
(2009) 08 MAD CK 0242

In the Madras High Court

Case No : Criminal O.P. (MD) No. 737 of 2009 and M.P. (MD) No. 1 of 2009

R. Nagarajan and A. Nagarajan

APPELLANT

Vs

The Food Inspector, Periyakulam Municipality
The Food
Inspector, Periyakulam Municipality Vs R. Nagarajan and A.
Nagarajan

RESPONDENT

Date of Decision : 10-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 16(1), 2, 7
Prevention of Food Adulteration Rules, 1955 — Rule 37, 37D

Citation : (2009) 08 MAD CK 0242

Hon'ble Judges : G.M. Akbar Ali, J

Bench : Single Bench

Advocate : R. Gandhi, for the Appellant; P. Rajendran, Government Advocate
(Crl. Side), for the Respondent

Final Decision : Allowed

Judgement

G.M. Akbar Ali, J.—This petition is filed u/s 482 of Cr.P.C., to call for the records relating to the charge sheet pending in S.T.C. No. 157 of 2008, on the file of the learned Judicial Magistrate, Periyakulam, and to quash the same.

2. The petitioners have been charged for the alleged offence punishable u/s 7(ii) & 16(1)(a)(i) r/w 2(ix)(g) and (k) of the Prevention of Food Adulteration Act, 1954 and Rule 37 of the Prevention of Food Adulteration Rules, 1955. The first petitioner is running a shop in the name and style of "Nagarajan Store", Thenkarai, Periyakulam and the 2nd petitioner is the manufacturer at Dindigul.

3. On 27.06.2007, the respondent viz., the Food Inspector of Periyakulam Municipality, inspected the first petitioner's shop and took sample packets of "Anil Puttu Flour". The respondent, on receiving a report from the Food Analysis Laboratory, Guindy, alleging that the sample packets contained misbranded labels thereby, contravened the Rule 37 of the Prevention of Food Adulteration

Rules, 1955 and filed a charge sheet for the offence as stated earlier.

4. According to the prosecution, in the present case, the pockets label contained pictures of plates containing Puttu with cashew nuts, sugar, elachi and broken coconuts which are printed on the main panel and back panel instead of the pictures of the actual food contained in the packet. According to the prosecution, the sample is misbranded and it is not in accordance with the requirements of Rule 37 of the Prevention of Food Adulteration Rules, 1955.

5. The petitioner would state that the petition is filed for quashing of the said charges on the ground that there is no violation of the provisions of the Rule 37 of the Prevention of Food Adulteration Rules, 1955.

6. The learned Counsel for the petitioner submitted that the first petitioner is a shop owner and the second petitioner is the manufacturer of a Food viz., "Anil Puttu Flour" and the label would depict a prepared item of food from the content showing cashew nut, sugar, elachi and broken coconuts, which is not false and misleading. The learned Counsel relied on a judgment of the Supreme Court in Crl.A.No.559 of 2008 dated 27.03.2008. In a similar case wherein, a pocket of "Shaktimaan Refined Soyabean Oil", kept for sale for human consumption, was sent for Chemical Analysis and the Analyst opined that the label contains pictures of vegetables like cabbage, carrot, brinjal, capsicum, cauliflower, tomato and onions, which are in no way connected with soyabean oil and that the pictures of vegetables on the label is an exaggeration of the quality of the product and hence, violates Rule 37D of the Prevention of Food Adulteration Rules, 1955. Therefore, is misbranded. The Hon"ble Apex Court has observed as follows:

In the present case, it is true that the appellant has used pictures of vegetables on the label of the product which is refined soyabean oil, which according to the appellant is to depict the purpose for which the oil can be used, viz., preparation of the vegetables depicted thereon.

7. The Apex Court has further held that "In our opinion the High Court has committed a serious error in arriving at a finding that the article of food (soyabean oil) was misbranded since the picture contained on the label has nothing to do with the article of food in question, completely ignoring the fact that the article of food can be used for cooking the vegetables shown in the picture which cannot be said to be exaggerating the quality of the food in question".

8. It is also brought to the knowledge of this Court about the guidelines issued by a Director of Public Health Preventive Medicine, Chennai, dated 02.06.2008. The guidelines were issued with an observation that many of the cases were declared misbranded by a public Analyst for no valid reasons or explanation which are not exhausting under the guidelines and an example is given as under:

3. A picture of some prepared foods which can be prepared using the edible oil or grain flour or dhal contained the package of edible oil or grain flour or dhal is not

misleading or false. Actually these are all leading pictures and not misleading.

9. In the instant case also a prepared food out of the content has been exhibited, which is aptly mentioned as leading pictures and not misleading one.

10. The powers of the Court u/s 482 of Cr.P.C., has to be sparingly used and in my considered view, label containing leading depiction of pictures will not amount to misleading, as contemplated in Rule 37 of the Prevention of Food Adulteration Rules, 1955. Therefore, the proceedings cannot be allowed to be continued, as it is abuse of process of law.

11. In the result, the charge sheet pending in S.T.C. No. 157 of 2008, on the file of the learned Judicial Magistrate, Periyakulam, is quashed and the petition is allowed. Consequently, connected miscellaneous petition is closed.