

(2007) 10 MAD CK 0128

In the Madras High Court

Case No : Criminal O.P. No. 9811 of 2006 and Criminal M.P. No's. 2548 and 2549 of 2006

Thangamani

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 24-10-2007

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 13(2), 16(1), 2, 7(1)

Citation : (2007) 10 MAD CK 0128

Hon'ble Judges : K.N. Basha, J

Bench : Single Bench

Advocate : R. John Sathyan, for the Appellant; I. Paul Noble Devakumar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

K.N. Basha, J.—Learned Counsel for the petitioner submits that the petitioner has come forward with this petition seeking for the relief of

quashing the proceedings in C.C. No. 251 of 2003 on the file of the learned Judicial Magistrate No. 5, Coimbatore for alleged offences u/s 7(1)

and 16(1)(a)(i) read with Section 2(d) and (m) of the Prevention of Food Adulteration Act, 1954.

2. Learned Counsel for the petitioner submits that the petitioner has been arrayed as A2 out of three accused. It is contended by the learned

Counsel for the petitioner that the petitioner has been implicated in this case only on the ground of petitioner being a licensee of the canteen namely,

M/s. Lakshmi Canteen"" and she has nothing to do with the day to day affairs of the canteen and she is not in-charge or business of the canteen.

Learned Counsel for the petitioner would also contend that the respondent failed

to send notice under Form III as contemplated u/s 13(2) of the Prevention of Food Adulteration Act, 1954 and as such, the entire proceedings is liable to be quashed in view of the non-compliance of the mandatory requirement in the Prevention of Food Adulteration Act, 1954. Learned Counsel also placed reliance on the decision rendered by the Hon''ble Apex Court in Tulsiram Vs. State of Madhya Pradesh, wherein, it was held that ""non compliance of Provisions of Sec 13(2) vitiates the trial as it takes away the valuable right of the accused to have the sample analyzed by the Central Food Laboratory"".

3. Per contra, learned Government Advocate (Criminal Side) contended that it is for the petitioner to prove that she is not in-charge and

responsible for the conduct of the business at the time of full fledged trial and the petitioner cannot take such plea in the quash petition. It is also

further contended by the learned Government Advocate(Criminal Side) that the respondent should be given an opportunity to establish that notice

contemplated u/s 13(2) of the Act was issued to the petitioner herein at the time of full fledged trial before the learned Magistrate and as such, this

quash petition is not maintainable and the same is liable to be dismissed.

4. I have carefully considered the rival contentions put forward by either side and also perused the impugned complaint filed in this case and other

materials available on record.

5. The allegation of the complainant/respondent is to the effect that a sample of sunflower oil was taken from the said canteen. It does not confirm

to the standards prescribed under the Prevention of Food Adulteration Act and Rules and as such the same is adulterated, thereby the accused is

said to have committed the offence u/s 7(1) and 16(1)(a)(i) read with Sec 2(1a) (d) and (m) of the Prevention of Food Adulteration Act, 1954. A

perusal of the complaint discloses that the petitioner has been implicated only as a licensee of the canteen namely, Lakshmi Canteen, and arrayed as

A-2 out of three accused. The averments and allegations contained in the complaint makes it crystal clear that only the third accused namely

T.Anandakumar is responsible and in-charge of the canteen and such averment is specifically made in the complaint itself. It is needless to state that

a person cannot be implicated in a case like the instant case merely on the ground of being a licensee and there should be specific averment and

allegation to the effect that such person also in-charge and responsible for the day to day affairs of the canteen.

6. As already pointed out, the entire perusal of the materials available on record including the impugned complaint clearly shows that only the third

accused is responsible and in-charge of the conduct of the business of the canteen and the petitioner, who is arrayed as A2 has been implicated in

this case merely as licensee of such canteen.

7. The Hon"ble Apex Court held in Smt. Manibai and Another Vs. The State of Maharashtra, that

For the sale of adulterated coconut oil by P, a co-licensee of the shop, his mother M, who was not in charge of nor was she actually conducting the

business at the shop, cannot be held liable merely because she was the licensee of the shop. Even assuming that the business was owned by a firm

or an association of individuals and M was a partner of the firm or a member of the association, M would not be liable for the sale u/s 17(1) as she

was not in charge of, and responsible for the conduct of the business.

The above principle of law laid down by the Hon"ble Apex Court is squarely applicable to the facts of the instant case. Therefore, this Court is of

the considered view that the proceedings initiated against the petitioner in so far as the petitioner is concerned is liable to be quashed on this sole

ground.

8. Learned Counsel for the petitioner also further pointed out that the respondent Food Inspector has not complied with the mandatory

requirements contemplated u/s 13(2) of the Prevention of Food Adulteration Act, 1954 by sending notice under Form III to the petitioner herein

and as such even on this ground, the complaint is liable to be quashed. Learned Counsel for the petitioner also placed reliance on the decision of

the Hon"ble Apex Court in Tulsiram Vs. State of Madhya Pradesh, .

9. The Honourable Apex Court in the decision cited supra has categorically held that "non compliance of Provisions of Sec 13(2) vitiates the trial

as it takes away the valuable right of the accused to have the sample analyzed by the Central Food Laboratory.

10 In view of the above findings, this Court is constrained to quash the proceedings in so far as the petitioner is concerned pending in C.C. No.

251 of 2003 on the file of the learned Judicial Magistrate No. 5, Coimbatore. As

the case itself relates to the year 2003, the learned Judicial

Magistrate No. 5, Coimbatore is directed to expedite the trial as expeditiously as possible and complete the same within a period of six months

from the date of receipt of copy of this order.

With the above direction, the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.