
(2014) 08 KL CK 0131

In the High Court Of Kerala

Case No : Crl. M.C. Nos. 883 and 1317 of 2011

P.P. Manoj

APPELLANT

Vs

Food Inspector

RESPONDENT

Date of Decision : 07-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2014) 08 KL CK 0131

Hon'ble Judges : A. Hariprasad, J

Bench : Single Bench

Advocate : Santhosh Subramaniam, E.A. Thankappan, Sherryj. Thomas and S. Sreekumar (North Paravur), Advocate for the Appellant; Tom Jose Padinjarekkara, Addl. Director General of Prosecution and Justin Jacob, Public prosecutor, Advocate for the Respondent

Judgement

A. Hariprasad, J.—Petitions filed under Section 482 of the Code of Criminal Procedure (in short, "Cr.P.C."). Since common questions arise in these cases, they are heard together and disposed by this common order.

2. The complaint in Crl.M.C. No. 1317 of 2011 (Annexure-I) shows the following allegations: On 15.10.2005 at 4.00 p.m., the complainant/Food Inspector conducted an inspection in Surya Hotel run by the accused. After issuing Form-VI notice and paying price for the commodity, he purchased 750 grams mango pickle. It was taken in a clean and dry steel vessel. Subsequently the contents were packed in polythene covers. After labelling and sealing the samples, Form-VII memorandum was prepared. One of the samples was sent for analysis to the Public Analyst, who issued Annexure-II analysis report. On the finding of the Public Analyst that the sample did not conform to the standards prescribed for pickle under A.16.16 of Appendix B to the Prevention of Food Adulteration Rules, 1955 (in short "the Rules"), the prosecution was launched.

3. In Crl.M.C. No. 883 of 2011, the allegations revealed from Annexure-I complaint are the following: On 18.07.2003 at about 2.00 p.m., the Food

Inspector inspected the provision shop run by the accused. In the presence of witnesses and after complying with all the formalities and also after giving notice in Form-VI, the Food Inspector demanded three bottles of tender mango pickle for analysis. Thereafter, the article was properly sealed and sent for analysis to the Public Analyst. Annexure-II is the report obtained from the Public Analyst, which showed that the sample did not conform to the standards prescribed in the aforesaid provisions. Therefore, this prosecution was also launched.

4. The petitioners (accused) challenge the maintainability of the prosecution on various legal grounds.

5. Heard Shri Santhosh Subramaniam, learned counsel for the petitioners in both the cases and Shri Tom Jose Padinjarekkara, learned Additional Director General of Prosecution appearing for the State.

6. Learned counsel for the petitioners submitted that the prosecution is legally unsustainable for multifarious reasons. In CrI.M.C. No. 1317 of 2011, the alleged inspection in the hotel of the petitioner was on 15.10.2005. The Rules underwent an amendment in respect of A.16.16 of Appendix B to the Rules with effect from 21.03.2005. The provision before the amendment reads as follows:

A.16.16.-PICKLE means the preparation made from sound, clean, raw or sufficiently mature fruits or vegetables or a combination of both free from insect damage or fungus attack, preserved in salt, acid, sugar or any combination of the three. The pickle may contain onion, garlic, ginger, sugar, jaggery, edible oils, spices, spice extract or oil of turmeric, pepper, chillies, fenugreek, mustard seed or powder, vegetable ingredients asafoetida, Bengal gram, lime juice, lemon juice, green chillies, vinegar or acetic acid, citric acid, dry fruit including resins and fruit nuts.

Combination on pickles may be:

(i) Pickles in citrus juice or brine.- The percentage of salt in covering liquid shall not be less than 10 per cent when salt is used as major preserving agent. When packed in citrus juice, acidity of the covering liquid shall be not less than 1.2 per cent calculated as citric acid. Soluble calcium salt and permitted preservatives may be used in such type of pickles. Pickles shall be free from copper, alum and mineral acids.

(ii) Pickles in oil.- The fruit or vegetable percentage in the final product shall not be less than 60 per cent. The pickle shall be covered with oil so as to form a layer of not less than 0.5 cm above the contents or the percentage of oil in pickles shall be not less than 10 per cent.

The pickle shall be free from copper, alum and mineral acid. It may contain rapeseed (rai), ajwain, saunf, black pepper and like spices, etc. Permitted preservative may be used in pickles.

(iii) Pickles in vinegar.-Pickles in vinegar mean the preparation from sound, clean,

raw or sufficiently matured fruits or vegetables free from insect damage or fungus attack, which have been cured in brine or dry salt or salted and dried stack with or without natural fermentation. It shall contain vinegar or acetic acid and the percentage of acid in the fluid portion shall not be less than 2 per cent w/w calculated as acetic acid. It may contain sugar, whole or ground or semi-ground, spices, dried fruits, green and red chillies, ginger, etc., dry fruit. Citric acid may also be added in such type of pickles. Spice extract or essences may also be used. The drained weight of the product shall not be less than 60 per cent. The pickles shall be free from copper, mineral acid, alum synthetic colours and shall show no sign of fermentation. The product shall be reasonably free from sediments. Permitted preservatives may be used in pickles.

