute of Preventive Medicine, Public Health Laboratories and Food (Health) Administration

Disposition : Appeal allowed

Judgement :

A. Gopal Reddy, J.

1. This Criminal Petition is filed under Section 482 of Criminal Procedure Code to quash the proceedings pending on the file of the VII Metropolitan Magistrate,

Chudi Bazar, Hyderabad in C.C. No. 22/2005 for the offence punishable under Section 16(1)(a)(i), 7(i) and 2(ia)(f) of [Prevention of Food Adulteration Act, 1954](#) (for brevity 'the Act').

2. The facts as stated in the petition are not in dispute at all that the Food Inspector took the samples of rice at the petitioner's kirana shop on 22.3.2003 and served a notice in Form No. VI on the accused to send the sample for getting it analysed by the public analyst, A.P. and obtained acknowledgment. The Food Inspector purchased 750 grams of rice and paid Rs. 12.00 towards cost of the sample, and obtained cash receipt from the accused. Thereafter he separated the rice into three equal parts, each weighing 250 grams and placed into three clean and dry glass bottles, and sent one part of the sample to Public Analyst, A.P. under acknowledgment on 24.3.2004 and the remaining two parts of the sample containers were deposited with Local Health Authority. The Public Analyst after causing analysis on the same sample, delivered covering letter vide No. 52/SFL/2003, dated 15.4.2003 along with report No. 157 dated 15.4.2003 to the Local (Health) Authority, Chief Medical Officer of Health, MCH on 19.4.2003 and through him the Food Inspector received the same. The Public Analyst in his report opined that the sample of rice contained plenty of black beetles and white worms, so it is unfit for human consumption, and therefore it is adulterated. Accordingly, a letter was served on the accused. The Food Inspector addressed a letter to the Chief Public Analyst, State Food Laboratory, Hyderabad to issue corrigendum to the said Public Analyst Report for Code and Serial No. L(H) AC/27/111/2003, and in turn the Chief Public Analyst, State Food Laboratory, Hyderabad issued corrigendum vide Lr. No. 1421/SFL/2003, dated 4.10.2003 for the Public Analyst Report No. 157/2003, dated 15.4.2003. On such Corrigendum report, the Local (Health) Authority, Assistant Medical Officer of Health, Circle No. 3, MCH, submitted that the adulterated case to the Director of Food (Health) Authority, Government of Andhra Pradesh on 31.3.2004. In turn the Director of Food (Health), Authority, Government of A.P. has accorded a written consent for institution of prosecution under Sections 20(1) of the Act vide Re. No. 3354/F5/2003-2004, dated 13.9.2004 to the Local (Health) Authority. On such written consent a complaint was filed against the accused on 20.12.2004 and accordingly, the same was taken on file by the VII Metropolitan Magistrate on

23.2.2005 and took necessary investigation under Section 13(2)(7) of the Act calling upon the petitioner to get the sample of rice that was kept with the Local (Health) Authority, Circle No. 3, analysed by the Central Health Laboratory, if so desired. Questioning the said proceedings, the present criminal petition is filed under Section 482 of Criminal Procedure Code.

3. The learned Counsel for the petitioner contended that the petitioner is doing the business of purchasing rice and selling the same in retail market. Since the samples taken from the petitioner's shop were not produced before the magistrate within 7 days as provided under Section 11(4) of the PFA Act, 1954, the prosecution against the petitioner is liable to be withdrawn. He further contended that as per Section 13(2) of the Act, after institution of prosecution against the persons, any sample of articles of food was taken, the persons from whom the sample of Article icles of food was taken may make an application to get the samples analysed by the Central Food Laboratory, is a valuable right, and that right of the petitioner has been prejudiced. Hence the proceedings are liable to be withdrawn.

4. The learned Counsel for the petitioner further relied on the decision of the Court in *M. Eswaraiah v. State of A.P. Food Inspector, Cuddapah* 1999 (2) EFR 537 and 2004 (2) FAC 229 (A.P. High Court).

5. Per contra, the learned Public Prosecutor contends that after receipt of the public analyst report, there was some error in noting the Circle on the report. Hence a corrigendum was called for and after receipt of corrigendum, the prosecution was launched against the petitioner is within a period of three years as provided under Section 11(4) of the Act. Since the samples drawn is unfit for human consumption and it is adulterated, the prosecution cannot be quashed.

6. This Court in '*M. Eswariah's* case (1 supra) held that for not sending the samples to the food Inspector within 7 days from the date of taking samples as contemplated under Section 11(4) of the Act, prosecution against the petitioner is liable to be quashed.

7. The very fact that the first analyst report was received by the Local Health Authority, on 19.4.2003 and the prosecution was launched on 20.12.2004 i.e., nearly after one year 8 months. On such prosecution, the same was taken on file on 20.3.2005 i.e. two months thereafter. It is settled law that sub-section 2 of Section 13 of the Act confers valuable right on the accused under which, the accused may make an application to the Court within a period of 10 days from the date of receipt of a copy of the report of the Public Analyst to get the samples of food analysed in the Central Food Laboratory, and in case, the sample is found by the said Central Food Laboratory unfit for analysis due to decomposition by passage of time, or for any other reason attributable to the lapses on the side of prosecution, that valuable right would stand denied.

8. The Supreme Court in *Nebh Raj v. The State (Delhi Administration)* and Anr. : 1981 CriLJ3 , held that there was no justification whatsoever for launching the prosecution more than two years after the sample was taken, and after obtaining the report of the Public Analyst, results in causing harassment to the accused in some cases and may also result in genuine offenders escaping punishment.

9. In view of the decision rendered by this court in *M Eswaraiah's case* (1 supra) the impugned proceedings are set aside and the prosecution launched against the petitioner in C.C. No. 22/2005 on the file of VII Metropolitan Magistrate, Chudi Bazar, Hyderabad, for not following the mandatory provision of depositing the samples in the Court within 7 days as contemplated under Section 7(4) of the Act, is quashed.