

**(2010) 08 MAD CK 0233**

**Madras High Court (Madurai Bench)**

**Case No:** Criminal Original Petition (MD) No. 7045 of 2010 and M.P. (MD) No's. 1 and 2 of 2010

Selvakumar

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** Aug. 10, 2010

**Acts Referred:**

- Prevention of Food Adulteration Act, 1954 - Section 13(1), 13(2), 16(1), 17, 2
- Prevention of Food Adulteration Rules, 1955 - Rule 37

**Citation:** (2011) 2 Crimes 106

**Hon'ble Judges:** R. Mala, J

**Bench:** Single Bench

**Advocate:** S. Ramasamy, for the Appellant; R.M. Anbunithi, G.A. for Crl. Side, for the Respondent

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

R. Mala, J.

The Petitioner approaches this Court with a prayer to call for the records pertaining to the case in C.C. No. 132 of 2010 on the file of the Judicial Magistrate No. V, Madurai and to quash the same.

2. The case of the Petitioner is as follows:

The Petitioner is the sole accused, who is the dealer of Sampurna Maida. The complainant inspected the shop of the Petitioner on 26.12.2006 and the sample was taken, which was sent to the Public Analyst on 03.01.2007. The Analyst's report has been received on 21.01.2007, but the complaint filed by the complainant is only on 08.03.2010. As per the report, the said sample is misbranded since it is not labelled in accordance with the requirements of Rule 37 of P.F.A. Rules 1955 and hence, the

complainant registered a case against the Petitioner for the offence punishable u/s 7(ii) and 16(1)(a)(i) r/w Section 2(ix)(k) and also Rule 37 and for any suitable Sections of the P.F.A. Act 1954 and Rules 1955 A.18.02 for Maida and the complaint was taken on file in C.C. No. 132 of 2010 on the file of the Judicial Magistrate No. V, Madurai. Hence, the Petitioner approached this Court to quash the complaint filed against him.

3. The learned Counsel appearing for the Petitioner would submit that the complaint has been filed on 08.03.2010, but 13(2) notice has been issued belatedly and hence, the Petitioner's choice for sending the sample to the Public Analyst has been curtailed; more over, there is No. evidence to show that how and in what manner, the sample is misbranded; the complaint suffers from procedural illegality, because it has been filed belatedly i.e. after four years from the date of sampling the food and after a lapse of 3 years from getting analysis report and thus he prayed for quashing the complaint in C.C. No. 132 of 2010 on the file of the learned Judicial Magistrate No. V, Madurai. To substantiate his case, he relied upon the following decisions:

1. (2010) 2 SCC (Cri) 270 (Girishbhai Dahyabhai Shah v. C.C. Jani and Anr.)

2. (2009) 1 MLJ (Cri) 843 (Bhushan Prasad, Manager-Quality and Regulatory Operations of the general Mills India Private Ltd., Mumbai and Anr. v. K. Ravichander)

3. (2008) 3 MLJ (Cri) 779 (Baskar Vembu, Indian Inhabitant, Nominee of Cadbury India Ltd., Mylapore, Chennai - 600 004 and Anr. v. State of Tamil Nadu at the instance of K. Jebaraja Shobana Kumar, Food Inspector, Food and Drugs, Administration, Tamil Nadu)

4. Heard the learned Government Advocate (Criminal side) and perused the materials available on records.

5. Admittedly, sample taken by the complainant on 26.12.2006 and the same was sent to Public Analyst on 03.01.2007 and the analyst report has been received on 21.01.2007. But the complaint has been filed on 08.03.2010 and thereafter only, 13(2) notice has been issued after three years from the analysis report received by the complainant stating that if it is so desired, he may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory. But, here, in the case on hand, the notice has been issued after 3 years from the date of receipt of notice and hence, the Petitioner's choice to send another portion of the product to the Public Analyst is curtailed.

6. In such circumstances, it is appropriate to consider the decisions relied upon by the learned Counsel appearing for the Petitioner. In (2010) 2 SCC (Cri) 270 (Girishbhai Dahyabhai Shah v. C.C. Jani and Anr.), wherein, the Apex Court has held

as follows:

7. Sections 13(1) and (2) of the Prevention of Food Adulteration Act, 1954, read as follows:

13. Report of Public Analyst. - (1) The Public Analyst shall deliver, in such form as may be prescribed, a report to the Local (health) Authority of the result of the analysis of any article of food submitted to him for analysis.

(2) On receipt of the report of the result of the analysis under Sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the person from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed u/s 14-A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.

8. It will be apparent from the above, that only on receipt of the report of the Public Analyst under Sub-section (1) to the effect that the article of food is adulterated, can a prosecution be launched and a copy of the report could be supplied to the accused, Sub-section (2) also indicates that on receipt of the report the accused could, if he so desired, make an application to the Court within a period of ten days from the date of the receipt of the copy of the report to get the sample of article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.

9. In other words, in the instant case, the Appellant was prevented from applying for analysis of the second sample before 17.07.1989, by which time the second sample of curd had deteriorated and was not capable of being analysed as was found in Ghisa Ram referred to above.

