
(2012) 07 KL CK 0030

In the High Court Of Kerala

Case No : Criminal M.C. No. 3734 of 2006

K.A. Muhammed Asharaf and Another

APPELLANT

Vs

The State of Kerala and Another

RESPONDENT

Date of Decision : 11-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 482

Prevention of Food Adulteration Act, 1954 — Section 16(ia)(ii), 2(1)(a)(e)(j), 2(v), 7(i)

Citation : (2013) 1 Crimes 426 : (2012) 3 KLJ 691

Hon'ble Judges : P.S. Gopinathan, J

Bench : Single Bench

Advocate : M.K. Damodaran and Sojan Micheal, for the Appellant; S. Hyma, GP, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Gopinathan, J.—This petition u/s 482 of the Code of Criminal Procedure (Cr.P.C.) was filed by the accused in ST 825 of 2003 on the file of the Judicial Magistrate of the First Class, Kodungallur. The second respondent herein filed the above case against the petitioners alleging offences u/s 2(1)(a)(e)(j), 7(i), 16(ia) (ii) and Rules 29 of the Prevention of Food Adulteration Rules, 1955. The case of the second respondent is that on 8.5.2002 the second respondent inspected "Hotel Star", a hotel run by the petitioner and found that tea powder was stored for preparing tea. From out of a 500 gms packet, 450 gms of tea dust was purchased by the second respondent for analysis, as per the rules. It was packed and sealed in three sample bottles as mandated by the rules and one of the samples was sent to the public analyst for analysis. The public analyst, by report dated 5.6.2002, reported that the sample contained added Synthetic Colouring matter and hence adulterated under Prevention of Food Adulteration Rules, 1955. Following the report, in compliance with the procedures laid down, Annexure-I complaint was filed against the petitioners. The petitioners now seek to quash the same with a plea that the tea dust was not stored for sale and that the complaint was filed on 26.2.2003 which is long after the date of sampling and

therefore, the petitioners were prejudiced.

2. Having heard and perusing the records, I find that this petition is without any merit. It is not in dispute that petitioners had stored tea dust in the hotel run by him. It is also not in dispute that 450 gms were sold to the second respondent by the petitioner for the value received. In the above circumstance, there is no merit in the submission that tea dust was not stored for sale. Even sale to the food inspector would amount to sale. Adding to that, even if the plea of the petitioners are accepted that the tea dust was stored for preparing tea, then also the petitioner could not escape from the prosecution. Because articles stored for the preparation of food also would come within the definition of Food as defined u/s 2(v) of the Prevention of Food Adulteration Act, 1954, which reads as follows:

2. Definitions-In this Act unless the context otherwise requires-

xxxx xxxx xxxx xxxx xxxx xxxx

(v). "food" means any article used as food or drink for human consumption other than drugs and water and includes-

(a) any article which ordinarily enters into, or is used in the composition or preparation of, human food,

(b) any flavouring matter or condiments, and

(c) any other article which the Central Government may, having regard to its use, nature, substance or quality, declare, by notification in the Official Gazette, as food for the purposes of this Act.

The above definition of food would show that articles used for the preparation of food also would come within the definition of food. Therefore, the contention of the petitioner that tea dust sold by the petitioner was not stored for sale as food but for manufacture of tea is also devoid of merit. Storing adulterated articles for manufacture of food also would attract penal provision.

Though it is seen that there is a delay of little more than 8 months after the sampling, there is nothing on record to show that the petitioners were anyway prejudiced. Statute prescribes no time limit except the limitation contained in Section 468 Cr.P.C. Admittedly, as contended by the second respondent tea dust would not in the ordinary course be damaged within the above period if it is properly preserved. Therefore, prima facie because of the delay no prejudice is seen caused. Before trial no prejudice can be assumed. Whether any prejudice is caused to the petitioner because of the delay is a matter of evidence. It cannot be determined u/s 482 Cr.P.C. I find no reason to interfere u/s 482.

In the result, this petition is dismissed. The case being pretty old, trial court shall give top priority to the case and be disposed of as expeditiously as possible.