
(2010) 02 AP CK 0080

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 1070 of 2007

Gurulakshmi Food Products

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 02-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 11(4), 13(2), 14(2), 16(1)

Citation : (2010) 1 ALD(Cri) 447 : (2011) 2 Crimes 212 : (2011) 8
RCR(Criminal) 3228

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

Advocate : V. Ramchander Goud, for the Appellant;

Final Decision : Allowed

Judgement

Samudrala Govindarajulu, J.—This petition is filed by the 2nd accused u/s 482 Code of Criminal Procedure for quashing proceedings in C.C. No. 211/2002 on the file of Judicial Magistrate of the First Class, Vinukonda relating to offence punishable u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (in short, the Act).

2. In this case, the Food Inspector, Guntur purchased sealed sample packets of Karam (chilli powder) from A-1's kirana shop at Karumanchi village. A-2 is stated to have manufactured, packed, and distributed the same for sale to the public. When sent to public analyst, report of analysis was received to the affect that the sample does not conform to standards of total ash and contains about 8.1 percent of common salt and is therefore adulterated. After obtaining necessary sanction, the food inspector filed complaint in the lower Court against A-1 and A-2.

3. Sample packets were purchased by the Food Inspector in A-1's shop on 19.03.2000. One of the sample packets was dispatched to the public analyst for analysis on 21.03.2000. Report of the public analyst is dated 19.04.2000.

Sanction for launching prosecution was issued by the Director on 01.05.2002. Complaint was filed by the Food Inspector in the lower Court on 20.06.2002. Thereafter the Food Inspector served copy of public analyst report along with notice u/s 13(2) of the Act to the accused informing their right to send second sample to Central Food Laboratory for second report by way of challenging the first report. Thus, notice u/s 13(2) of the Act enclosing public analyst report was served on the Petitioner more than 27 months of obtaining sample packet by the food inspector from A-1's shop. Shelf life of any food product like chilli powder is only six months from date of its preparation or packing. By the time the food inspector gave notice u/s 13(2) of the Act to the accused, shelf life of the second sample expired long back. Therefore, it would be futile exercise of right of the accused to send second sample for analysis to the Central Food Laboratory, because the second sample is not fit for analysis after more than 27 months of its purchase.

4. In similar circumstances, this Court time and again held that the accused would be entitled for out right acquittal because he had lost his valuable defence of obtaining second opinion from Central Food Laboratory to prove that report of the public analyst is not correct (vide *Grandhi Subba Rao v. State of A.P* (unreported decision dated 21.06.2006 in CrI. P. No. 2982 of 2005). *Naresh Kumar Kedia v. Director Institute of Preventive Medicine* 2006 (1) FAC 104, *Konda Suryanarayana v. State of A.P.* 2006 (1) FAC 157 and *Vinod Namviar v. State of A.P.* 2006 (1) FAC 235. Thus, on this ground alone the criminal case in the lower Court against the Petitioner/A-2 is liable to be quashed. In that view of the matter, it may not be necessary for this Court to discuss in detail the alleged contraventions of Section 11(4) and 14(2) of the Act in this case.

5. Before parting with this case, I would like to comment on bureaucratic delays in giving sanction for prosecution in food adulteration cases. Even though the food inspector and the public analyst are prompt in their duties, the sanctioning authority is taking unduly long time for passing sanction for prosecution against the culprits, for reasons best known to the sanctioning authority. It is not known whether such avoidable delay occasioned with a view to help the culprits or whether such delay was only due to bureaucratic red-tapism. If such attitude is not discontinued by the sanctioning authority, then it would be futile for the food inspectors to book cases against culprits who are selling and manufacturing adulterated food items. By the time of granting of sanction order for prosecution, shelf life of the sample food comes to an end and the culprit would walk away from the criminal justice system on technical grounds even after prima facie committing the offence. In order to plug this loophole in the Act, as an alternative, framers of law may consider passing of an amendment by deleting the words "after the institution of prosecution" occurring in Section 13(2) of the Act, so that the local (health) authority who is the food inspector will be able to serve notice u/s 13(2) of the Act along with copy of the public analyst report to the proposed accused i.e., seller, manufacturer etc., at an early date even during subsistence shelf life of the food item in respect of which sample was obtained,

so that the proposed accused will have opportunity to challenge report of the public analyst by way of taking steps to send second sample to Central Food Laboratory for analysis and report. If any of the above two alternatives are not complied with, then the Act though remains in the state book, becomes functionless.

6. In the result, the petition is allowed quashing proceedings in C.C. No. 211/2002 on the file of Judicial Magistrate of the First Class, Vinukonda in so far as the Petitioner/A-2 is concerned.