
(2006) 04 AP CK 0003

In the Andhra Pradesh High Court

Case No : Criminal Petition No's. 1426 and 1429 of 2003

T. Srihari Ltd. and Others

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 06-04-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319

Citation : (2006) 18 CriminalCC 647 : (2006) 4 RCR(Criminal) 182

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : E. Manohar representing Mr. S. Leo Raj, for the Appellant;

Final Decision : Allowed

Judgement

P.S. Narayana, J.—Heard Sri E.Manohar, the learned Senior Counsel representing the petitioners and the learned Public Prosecutor representing the respondent/complainant respectively in both these Criminal Petitions.

2. In view of the fact that the principal ground raised praying for quashing of proceedings in both these criminal petitions being the same, though in CrI.P.No.1426/2003 certain additional grounds also had been raised, for the purpose of convenience, both these Criminal Petitions are being disposed of by this Common Order.

3. Sri E.Manohar, the learned Senior Counsel representing the petitioners in both these Criminal Petitions would maintain that a mere declaration that the accused is a marketer may not be sufficient to prosecute the marketing agency unless there is a connecting link between the product and the marketer and in the absence of the same, the marketing agency cannot be held liable for the food product being adulterated and, hence, the prosecution for offences under the Prevention of Food Adulteration Act, 1954 (hereinafter in short referred to as "Act") or the Rules framed thereunder cannot be maintained. The learned Senior Counsel in all fairness would maintain that it may be that at the appropriate

stage the concerned learned Magistrate may invoke the provisions of Section 20-A of the Act referred to supra. The learned Senior Counsel also placed reliance on certain decisions.

4. The learned Public Prosecutor, however, would contend that in the light of the different provisions of the Act and the Rules framed thereunder, the petitioners also are liable to be prosecuted under the provisions of the Act and the petitioners cannot escape such criminal liability taking shelter u/s 14-A of the Act. The learned Public Prosecutor also had explained the relevant facts in both the Criminal Petitions.

5. CrI.P.No. 1426/2003 is filed by Accused Nos.2 and 3 in C.C.No.226/2003 on the file of Additional Judicial First Class Magistrate, Ananthapur. The facts in nutshell are as hereunder:-

The Food Inspector, Division-1, Ananthapur, filed a complaint on 16.10.2002 against three accused in the Court of Additional Judicial First Class Magistrate, Ananthapur u/s 116(1)(a)(i), Section 7(i), Section 2(i-a)(m) of the Act for sale of adulterated Brooke Bond Deluxe Green Label Coffee. A-1 is the vendor, A-2 is the nominee of A-3, the manufacturing Company. The learned Magistrate had taken cognizance of the same on 3.2.2003 which was registered as C.C.No.226/2003. On 24.7.2001, the Food Inspector Division-I, Ananthapur, visited the Kirana Shop of A-1 in main road Atmakur, Ananthapur District and purchased Brooke Bond Deluxe Green Label (blend of coffee and chicory coffee 53% and chicory 47) sealed packets. The label particulars disclosed that the product was packed in January 2001 and it is best within six months from the date of packing. It is further stated that on enquiry and demand u/s 14-A of the Act, the vendor stated that he had no purchase bill regarding the source of supply of the sample. One sample was sent for analysis and the Public Analyst in his report dated 30.8.2001 opined that the sample does not conform to the standards of aqueous extract and, hence, adulterated. As per the values permitted in Clause A.08-03 in Appendix B to the Rules framed under the Act, aqueous extract should not be more than 50% but the sample contained 51.64%. It was further stated that consent for prosecution was accorded by the Food (Health) Authority on 10.07.2002 u/s 20(1) of the Act. The complaint was filed on 16.10.2002 and cognizance was taken as already aforesaid.

6. The twin grounds which were raised are that the vendor had not disclosed the source of purchase and the name of Hindustan Lever Limited and the Company does not directly sell its products to the retailers and the stock held by A-1 is spurious and not one manufactured or supplied by A-3 Company and the consent for prosecution can be given and prosecution can be launched only against the persons whose names and addresses had been disclosed by the vendor u/s 14-A of the Act and Section 14-A of the Act may have to be read along with Section 13(2) of the Act. The other ground raised is the unexplained and inordinate delay in launching the prosecution.

