(2011) 03 AP CK 0002

Andhra Pradesh High Court

Case No: Criminal Petition No. 6093 of 2008

P. Gopalakrishna and Ushodaya Enterprises (P) Ltd. both (Priya Foods Division)		APPELLANT
	Vs	
The Food Inspector, Division III and State of A.P.		RESPONDENT

Date of Decision: March 28, 2011

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 227, 258, 4(2)#Prevention of Food Adulteration Act, 1954 â€" Section 13(2), 13(5), 16(1), 2, 7

Citation: (2011) 03 AP CK 0002

Hon'ble Judges: K.S. Appa Rao, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K.S. Appa Rao, J.
This is an application to quash the proceedings in C.C. No. 67 of 2008 on the file of the Additional Judicial First Class

Magistrate, Bobbili, registered under Sections 16(1)(a)(i), 7(i), 2(ia)(m) of Prevention of Food Adulteration Act, 1954 (for short the ""Act"")

2. The facts of the case in nutshell reads as follows:

The Petitioners are Accused Nos. 1 to 3 in C.C. No. 67 of 2008 on the file of the Additional Judicial Magistrate of First Class, Bobbili. The Food

Inspector, Vizianagaram Division-III filed a complaint u/s 30 read with Section 7 of Prevention of Food Adulteration Act. The case of the

complainant is that on 10.10.2007, the Food Inspector along with his staff inspected the shop of accused No. 1 and purchased six sealed packets

of Priya chilli powder from accused No. 1. After following the due procedure, the Food Inspector sent the sample to Public Analyst for analysis

and the analyst opined that the sample does not confirm to the standard of non-volatile ether extract and therefore, it was adulterated. After filing of

the complaint, the Petitioners filed an application u/s 13(2) of the Prevention of Food Adulteration Act to send the 2nd sample to the Central Food

Laboratory for analysis and report and the said petition was allowed and the 2nd sample was sent to the Director, Central Food Laboratory, Pune

for analysis. By his report dated 8.7.2008, the Director, Central Food Laboratory opined that the sample confirmed to the standards of chillies and

capsicum (Lal Mirchi) powder as per Prevention of Food Adulteration Act Rules. Pursuant to the said report, the Petitioner filed an application

Criminal M.P. No. 5071 of 2008 to discharge the accused or dismiss the complaint. The learned Magistrate dismissed the petition holding that no

accused in a complaint case can be discharged after taking cognizance. Aggrieved by the said order, the present Petition is filed.

3. Now the point for consideration is whether there are any grounds to quash the proceedings and whether the accused are entitled for discharge?

4. It is an admitted fact that Criminal M.P. No. 5071 of 2008 in C.C. No. 67 of 2008 was filed by the Petitioners u/s 227 of Code of Criminal

Procedure for discharge. The learned Magistrate after enquiry dismissed the petition u/s 258 of Code of Criminal Procedure observing that no

accused in a complaint case can be discharged after taking cognizance by the Court and the Court found no merits in the petition. It is noted supra

that the Petitioners filed petition u/s 227 of Code of Criminal Procedure for discharge. Section 227 of Code of Criminal Procedure reads as

follows:

Discharge : If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the

accused and the prosecution this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall

discharge the accused and record his reasons for so doing.

Section 258 of Code of Criminal Procedure reads as follows:

Power to stop proceedings in certain cases : In any, summons that case instituted otherwise than upon complaint, a Magistrate of the first class or,

with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the

proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal

witnesses has been recorded, pronounce a judgment of acquittal, and in any other case release, the accused, and such release shall have the effect

of discharge.

5. The above said petition u/s 227 was filed by the Petitioners after filing the charge sheet in C.C. No. 67 of 2008. The Petitioners admittedly filed

application u/s 13(2) of Prevention of Food Adulteration Act requesting the Court to send the 2nd sample to the Director, Central Food

Laboratory, Pune for report. After hearing both sides, the learned Magistrate was pleased to send the 2nd sample to the Central Food Laboratory,

Pune for analysis and the Director, Central Food Laboratory was pleased to analyse the 2nd sample as ordered by the Court and sent his report of

analysis. The certificate of analysis issued by the Director, Central Food Laboratory, Pune reveals that the sample confirms to the standards of

chillies and capsicum (Lai Mirchi) power as per Prevention of Food Adulteration Act Rules, 1955.

6. u/s 13(5) of Prevention of Food Adulteration Act, certificate of analysis issued by the Director, Central Food Laboratory will supersedes the

certificate issued by the Public Analyst. As such, the certificate of analysis issued by the Director, Central Food Laboratory, Pune will prevail the

certificate issued by the Public Analyst consequently, the report of the Public Analyst is of no avail and cannot be considered for any purpose, as

the report of the Director, Central Food Laboratory, Pune reveals that the sample confirmed to the standards of chillies and capsicum (Lal Mirchi)

power as per Prevention of Food Adulteration Act Rules, 1955, the case filed by the complainant is of no material under law. The counsel also

draw the attention to a decision reported in K.M. Mathew Vs. State of Kerala and another, and urged that the Hon''ble Supreme Court was

pleased to observe that Magistrate may drop the proceedings if satisfied on reconsideration of the complaint that there is no offence for which the

accused could be tried. It was further observed that no specific provision is required for Magistrate to drop the proceedings or rescind the

process. The fact that the process has already been issued is no bar to drop the proceedings, if the complaint on the very face of it does not

disclose any offence against the accused. It was also observed by the Bombay High Court in the decision rendered and reported in Baburao Hari

Pawar v. State of Mahararashtra 1987 Cri.L.J. 584 states ""the discharge of accused and a right to ask for discharge is available to accused at any

stage of trial"". It was further observed by the Bombay High Court in the decision rendered and reported in Murlidhar Dullabhdas Wani v. the State

of Maharashtra 1978 Cri.L.J. 70 that ""Director''s certificate showing no adulteration, the accused is to be discharged applying provisions of Code

of Criminal Procedure even in absence of such provisions in the Act by virtue of Section 4(2) Code of Criminal Procedure Therefore, in the above

said circumstances of the case and also in view of the certificate of analysis issued by the Director, Central Food Laboratory, supersedes the

report of the public analyst, no offence shall be made out against the Petitioners-accused. Hence, the proceedings in C.C. No. 67 of 2008 on the

file of the Additional Judicial First Class Magistrate, Bobbili is liable to be quashed.

Accordingly, the Criminal Petition is allowed.