

C. Suresh, Vs. the State Represented by Its Food Inspector, In-charge (Panchayat Union), Govt. Primary Health Centre

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Court : Chennai

Decided On : Feb-01-2005

Reported in : 2005(1)CTC645

Judge : M. Chockalingam, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482

Appeal No. : Crl. O.P. No. 183 of 2005 and Crl. M.P. Nos. 63 and 64 of 2005

Appellant : C. Suresh, ;A.A. Lakshmanan and the Nilgiri Dairy Farm Private Limited Represented by A.A. Lakshmana

Respondent : The State Represented by Its Food Inspector, In-charge (Panchayat Union), Govt. Primary Health Centr

Advocate for Def. : A.N. Thambidurai, Govt. Adv. (Criminal Side)

Advocate for Pet/Ap. : R. Karthikeyan, Adv.

Disposition : Petition allowed

Judgement :

ORDER

M. Chockalingam, J.

1. This O.P. has been brought forth, seeking to quash the proceedings pending in C.C. No. 266 of 2004 on the file of the Judicial Magistrate No. III, Erode, taken cognizance by the said Court on the complaint lodged by the respondent-the Food Inspector, in charge (Panchayat Union, Erode), Government Primary Health Centre, Chitode, Erode District.

2. The gist case of the respondent-complainant was that the toned milk food samples were lifted on 22.7.2003 and despatched to the Government Analyst, Guindy on 23.7.2003. The Government Analyst, by his letter dated 24.7.2003 informed the Local Health Authority that the toned milk food sample was broken in transit and requested to send the second portion of the sample, and the letter was received by the Local Health Authority on 30.7.2003. The second portion of the food sample was despatched to the Government Analyst's Office on 4.8.2003 and the same was received by the Government on 7.8.2003. The Government Analyst's Report No. 356/2003-2004 dated 26.8.2003 with Form III report was received by the Local Health Authority on 28.8.2003 and forwarded to the Food Inspector, and the Food Inspector, in turn sent a letter on 3.9.2003 to the third accused, seeking for the details in Form VIII and Form VIII nomination was received by the Food Inspector on 29.9.2003. The respondent submitted a letter to the Joint Director, Public Health and Preventive Medicine, Chennai on 2.10.2003, requesting written consent for launching prosecution. The said consent was received by the Local Health Authority on 23.1.2004 and received by the Food Inspector on 30.1.2004. The complaint was filed on 31.3.2004 and the same was returned to the Food Inspector on 2.4.2004. The same was resubmitted on 23.4.2004 and was taken on file on 13.5.2004. Notice as contemplated under the provisions of Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act') was sent to the petitioners on 18.5.2004 and thus the case was taken cognizance by the Court and the same is pending.

3. Learned counsel for the petitioners raised two contentions before this Court. First one is that there has been undue delay in launching the prosecution, wherein the valuable right of the petitioners, seeking for the second analysis, was

frustrated, since, within the period, the milk, which was taken on sample, was thoroughly decomposed and no purpose would be served. The second is that the complaint was lodged before the lower court on 31.3.2004 and the notice, what is contemplated under Section 13(2) of the Act, should have been issued within ten days from the date of institution of proceedings; but, in the instant case, it was issued only on 18.5.2004, and it is mandatory that the provision under Section 13(2) of the Act has to be complied with by the prosecution, and hence, the complaint has to be quashed.

4. In answer to the above, learned counsel for the State would submit that originally, the complaint was presented before the Judicial Magistrate on 31.3.2004; but, the same was returned on 2.4.2004 and re-presented before the said Court on 23.4.2004, which was taken cognizance by the Court on 13.5.2004, and notice under Section 13(2) of the Act was issued on 18.5.2004, thus, the notice was sent within a period of ten days from the date of institution and as such, there is no violation of mandatory provision, as contemplated under the Act.

5. It would be more appropriate and advantageous to reproduce the provision under Section 13(2) of the Act, which is as follows:-

'13(2): On receipt of the report of the result of the analysis under Sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the persons from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under Section 14A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the Court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.'

6. A reading of the above provision would make it explicit that the accused has got a valuable right to ask for sending the sample for analysis by the Central Food Laboratory. The purpose of the said provision was only to enable the accused to

move the Court to get the sample kept by the local health authority, analysed by the Central Food Laboratory. The said provision clearly prescribes that on receipt of the report of the result of the analysis to the effect that the article of food is adulterated, the Local Health Authority should send a copy of the report of the result of the analysis within 10 days from the date of the receipt of the copy of the report. It also contemplates that the person accused of a charge of adulteration, shall be allowed 10 days time to make an application to get the sample sent to the Central Food Laboratory for analysis. Needless to say that the accused can make available of this right only after the institution of the prosecution. In a given case, if the prosecution starts at a time when that part of the sample, which has to be subjected to the analysis by the Central Food Laboratory on the application of the accused, has become unfit for analysis, the valuable right cannot be availed by the accused.

7. In the instant case, the sample of toned milk was taken on 22.7.2003 and despatched to the Government Analyst on 23.7.2003. Pursuant to an information that the toned milk food sample was broken in transit, the second portion of the sample was sent, and on analysis, a report was received on 7.8.2003. The same was received by the Local Health Authority on 28.8.2003. But, the written consent for launching the prosecution was received by the Local Health Authority on 23.1.2004, and the same was received by the Food Inspector on 30.1.2004. The complaint filed on 31.3.2004 was returned, and the same was re-submitted on 23.4.2004. The same was taken on file on 13.5.2004. It would be abundantly clear that the sample of toned milk was taken on 22.7.2003, the Food Inspector presented the complaint on 31.3.2004, and after it was taken on file on 13.5.2004, notice under Section 13(2) was issued to the petitioners on 18.5.2004. Thus, it would be quite evident that a notice along with the report of the analyst was sent on 18.5.2004, after an interval of nearly 10 months. By that time, the milk sample would have become decomposed. Thus, the right of the accused available under Section 13(2) has been frustrated, due to the inordinate delay and inaction on the part of the prosecution.

8. The second contention put forth by the learned counsel for the petitioners that the notice has not been issued within time as contemplated under Section 13(2) of

the Act has got to be accepted.

9. Learned Government Advocate for the respondent would submit that though the complaint was originally filed before the lower Court on 31.3.2004, the same was returned and re-presented on 13.5.2004, on which date it was taken cognizance, and notice was issued on 18.5.2004 i.e. within ten days as stipulated under Section 13(2) of the Act and hence it cannot be stated that notice was issued out of time.

10. Contrary to the above contention, it is contended by the learned counsel for the petitioners that what is found in Section 13(2) of the Act is the filing of the complaint and not the date when it was assigned with the number by the lower Court. In support of his contention, he would rely on a Judgment of this Court in **ABDUL MAJEED v. STATE BY FOOD INSPECTOR** 1981 L.W.Crl.305. This Court had an occasion to consider what is the import of the word employed in Section 13(2) of the Act in the said case. The institution of the proceedings under this Act would mean the filing of the complaint before the Court, which has jurisdiction over the same. Hence, the contention of the learned counsel for the petitioners has got to be accepted. Thus, this Court has to agree with the petitioners on both the above contentions, and the proceedings, in the opinion of this Court, are liable to be quashed.

11. For the reasons stated above, this criminal original petition is allowed, and the proceedings in C.C.No. 266 of 2004 on the file of the Judicial Magistrate No. III, Erode, are quashed. Consequently, connected Crl.M.Ps. are closed.