7. CrI.P.No. 1429/2003 is filed by Accused Nos.2 to 5 praying for the quashing of the proceedings in S.T.C.No.4/2003 on the file of III Additional Munsif Magistrate, Ongole, Prakasam District. It was stated that the concerned Food Inspector filed a complaint on 23.9.2002 and the learned III Additional Munsif Magistrate³, Ongole had taken cognizance of the same on 20.2.2002 u/s 16(1)(a)(i) Section 2(i-a)(b) and Section 7(1) of the Act. The facts in brief are that on 25.5.2000, L.W.1 visited the shop of A-1 at Maddirala village, Nagula Uppalapadu Mandal, Prakasam District and found 1 Kg. sealed packets of Kissan Annapurna iodized salt kept for sale for human consumption. It was stated that the label declaration disclosed that the salt was packet in January, 2000 and it is best within one year from the date of manufacture. On suspicion of adulteration he purchased three packets and one packet was sent for analysis and the Public Analyst by his report dated 24.6.2000 opined that the sample contains iron fillings of 5.90 parts per million (ppm) which should be absent according to the value permitted in A-15-01 in Appendix B to the Rules and, hence, adulterated. After receipt of report on L.W.1 addressed a letter to A-1 stating that at the time of lifting the sample he had not produced the purchase bill of the salt and, hence, he was directed to furnish the purchase bill immediately, but A-1 had not chosen to send any reply. On the basis of the label declaration proposals were sent to the Food (Health) Authority, Hyderabad on for consent for prosecution and the written consent u/s 20(1) of the Act for launching the prosecution against die five accused persons was accorded on 7.6.2002. Accordingly the complaint was filed which was taken cognizance as already aforesaid.

8. The principal grounds raised in this Criminal Petition i.e. CrI.P.No.1429/2003 also appear to be almost similar as referred to supra. No doubt certain additional facts also had been referred to. In both the Criminal Petitions, strong reliance was placed on the decisions of this Court in T.Srihari v. State of A.P., CrI.P.No. 1643/2002 decided on 14.11.2002 and Sri Mathew Xavier and another v. State of A.P., CrI.P.No.269/2003 decided on 16.3.2006.

9. Section 14-A of the Act reads as hereunder:

Vendor to disclose the name, etc. of the person from whom the article of food was purchased:

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 who he purchased the article of food.

Section 20-A of the Act reads as hereunder:

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.

Rule 32(c) of the Rules reads as hereunder:

(i) the name and complete address of manufacturer and the manufacturing unit, if these are located at different places and in case the manufacturer is not the packer or bottler the name and complete address of the packing or bottling unit as the case may be;

(ii) where an article of food is manufactured or packed or bottled by a person or a company under the written authority of some other manufacturer or company, under his or its band name, the label shall carry the name and complete address of the manufacturing or packing or bottling unit as the case may be, and also the name and a complete address of the manufacturer or the company, for and on whose behalf it is manufactured or packed or bottled;

(iii) where an article of food is imported into India, the package of food shall also carry the name and complete address of the importer in India:

Provided that where any food article manufactured outside India is packed or bottled in India, the package containing such food article shall also bear on the label, the name of the country of origin of the food article and the name and complete address of the importer and the premises of the packing or bottling in India.

Explanation VIII to Rule 32 reads as hereunder:

(i) "Best Before" means the date which signifies the end of the period under any stated storage conditions during which the product will remain fully marketable and will retain any specific qualities for which tacit or express claims have been made. However, provided that beyond the date the food may still be perfectly satisfactory.

(ii) In addition to the date of best before, any special conditions for the storage of the food shall be declared on the label if the validity of the date depends on such storage.

Reliance also was placed on Morton Confectionery and Milk Products Factory, Marhowra v. The State of Bihar, ILR 1980 Pat 181. The learned Judge of this Court in the decision referred (supra) had considered similar question and came to the conclusion that the name of the manufacturer, supplier, marketing agency found on the label cannot form the basis for prosecuting them and taking into consideration that there is nothing on record other than the label connecting concerned petitioners with the product held that in the absence of the connecting link between the petitioners and the alleged adulterated product, the proceedings are liable to be quashed. This Court does not find any reason to take a different

view in the present Criminal Petitions also. It is needless to say that if the learned Magistrate is inclined to invoke the jurisdiction u/s 20-A of the Act during the course of trial depending upon the facts and circumstances of the case, it is made clear that the learned Magistrate is at liberty to do so. However, as on today, in the light of the principal stand taken praying for quashing of the proceedings, both the Criminal Petitions are bound to succeed and accordingly the proceedings as against the petitioners in these Criminal Petitioners are quashed. This Court is not inclined to express any opinion relating to the inordinate delay in launching the prosecution inasmuch as the proceedings are being quashed on the principal ground raised by the petitioners.

10. Subject to the above observation, both the Criminal Petitions are allowed.