
(2013) 11 AP CK 0071

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 5796 of 2007

M/s. M.T.R. Foods Limited

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 22-11-2013

Acts Referred:

Citation : (2014) 1 ALD(Cri) 324

Hon'ble Judges : Noushad Ali, J;K.C. Bhanu, J;G. Chandraiah, J

Bench : Full Bench

Advocate : V.V.N. Narayana Rao, for the Appellant;

Judgement

K.C. Bhanu, J.—The reference has been made to the Full Bench on the observations made by a learned Single Judge of this Court by its order, dated 17.03.2010, in CrI. P. No. 5796 of 2007 wherein it is observed as follows: In the light of the same, especially in the light of the observations made by the Division Bench of this Court and since elaborate submissions had been made by Sri V.V.N. Narayan Rao, learned counsel for the petitioner, the said decisions require reconsideration. Inasmuch as this question is argued in elaborate quite often, it would be proper to have an authoritative pronouncement in this regard by an appropriate Full Bench or Larger Bench, as the case may be.

The matter relates to the Prevention of Food Adulteration Act, 1954 (for short, "the Act"). Two decisions were referred to, in the reference order. First case referred to is in Mathew Xavier, Regional Sales Manager Foods, Nominee of Hindustan Lever Ltd., Mumbai and another v. State of A.P. 2009 (2) ALD (CrI.) 685 (A.P.) wherein, it was observed as follows: The above decision of the Supreme Court puts the issue beyond any pale of doubt. While a joint trial of the manufacturer, distributor, dealer and vendor is permissible, but none the less if the link is missing amongst each of them the only recourse that is available is to examine the evidence that has come on record during the trial, which if permits the manufacturer, distributor and dealer also to be prosecuted, then the power u/s 20(A) has got to be exercised. It has therefore to be understood that at the

first instance, unless the Food Inspector has picked up the sample for analysis, right from the place where it is manufactured itself, he has to necessarily prosecute the manufacturer or dealer or distributor or agent only upon prima facie establishing their link to the alleged adulterated food article which has been sold or offered for sale. Therefore, at the initial stage itself, the manufacturer or distributor or dealer cannot be straight away prosecuted on the strength and basis of the information gathered in terms of Section 14A of the Act. We therefore answer the reference holding that the learned Single Judge who decided Crl. Petition No. 269 of 2003 on 12.03.2006 has taken a correct view of the matter.

2. Section 20A of the Act reads as follows:

Power of Court to implead manufacturer etc:

Where at any time during the trial of any offence under this Act alleged to have been committed by any person, not being the manufacturer, distributor or dealer of any article of food, the Court is satisfied, on the evidence adduced before it, that such manufacturer, distributor or dealer is also concerned with that offence, then, the Court may, notwithstanding anything contained in sub-section (3) of section 319 of the Code of Criminal Procedure, 1973 (2 of 1974), or in section 20 proceed against him as though a prosecution had been instituted against him u/s 20.

From the above provision, it is clear that the Court can exercise its discretion during the trial of the case to implead manufacturer, distributor or dealer of any article of food, if on evidence, it is satisfied that such persons are also concerned with the offence. After scrutiny of Section 20A of the Act, the following principles were laid by the Supreme Court in *Food Inspector, Palghat Municipality v. Seetharam Rice and Oil Mills* 1974 FAC 534 wherein it is held as under:

- (i) Section 20A of the Act envisages a joint trial of, the vendor and the manufacturer or distributor or dealer of any article of food, as the case may be;
- (ii) The powers given u/s 20A can be invoked only during the trial of any person, not being the manufacturer, distributor or dealer of any article of food, for any offence under the Act;
- (iii) Under this section it is imperative on the part of the court to implead a manufacturer, distributor or dealer of any article of food, whenever the court is satisfied on the evidence adduced before it, that such manufacturer, distributor or dealer is also concerned with the offence with which the vendor, the original accused, is charged;
- (iv) The satisfaction referred to in this section is to be reached by the court on the basis of the materials already on record and no hard and fast rule or any guideline can be laid down regarding the data or quantum of materials necessary or sufficient to reach this satisfaction;

(v) Even if a manufacturer, distributor or dealer is not present in court, the Magistrate is empowered to implead such a manufacturer, distributor or dealer without a complaint or written consent or sanction as contemplated u/s 20 of the Act;

(vi) Impleading under this section can be done at any stage after the commencement of the trial and before the conclusion of the trial of the vendor, the original accused, by convicting or acquitting him and not thereafter; and

(vii) After impleadment of the manufacturer, distributor or dealer, as the case may be, the entire proceeding against the original as well as the newly added accused shall commence afresh in accordance with law.

The satisfaction of the Magistrate trying the offence punishable under the Act to the effect that the manufacturer, distributor or dealer is also concerned with the crime is sufficient to implead him in the case u/s 20A of the Act.