In (2009) 1 MLJ (Crl) 843 (Bhushan Prasad, Manager-Quality and Regulatory Operations of the general Mills India Private Ltd., Mumbai and Anr. v. K. Ravichander), this Court has held as follows:

The reading of Section 13(2) of the Prevention of Food Adulteration Act 1954 makes it clear that on receipt of the Analyst report, the Local Health Authority shall after the institution of prosecution forward the copy of the analyst report to the accused concerned and to inform such persons that they may make an application before the Court within 10 days from the date of receipt of the copy of the report to get the other portion of the sample of article to be analysed by Central Food Laboratory. But in the instant case, it is seen that the date of manufacture of the sample is 15.10.2003, the date of expiry of the article is dated 15.02.2004, the Food Inspector

obtained sanction for prosecution on 12.11.2004 and the complaint was filed only on 10.12.2004 and as such the complaint itself was filed after the expiry of the product, viz., sample as early as on 15.02.2004 and as such the sample has become unfit for further analysis by the Central Food Laboratory and thereby the Petitioners have lost their valuable right to get the sample examined by the Central Food Laboratory which resulted in grave prejudice to the accused.

In (2008) 3 MLJ (Crl) 779 (Baskar Vembu, Indian Inhabitant, Nominee of Cadbury India Ltd., Mylapore, Chennai - 600 004 and Anr. v. State of Tamil Nadu at the instance of K. Jebaraja Shobana Kumar, Food Inspector, Food and Drugs, Administration, Tamil Nadu), this Court has held as follows:

In the present case, even if the stand taken by the Respondent is accepted that the samples were drawn in the prescribed manner, there is a gross failure on their part in launching the prosecution instantly as enunciated in the Act. Notice u/s 13(2) of Act came to be served on the Petitioners only on 04.10.2005 and by that time, food sample had become so decomposed and totally unfit for analysis. Strikingly, there is No. explanation forthcoming on the part of the prosecution for such serious lapses. The valuable right of the accused/Petitioners is taken away. In such circumstances, the Court has No. other option except to quash the entire proceedings pending against the Petitioners before the trial Court.

In G. Sivakumar and Ors. v. Food Inspector, City Municipal Corporation of Coimbatore reported in (2009) 2 MLJ (Crl) 1035, wherein, this Court has held as follows;

Admittedly, in this case, the delay between the launching of prosecution and forwarding of form III was beyond six months and is hit by Rule 9-B of the Prevention of Food Adulteration Rules. That apart, the report of the Public Analyst is dated 12.09.2001 and the prosecution came to be launched on 07.09.2004 when the complaint was preferred and it was taken on file on 16.09.2004. On 21.09.2004 the Petitioners/accused received notice and if they calculate the said period, the prosecution has been launched after a period of nearly 3 years.

In view of such a long delay in launching prosecution in the present case, the Petitioners/accused are put to serious prejudice as they lost their right of having the sample analyzed.

7. As per the above said citations, because of the delay in issuing 13(2) notice, the Petitioner was prevented from sending the sample for second analysis within time prescribed. In such circumstances, I am of the opinion that all the citations are squarely applicable to the facts of the present case.

8. The learned Counsel appearing for the Petitioner would also rely upon the order of this Court made in Crl.O.P. (MD) No. 5765 of 2009, where, the learned Judge cited the view of his Lordship Justice Malai Subramanian in an earlier occasion, which read

as follows:

The Petitioner seeks to quash the proceedings pending against them in all the matters where they were prosecuted for the offence of misbranding under the provisions of the prevention of Food Adulteration Act.

2. According to the learned senior counsel, the label pasted on the containers of the food products do not contain the term "up to" as ordered in the letter of the State Local Health Authority and joint Director in his communication dated 28.09.2001. The Petitioner plead that they are not aware of the distinction between new label and the old one. They also undertake to paste the new labels on the food products hereafter. It does not appear to be a grave offence of misbranding. There is not much distinction between the contents of the earlier label and the new label except incorporation of certain words.

It is also appropriate to consider the decision of this Court made in Crl.O.P. (MD) No. 11867 of 2009, wherein, this Court has held as follows:

A perusal of the complaint would reveal that it has been merely stated that "sample is misbranded as it is not labelled in accordance with Rules 32(f)(i) and 42 (zzz) 17 of P.F.A. Rules, 1955. It is not quite clear as to how the sample is misbranded and the averments made in the complaint are also bereft of any particulars. There must be a specific averment that the customers are being mislead on account of misbranding and in the absence of any such clear averments, it cannot be said that the customers are mislead or misdirected.

9. A perusal of the public analyst's report would reveal the Public Analyst has simply stated that the sample was misbranded since it is not labelled in accordance with the requirements of Rule 37 of P.F.A. Rules 1955, but he has not mentioned as to how and what manner the sample was misbranded. There must be a specific averment that the customers being mislead on account of misbranding and in the absence of any such clear averments, it cannot be said that the customers are mislead or misdirected.

10. In the above stated circumstances, as already stated that there is a delay in issuing 13(2) notice and the details of misbranding has not been mentioned, I am of the view that the complaint against the Petitioner is liable to be quashed.

11. In fine, this criminal original petition is allowed and the complaint in C.C. No. 132 of 2010 on the file of the Judicial Magistrate No. V, Madurai is hereby quashed. Consequently, connected miscellaneous petitions are closed.