
(2006) 02 AP CK 0023

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 3753 of 2002

Konda Suryanarayana and Others

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 08-02-2006

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 13(2), 16(1), 2, 7(1)
Prevention of Food Adulteration Rules, 1955 — Rule 50

Citation : (2006) 2 ALD(Cri) 64 : (2006) 1 ALT(Cri) 446 : (2006) CriLJ 1870 : (2006) FAJ 182

Hon'ble Judges : P. Lakshmana Reddy, J

Bench : Single Bench

Advocate : P. Vengala Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P. Lakshmana Reddy, J.—This Criminal Petition is filed to quash the proceedings in Calendar Case No. 18 of 2002 on the file of the Judicial Magistrate of First Class, Yemmiganur.

2. The petitioners herein were prosecuted for the offences punishable under Sections 16(1)(a)(i), 7(1) and 2(ia) of Prevention of Food Adulteration Act 1954 and Rule 50 of Prevention of Food Adulteration Rules, 1955.

3. The allegation against the petitioners is that when they kept for sale the Dalda original wanaspathy in their shop the Food Inspector took samples and sent for analysis and the analyst opined that the red units shall not be lighter than 2.0 red units in 1 cm cell, but the sample contained red units of 1.4 and therefore the sample does not conform to the red units in respect of Baudouin's test for sesame oil and therefore adulterated.

4. The learned Counsel for the petitioners contended that the samples were taken on 2-2-1999 and were sent for analysis on 3-2-1999 and the Food

Inspector received the analyst report on 2-3-1999 and till 21-1-2002 no complaint was filed and only on 21-1-2002 complaint was filed and Section 13(2) notice was issued on 1-2-2002 and only along with notice the copy of analyst report was served on the accused and thus there is delay of three years between the date of taking sample and the date of serving the analyst report and thus the prosecution defeated the valuable right conferred on the accused to send the remaining sample to the Central Food Laboratory and therefore the complaint filed after such a long delay is liable to be quashed.

5. The learned Counsel relied upon a decision of the Apex Court in *Nebh Raj Vs. State (Delhi Administration) and Another*, wherein the Apex Court observed that there was no justification whatever for launching the prosecution more than two years after the sample was taken and after obtaining the report of the Public Analyst and that launching of prosecution at such a belated stage may result in causing harassment to the accused in some cases and may also result in genuine offenders escaping punishment. With such observation, the Apex Court in that case acquitted the accused on the ground of delay. The learned Counsel relied on a decision of Orissa High Court in *Narain Extractions Private Limited Vs. P.C. Mishra, Food Inspector*, wherein the Orissa High Court held that the prosecution launched after about 2 years 8 months after report of Public Analyst was made available and no reason was indicated for the said delay and therefore the prosecution is liable to be quashed. The Orissa High Court followed the decision of Apex Court in *Nebh Raj Vs. State (Delhi Administration) and Another*, besides some other decisions of the Apex Court.

6. The learned Public Prosecutor opposed the petition contending that the complaint was filed within the period of limitation and the Court after taking the cognizance of the case within 10 days, Section 13(2) notice was served and therefore there are no grounds to quash the proceedings.

7. Heard both sides and perused the material on record.

8. In the instant case, it is not disputed that the samples were taken on 2-2-1999 and on the very next day the samples were sent to the analyst and the analyst analysed the samples on 9-3-999 and sent his report to the Food Inspector who received it on 12-3-1999. It is also not disputed that the copy of that report was made available to the accused only on 11-2-2002. The complaint was filed on 21-1-2002. So for a period of 2 years 9 months after receipt of analyst report, the Food Inspector kept quite without filing the complaint and without serving the copy of the analyst report. Therefore, the accused has lost his valuable right of sending the remaining sample to the Central Food Laboratory because no useful purpose would be served by sending the sample vanaspathi for analysis after a period of 2 years 9 months. The Apex Court in *Nebh Raj Vs. State (Delhi Administration) and Another*, deprecated the practice of launching the prosecution more than two years after the sample was taken. The Orissa High Court after considering the law on the subject held that the prosecution, launched after over a period of two years after receipt of report

from the Public Analyst is liable to be quashed. The said decisions of the Apex Court and also Orissa High Court (supra) are very much applicable to the facts of this case. In the instant case also, there is absolutely no reason given for such a long delay in launching prosecution. In view of the above cited decisions, I find considerable force In the contention of the learned Counsel for the petitioners that the proceedings in this case are liable to be quashed.

9. In the result, this Criminal Petition is allowed and the proceedings in Calendar Case No. 18 of 2002 on the file of the Judicial Magistrate of First Class, Vemmiganur are hereby quashed.