3. The object of Section 20A of the Act has been specifically stated in Delhi Cloth and General Mills Co. Ltd. Vs. State of M.P. and others, wherein it is held that only during the course of trial, as enjoined in Section 20A of the Act, manufacturer, dealer or distributor can be brought as co-accused and joint trial can be conducted in order to avoid multiplicity of criminal prosecution. Therefore, the decision in Mathew Xavier, Regional Sales Manager Foods, Nominee of Hindustan Lever Ltd., Mumbai (supra) does not require reconsideration because that decision is based upon interpreting the provision of Section 20A of the Act coupled with the decision rendered by the Apex Court.

4. The second decision referred to in the reference order is T. Deveswar Reddy, Area Manager, Nagarjuna Fertilizers Chemicals Ltd. Vs. Asstt. Director of Agriculture (R) and Another, wherein it was observed as under:

No doubt, Sub-section (2) of Section 13 of the Act confers valuable right on the accused under which provision the accused can make an application to the Court within a period of 10 days from the receipt of copy of the report of Public Analyst to get the samples of food analysed in the Central Food Laboratory unfit for analysis due to decomposition by passage of time or for any other reason attributable to the lapses on the side of prosecution, that valuable right would stand denied. This would constitute prejudice to the accused entitling him to acquittal but mere delay as such will not per se be fatal to the prosecution case even in cases where the sample continues to remain fit for analysis in spite of the delay because the accused is in no way prejudiced on the merits of the case in respect of such delay. Therefore, it must be shown that the delay has led to the denial of right conferred u/s 13(2) and that depends on the facts of each case and violation of the time-limit given in sub-rule (3) of Rule 7 by itself cannot be a ground for the prosecution case being thrown out.

The above decision deals with the rights of the accused u/s 13(2) of the Act, which reads as follows:

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 u/s 14A, 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.

From the above provision, it is clear that a valuable right has been conferred on the vendor to have the second sample analysed by the Director of Central Food Laboratory. This right is a valuable one because the certificate that may be given by the Director of Central Food Laboratory supersedes the report of the Public Analyst and is treated as a conclusive evidence of its contents in view of sub-section (5) of Section 13 of the Act, which reads as under:

Any document purporting to be a report signed by a public analyst, unless it has been superseded under sub-section (3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under Sections 272 to 276 of the Indian Penal Code (45 of 1860).

Sub-section (3) of Section 13 of the Act also states that the certificate issued by the Director of the Central Food Laboratory under sub-section (2B) shall supersede the report given by the Public Analyst under sub-section (1).

5. No doubt, the object of sub-section (2) of Section 13 of the Act is to afford an opportunity to the accused to get the sample analysed, if so desired, by the Central Food Laboratory, whose certificate is deemed to be final and conclusive of the facts stated therein. But, at the same time, when any other person, who is a manufacturer, distributor or dealer is impleaded as an accused u/s 20A of the Act during the trial of the case, the question of invoking the right conferred u/s 13(2) of the Act would not arise. Both the provisions are independent and they cannot be read together. The reason behind it is sometimes the shelf life of article of food may expire during trial of the case. In such circumstances, sending the remaining sample, if any available, to the Public Analyst by impleading the accused u/s 20A of the Act may be a futile exercise and no desired results would come on the analysis of the third sample. Furthermore, it would be redundant for dealer, manufacturer or distributor to make an application to send the sample to Director, Central Food Laboratory for analysis of sample. Once the original accused exercised his right u/s 13(2) of the Act, there is no need for dealer, distributor or manufacturer to send the third sample, if any, available in the Court to the Central Food Laboratory because the certificate that may be given by the Director, Central Food Laboratory supersedes the report of the Public

Analyst. So, if a right is given to the manufacturer, distributor or dealer to send the third sample, if any, available in the Court, it is nothing but reviewing the report that may be given by the Director of Central Food Laboratory, which is not permissible under law. Therefore, this decision does not require any reconsideration because the decision is based upon the interpretation of Section 13(2) of the Act.

6. The right u/s 13(2) of the Act can be exercised by persons mentioned in that section for making an application to the Court within a period of ten days from the date of receipt of a copy of the report, to get the sample of article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory. So, when a person is impleaded as a co-accused exercising the powers u/s 20A of the Act, the question of sending any Public Analyst report to him may not arise. Section 13(2) of the Act provides for sending of the report of the result of the analysis to a person from whom the sample of article of food was taken and the person, if any, whose name and address and other particulars have been disclosed u/s 14A of the Act, which reads as under:

Every vendor of an article of food shall, if so required, disclose to the food inspector the name, address and other particulars of the person from whom he purchased the article of food.

7. In view of the above discussion, it is clear that there were no conflicting views in both the judgments so as to refer the matter to an appropriate Bench for an authoritative pronouncement. Those two provisions i.e., u/s 13(2) and 20A of the Act deal with the distinct rights of accused as mentioned in those provisions. The two Division Benches' decisions rendered by the learned Judges do not conflict with each other. When there is no conflict of two coordinate Benches, in our opinion, no reference is required. Therefore, the reference is answered holding that the decisions rendered by the two Division Benches in Mathew Xavier & T. Deveswar Reddy (1 & 2 supra) do not require reconsideration.