
(2006) 04 AP CK 0067

In the Andhra Pradesh High Court

Case No : Criminal P. No. 5196 of 2002

Md. Mahmood and Others

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 05-04-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 10, 7, 9

Citation : (2006) 2 ALD(Cri) 138 : (2006) 2 ALT(Cri) 388 : (2006) 2 APLJ 284 :
(2006) CriLJ 3470

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : A. Ravi Shankar, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

N.V. Ramana, J.—This Criminal Petition, u/s 482 of the Criminal Procedure Code, 1973, is filed seeking to quash the proceedings in C.C. No. 677 of 2002 on the file of the VI Metropolitan Magistrate, Hyderabad, for the offence u/s 7(iv) of the Prevention of Food Adulteration Act, 1954.

2. The brief facts of the case are that based on the complaint lodged by one Syed Sadiq, Head Constable of Amberpet Police Station, alleging that on 14-5-2002 at 10.30 hours while he and another Constable were on patrolling duty, they found the petitioners selling Gutkha, the Sub-Inspector of Police, Amberpet Police Station, registered a case in Crime No. 148 of 2002 and after investigation, he filed charge-sheet against the petitioners for the offence u/s 7(iv) of the Prevention of Food Adulteration Act, 1954, which was taken on file as C.C. No. 677 of 2002, and to quash the said proceedings, the petitioners filed this criminal petition.

3. The learned Counsel for the petitioners submitted that the police have no power to seize, arrest and investigate the offences falling under the Prevention of

Food Adulteration Act, 1954. It is only the Food Inspector, appointed for the local area, in whose jurisdiction the offence is committed, has the power to seize, arrest and investigate. He submitted that the Government vide orders issued in G.O. Ms. No. 44, dated 19-2-2002, prohibited the sale of pan masala under any brand name with emblem of Gutkha, which contains tobacco, in Andhra Pradesh. To implement the prohibition of sale of Gutkha, the Directorate of Institute of Preventive Medicine, Public Health Labs and Food (Health) Administration, Andhra Pradesh, Hyderabad, has issued Circular Memorandum No. 4709/F1 /2001, dated 20-2-2002, to the effect that the Food (Health) Administration Enforcement Officials shall conduct raids with the support of the police and officials of Vigilance and Enforcement Department and seize such products from retail and wholesale outlets and manufacturing units. In view of the said Circular Memorandum, the learned Counsel for the petitioner submits that the entire process of seizure, arrest and investigation done by the local police, is without jurisdiction, and as such, the proceedings have to be quashed.

4. The learned Public Prosecutor fairly admitted that it is the Food Inspector appointed for a local area in whose jurisdiction the offence takes place, is alone entitled to seize, arrest and investigate the matter.

5. Heard the learned Counsel for the petitioner and the learned Public Prosecutor.

6. Under the scheme of the Prevention Of Food Adulteration Act, 1954, the power to inspect, seize, arrest and investigate the cases falling under the. Prevention of Food Adulteration Act, 1954, is vested exclusively in the Food Inspector, appointed for a local area, in whose jurisdiction the offence is committed. The powers of the Food Inspector, appointed u/s 9, are enumerated in Section 10 of the Prevention of Food Adulteration Act, 1954, which inter alia include to take samples of any article of food from any person selling article, conveying, delivering or preparing to deliver such article to a purchaser or consignee, to send such sample for public analyst for the local area within which such sample has been taken with the previous approval of the Local (Health) Authority having jurisdiction in the local area concerned or with the previous approval of the Food (Health) Authority, to prohibit the sale of any article of food in the interest of public health.

7. In the interest of public health, the Government vide orders issued in G.O. Ms. No. 44, Health, Medical and Family Welfare (LT) Department, dated 19-2-2002, has prohibited the sale of pan masala with any emblem of Gutkha. For enforcement of the prohibition of Gutkha in the State of Andhra Pradesh, the Directorate of Institute of Preventive Medicine, Public Health Labs and Food (Health) Administration, Andhra Pradesh, Hyderabad, has issued Circular Memorandum No. 4709/F1/2001.. dated 20-2-2002, to the effect that the Food (Health) Administration, enforcement officials shall conduct raids with the support of the Police and officials of Vigilance and Enforcement Department and seize such products from retail and wholesale outlets and manufacturing units in Andhra Pradesh.

8. Gutkha being a food item, under the provisions of the Prevention of Food Adulteration Act, 1954, it is only the Food Inspector, who is empowered to seize, arrest and investigate the case. The sale of Gutkha in the State of Andhra Pradesh has been prohibited by the Government. As per the orders issued by the Directorate of Institute of Preventive Medicine, Public Health Labs and Food (Health) Administration, Andhra Pradesh, Hyderabad, in Circular Memorandum, dated 20-2-2002, the raids in relation to sale of Gutkha, shall be conducted by the Food (Health) Administration Enforcement Officials with the support of the Police and Officials of the Vigilance and Enforcement Department and seize such products from retail and wholesale outlets and manufacturing units in Andhra Pradesh. In the instant case, except the local police, none of the Enforcement Officials from the Food (Health) Administration, were involved in the seizure, arrest and investigation of the case.

9. Having regard to the fact that the Prevention of Food Adulteration Act, 1954 vests the power to seize, arrest and investigate the case in the Food Inspector, and having regard to the Circular Memorandum, which requires conducting of raids by the Food (Health) Administration Enforcement Officials, for enforcing the ban on Gutkha, with the support of Police and Officials of Vigilance and Enforcement Department, the entire exercise of seizure of Gutkha, arrest of accused and investigation of case, done by the local police, is without jurisdiction and the proceedings initiated in pursuance thereof on the file of VI Metropolitan Magistrate, Hyderabad in C.C. No. 677 of 2002 against the petitioners, are liable to be quashed.

10. Accordingly, the Criminal Petition is allowed and the proceedings in C.C. No. 677 of 2002 on the file of the VI Metropolitan Magistrate, Hyderabad are quashed.