

(1990) 09 MAD CK 0010

In the Madras High Court

Case No : Criminal Miscellaneous Petition No. 8073 of 1987

C. Rajalakshmi

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 03-09-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1991) LW(Cri) 22

Hon'ble Judges : Arunachalam, J

Bench : Single Bench

Advocate : K.N. Basha, for the Appellant; Hamid Sultan, Government Advocate (Crl. Side) on behalf of the State, for the Respondent

Judgement

Arunachalam, J.—The Petitioner is the first accused in C.C. No. 360 of 1986, pending on the file of the Sub Divisional Judicial Magistrate,

Dindigul She is being prosecuted with another, arrayed as the second accused for an offence punishable under Sections 7(1) and 16(a)(i) read with

Section 2(ia)(a) of the Prevention of the Food Adulteration Act.

2. The prosecution against both the accused was initiated by the Respondent, who is the Food Inspector, Dindigul Municipality, Dindigul. On 9-4-

1986 at or about 9:30 a.m., the Respondent obtained curd through the 2nd accused, which on analysis was found to be adulterated and not

conforming to the standards prescribed under the Act and the Rules. Thereafter, after serving the notice contemplated u/s 13(2) of the Act, this

prosecution was initiated.

3. In this petition filed u/s 482, Code of Criminal Procedure to call for the records and quash the pending proceedings as not maintainable and an

abuse of process of court, Mr. K. Basha, learned Counsel appearing on behalf of

the Petitioner, contended that except stating that the Petitioner was a licensee and partner of Pandian Nagar canteen, nothing more had been alleged to connect her with the offence and on that sole ground the pending prosecution must be quashed. He specifically pointed out that the Petitioner was not even present at the time of taking sample.

4. I have heard Mr. Hamid Sultan, learned Government Advocate, appearing on behalf of the Respondent. He fairly stated that except stating that the Petitioner was licensee and partner of the canteen, nothing further has been stated in the complaint, or in any other record forwarded to court that the Petitioner was in charge of and was responsible for the conduct of the canteen.

5. I have carefully considered the submissions made by the learned Counsel for the Petitioner. The apex court in Smt. Manibai and Another Vs.

The State of Maharashtra, had occasion to consider a similar question. The observations run as hereunder:

For the sale of adulterated coconut oil by P1 a co-licensee of the shop, his mother M. who was not in charge of nor was she actually conducting the business at the shop, cannot be held liable merely because she was the licensee of the shop. Even assuming that the business was owned by a firm or an association of individuals and M was a partner of the firm or a member of the association, M would not be liable for the sale u/s 17(1) as she was not in charge of and responsible for the conduct of the business.

As pointed out earlier, there is no evidence on record to connect the Petitioner with the offence to hold even prima facie that she was in charge of and responsible for the conduct of the business, which was carried on at the canteen. It is settled law, that in the absence of basic allegations in the complaint, while exercising inherent powers, the prosecution can be quashed: Applying the principles laid down by the Supreme Court in Smt.

Manibai and Another Vs. The State of Maharashtra, referred to above and the settled law on this subject, I am of the view that the prosecution, as against the Petitioner, cannot be allowed to survive any longer. The proceedings in C.C. No. 360 of 1986 on the file of the sub Divisional Judicial Magistrate, Dindigul, shall stand quashed in so far as it relates to the Petitioner.