
(2015) 08 MAD CK 0053

In the Madras High Court

Case No : Criminal Original Petition (MD) No. 3848 of 2009 and M.P. (MD) No. 1 of 2009

Gurusamy and Others

APPELLANT

Vs

The Food Inspector, Sattur Municipality

RESPONDENT

Date of Decision : 06-08-2015

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 13(2), 14-A, 16(1-A)(I), 7(i)2(ia) (a)(b)(h)(j)

Citation : (2015) 08 MAD CK 0053

Hon'ble Judges : R. Mala, J.

Bench : Single Bench

Advocate : Michael Bharathi, for the Appellant; K. Anbarasan, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

R. Mala, J.—The petitioner has approached this Court with a prayer to call for records pending in C.C. No. 201 of 2008 on the file of the Judicial Magistrate No. II, Sattur, Virudhunagar District and quash the complaint as against the petitioners/Accused.

2. The learned counsel for the petitioners would submit that the respondent herein has filed a complaint against the petitioners for the offence under Section 7(i)2(ia)(a)(b)(h)(j) read with Section 16(1-A)(I) of the Prevention of Food Adulteration Act and under Rules 23, 29 and 44-A (f) of the Prevention of Food Adulteration Rules, 1955 stating that on 23.03.2006 at 12.45 p.m., the sample of Bengalgram Dhal, which was kept for preparation and sale of savories was lifted from the cookery place of the first petitioner and he has purchased the same, after following the procedure and send the same to the Public Analyst on the same day. Thereafter, he received a report on 28.04.2006, which contain a statement that the sample is adulterated one containing Kesari Dhal, rice flour and Tartazine, a synthetic colour. Therefore, he preferred the complaint against

the petitioner.

3. He would further submit that the samples have been taken on 28.03.2006 and complaint has been filed on 10.12.2008, whereas the notice under Section 13(2) of the Food Adulteration Act, 1954, had been served on 15.12.2008, after 21 months from the date of collection of food samples and hence, the petitioner's chance for sending the sample to the Public Analyst has been curtailed; more over, the complaint suffers from procedural illegality, because it has been filed belatedly after 21 months from the date of sending the food samples and thus he prayed for quashing the complaint. To substantiate his case, he relied upon the following decisions:

"1. 2005 M.L.J. (Crl.) 460 - Suresh C. and Others v. State

2. 2008 (3) MLJ (Crl) 779 (Baskar Vembu v. State of Tamil Nadu"

4. Heard the learned Government Advocate (Criminal side) and perused the materials available on records.

5. Admittedly, the samples were taken by the complainant on 23.03.2006 and the same were sent to the Public Analyst on the same day and the analyst report has been received on 28.04.2006. But the complaint has been filed on 10.12.2008 and thereafter, only on 15.12.2008, notice under Section 13(2) of the Prevention of Food Adulteration Act was issued, and in the said notice, it was stated that if so desired, the petitioner 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 samples of the articles of food kept by the Local (Health) Authority analysed by the Central Food Laboratory. But, here, in the case on hand, the notice has been issued after nearly 30 months from the date of receipt of report and hence, the petitioner's chance to send another portion of the product to the Public Analyst is curtailed.

6. Admittedly, the first petitioner is a manufacturer and the second petitioner is a Trader. It is also an admitted case that on 23.03.2006, the respondent has drawn the sample, after following procedures and that has been sent for analysis on the same day itself. The report has been received on 28.04.2006, in which, it was stated that the same sample is an adulterated one. Therefore, after obtaining necessary approval from the higher officials, he filed the complaint only on 10.12.2008. In such circumstances, it is appropriate to consider Section 13(2) of the Prevention of Food Adulteration Act, 1954, which read 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 person 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 14-A, 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."

7. In the Act, it was stated that within a period of 10 days from the date of receipt of the copy of the report, the person, from whom the sample was taken may make an application to the Court to get the sample of the article analysed by the Central Food Laboratory. Whereas, in the decision reported in 2005 M.L.J. (Cri.) 460 - Suresh C. and Others v. State, this Court in paragraph No. 7 has held as follows:

"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 foods 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 resubmitted 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, notice under Sec. 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 Sec. 13(2) has been frustrated, due to the inordinate delay and inaction on the part of the prosecution."

8. In the another decision in 2008 (3) MLJ (Cri) 779 (Baskar Vembu v. State of Tamil Nadu also, it was stated that the prosecution is launched 17 months after Public Analyst's report and notice under Section 13(2) of Prevention of Food Adulteration Act, 1954 was served on the petitioners belatedly and by that time, food sample had become so decomposed and totally unfit for analysis. Hence, due to the inordinate delay, the valuable right of accused was taken away. As per the above said citations, in the present case also, because of the delay in issuing the notice under Section 13(2) of the Prevention of Food Adulteration Act, the petitioners were prevented from sending the sample for second analysis within the time prescribed and the valuable right of the petitioners/accused, was taken away. In such circumstances, I am of the opinion that the above citations are squarely applicable to the facts of the present case.

9. In the above stated circumstances, as already stated, since there is a delay in issuing the notice under Section 13(2) of the Prevention of Food Adulteration Act, the same caused prejudice to him, as he lost his right to have the samples analysed and further, the valuable right of the petitioners/A1 and A2 has also been taken away. Therefore, I am of the view that the complaint against the

petitioners is liable to be quashed.

10. In fine, this Criminal Original Petition is allowed and the complaint in C.C. No. 201 of 2008 on the file of the Judicial Magistrate No. II, Sattur, Virudhunagar District is hereby quashed. Consequently, connected miscellaneous petitions is closed.