Subsequent to the amendment, the earlier provision in A.16.16 of Appendix B has been renumbered as A.16.42 of Appendix B. The amended provision reads as follows:

A.16.42.-Pickles means the preparation made from fruits or vegetables or other edible plant material including mushrooms free from insect damaged or fungal infection, singly or in combination preserved in salt, acid, sugar or any combination of the three. The pickle may contain onion, garlic, ginger, sugar, jaggery, edible vegetable oil, green or red chillies, spices, spice extracts/oil, limejuice, vinegar/acetic acid, citric acid, dry fruits and nuts. It shall be free from copper, mineral acid, alum, synthetic colours and shall show no sign of fermentation.

2. The product may contain food additives permitted in Appendix C. The product shall conform to the microbiological requirements given in Appendix D. Pickles may be of combinations as given below:-

On the above premise, learned counsel for the petitioners submitted that the prosecution is not maintainable mainly for two reasons. Firstly, learned counsel for the petitioner submitted that the unamended A.16.16 of Appendix B of the Rules contains prescriptions generally for all kinds of pickles. There are three categories mentioned thereunder, viz., pickles in citrus juice or brine, pickles in oil and pickles in vinegar. On a reading of the first portion of this part of the Rules, it is evident that it deals with pickles generally. Annexure-II analysis report shows that the said sample did not conform to the standards prescribed for the pickles as per A.16.16 of Appendix B to the Rules. This is without any basis as it does not specify the category to which it was expected to fall. This contention appears to be forceful. Secondly, it is contended that the prosecution has no case that the pickle allegedly taken from the hotel or shop of the petitioners was made either in the medium of citrus juice or brine, or in oil or in vinegar. In the absence of specific allegation, it is not possible for any accused to defend a case. On going through the complaints in both the cases, it could be seen that only a bald allegation is made that the pickles did not fall within the standards prescribed by the Rules. If the charges are evasively made, it is not possible for the accused to defend the case properly. This certainly causes

prejudice to the accused. Viewing from that angle, the prosecution is not maintainable.

7. In respect of CrI.M.C. No. 1317 of 2011, learned counsel for the petitioners submitted that the prosecution was launched on 19.01.2006 without even considering the amendment of the Rules, which came into force on 21.03.2005. In other words, the accused in that case is sought to be prosecuted on the basis of allegation of an offence, which was completely changed by the amendment to the Rules. Learned counsel for the petitioner basing on B.L. Kohli and Another Vs. Delhi Administration, ; Prem Chand v. State of Haryana (1993(2) FAC 178) and M/s. Dalmia Dairy Industries Ltd. Vs. State of Haryana contended that the benefit of the amendment to the Rules should enure to the accused. It is settled law that the rule of construction of a penal statute is that where the legislature evinces its intention to modify the law in favour of the accused so as to reduce the rigour of the law in the light of past experience and changed social conditions, so long as prosecution of the accused has not concluded by a judgment of conviction, the proceedings against him are regarded as inchoate and the law applicable to him would be the law as amended by the legislature. This proposition is indubitable.

8. Learned counsel for the petitioners relied on a decision of the Single Judge of this Court in CrI.M.C. No. 565 of 2011 dated 28.03.2011. That was a case wherein the Food Inspector alleged that the pickle seized from the accused was garlic pickle in oil. Considering the entire issue at length, the learned Single Judge found that the prosecution was not sustainable in view of the fact that it was launched without noticing the change of law.

9. Learned counsel for the petitioner placed reliance on the decision of this Court in CrI.R.P. No. 1914 of 2004 dated 22.07.2008. An identical question was considered by the learned Single Judge of this Court and found that the prosecution was not legally sustainable.

10. Learned counsel for the petitioners in Cr.M.C. No. 1317 of 2011 contended that the pickle allegedly taken from the hotel was not intended for sale as such. It is, therefore, argued that storing a food item simpliciter is not an offence, unless it contains a noxious or prohibited substance. Even going by the prosecution case, there is no such allegation. Therefore, basing on Poulose v. Food Inspector (1992(1) KLT 522), it is contended that the prosecution is bad insofar as it relates to seizure of food item from a hotel.

11. Considering the entire facts and circumstances and the law on the point, I find that the prosecution in both these cases on the basis of the allegations in the complaint coupled with the analysis report is not maintainable in law. Further the petitioners/accused in CrI.M.C. No. 1317 of 2011 is being prosecuted under a law, which was not in existence on the date of the alleged offence. Therefore, on this count also, the petition is to be allowed.

In the result, both the petitions are allowed. The complaints in C.C. No. 77 of

2004 on the file of Judicial First Class Magistrate Court, Vaikom and that in C.C. No. 107 of 2006 on the file of the Judicial First Class Magistrate Court, Chalakkudy are hereby quashed.

All pending interlocutory applications will stand dismissed.