

(2009) 08 MAD CK 0188

Madras High Court

Case No: Criminal O.P. No. 23667 of 2007 and M.P. No. 1 of 2007

K.R. Racichandran, Manager and
Nominee, M.N. Nagalingam
Refineries and M.N. Nagalingam
Refineries

APPELLANT

Vs

State Government of Tamilnadu,
Authorizee Joint Director (P.F.A.)

RESPONDENT

Date of Decision: Aug. 7, 2009

Acts Referred:

- Prevention of Food Adulteration Act, 1954 - Section 13(2), 16(1), 2, 7(1)
- Prevention of Food Adulteration Rules, 1955 - Rule 9B

Hon'ble Judges: C.S. Karnan, J

Bench: Single Bench

Advocate: Juliet Pushpa, No appearance, for the Appellant; R. Muniappa Raj, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

C.S. Karnan, J.

The petitioner has filed the above Criminal Original Petition to call for the records relating to C.C. No. 237 of 2007 on the file of the Judicial Magistrate No. V, Coimbatore and quash the same.

2. The prosecution case is that the respondent/Food Inspector, attached to the Coimbatore City Municipal Corporation inspected a Bakery namely "Jaya Vilas" running at No. 55, Selvapuram, Perur Main Road, Coimbatore on 10.06.2006 at 10.30AM. It was found that 10 Kg of Bakery shortening manufactured by M/s M.N. Nagalingam Refineries, were kept in a open box. The Inspector took three samples of 200 grams packets from the said Bakery shortening in the presence of a witness,

M. Raju. The petitioner/accused said that he had purchased it from M/s. M.N. Nagalingam Refineries and said he did not have the relevant bills for the said item. The respondent then duly informed and gave the local health Inspector two sample packets on 12.06.2006 to be kept in safe custody and sent a sample to public Analyst, Food Analysis Laboratory, Salem, on the same day. The report from the public Analyst at Salem was received on 13.07.2006. It was mentioned in the report (No. 5012/2006-2007 dated 12.07.2006), that the said sample was adulterated. After this the respondent got the P.F.A. Certificate issued by Virudhunagar Municipality from the said M/s. Nagalingam Refineries as also a Certificate from K.R. Ravichandran that he is the Manager of the said M/s Nagalingam Refineries. Subsequently, a Form-VI was issued to the 2nd petitioner by the Municipal Administration and Water Supply Department wherein details regarding ownership of firm, TNGST Registration and Licence (Chalan Copy) under PFA Act for the year and signed Xerox copy of Certificate of incorporation issued under the company Act were sought.

3. A sanction was also obtained from the Joint Director of Public Health and Preventive Medicine (PFA), Chennai-6 empowering the Food Inspector, Coimbatore Corporation, Coimbatore to initiate prosecution of accused. A notice was then issued to M/s. M.N. Nagalingam Refineries, Virudhunagar u/s 13(2) of the Prevention of Food Adulteration Act, 1954 and Rule 9-B of PFA Rules, 1955 and a case was registered with the Judicial Magistrate Court No. V, Coimbatore and the same was taken on file by the Learned Magistrate in C.C. No. 237/2007 for alleged offences under Sections 7(1), Section 16(1)(a)(i)(ii) r/w Section 2(i)(a)(a)(iii) of PFA Act, 1954 and Rule 1955 (Amended).

4. The petitioners state as follows:

The public analyst report was received as early as 13.07.2006 and Form 13(2) Notice was issued by the respondent only on 26.03.2007 after a delay of nearly eight months. The petitioners alleged that there is total non-application of mind while granting sanction for prosecution. It is also alleged by the petitioners that the 10Kgs of Vanaspathy was in Polythene Covers and kept inside a Carton Box and not as alleged by the respondent. Further, the petitioners alleged that the accused No. 2 could not produce any receipts to prove that he had purchased the said Vanaspathy from the 1st petitioner and also as the respondent has not mentioned about the batch No. and Serial No of the pack, it cannot be presumed that the Vanaspathy which was taken for sample was manufactured by the 2nd petitioner. Hence, the petitioners prayed for quashing the complaint in C.C. No. 237 of 2007.

5. Considering the facts and circumstances of the case and the citations furnished by the petitioner in (1) (2008) 2 MLJ (Crl) 789, Bharat Niketan Engineering College v. S. Natarajan (2) (2007) 3 Scc (Cri) 203 N.K. Wahi v. Sekar Singh, the Court is of the view that as the public analyst report was received by the respondent on 13.07.2006 itself, and the Form-13(2) Notice issued to the accused only on 26.03.2007 and hence

there is an unexplained delay caused by the respondent. Further, there is no documentary proof that the said adulterated material was sold to the 1st and the 2nd accused. As such, there are irregularities in the prosecution case. Therefore, the Court opines that the complaint as against Accused 3 and 4 in C.C. No. 237/2007 is not maintainable and is therefore quashed as against them only. Accordingly, the Criminal Original Petition No. 23667 of 2007 is allowed. Consequently the connected Miscellaneous Petition is closed.