
(2011) 07 MAD CK 0401

Madras High Court

Case No: R.C. No. 653 of 2007 and M.P. No. 1 of 2007

General Mills India Pvt.
Ltd.

APPELLANT

Vs

Food Inspector
G.Pakirisamy Food and
Drugs Administration,
Government General
Hospital, Karaikal

RESPONDENT

Date of Decision: July 22, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 258
- Prevention of Food Adulteration Act, 1954 - Section 10, 13, 13(1), 13(2), 14A
- Prevention of Food Adulteration Rules, 1955 - Rule 7, 9B

Hon'ble Judges: K.B.K. Vasukicrl, J

Bench: Single Bench

Advocate: R. Natarajan, for the Appellant; M.R. Thangavel, APP (Pondy), for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Honourable Ms. Justice K.B.K. Vasukicrl

1. This criminal revision is filed by the accused challenging the dismissal of the discharge petition in CrI.M.P. No. 2619 of 2004 in S.T.R. No. 189/2003.

2. The complaint arising out of which is S.T.R. No. 189 of 2003 and CrI.M.P. No. 2619 of 2004, is filed by Food Inspector appointed by the Government of Pondicherry u/s 9 of the Prevention of Food Adulteration Act 1954 (hereinafter shortly referred to as "Act"). The complainant-Inspector inspected the premises of M/s. Mythily Agency situated at No. 7, Kalmattu Veedy, Karaikal at 11.30 hours on 30.9.2002 and found food articles like bread,

dates, atta etc stored for sale. The complainant has, in exercise of his power vested u/s 10 of the Act, took samples of food viz., 3 x 500 gms packet of Pillsbury Chakki fresh "Atta" along with another sample after complying with all the legal formalities and the same was duly acknowledged by the first accused. The 3 sample packets (each 500 gms) of Pillsbury chakki fresh "Atta" were separately packed and wrapped, fastened, labels affixed and local (Health) Authority slips bearing the code and serial No. KFDA/LHA-MKR/2002/24 were fixed and sealed with sealing wax and the signature of the first accused was also obtained in the same. Thereafter, one of the sealed sample packets along with memorandum in Form VII was sent in sealed cover to the Public Analyst, Public Health Laboratory, Pondicherry-6 on 1.10.2002 and the remaining 2 sealed sample packets along with Form VII copies, were sent to the Local (Health) Authority, Karaikal on 1.10.2002 for his custody. The report of the Public Analyst in prescribed form was received by the complainant and the report is to the effect that "Pillsbury Chakki Fresh "Atta" contains 0.22% (on dry weight basis) alcoholic acidity which is more than maximum permissible limit of 0.18% and therefore, the sample is declared as "Adulterated". Hence, the complaint came to be instituted to initiate prosecution against A1 to A3, who are the manufacturer and supplier of Atta and the person from whom, Atta sample is drawn.

3. The complaint is filed on 27.1.2003 and the same is taken on file on 30.1.2003 and the accused subsequently received intimation u/s 13(2) of the Act on 7.2.2003. on receipt of the same, the accused made an application u/s 13(2) of the Act to get the sample of the food article kept by the Local (Health) Authority, Karaikal, to be analyzed by the Director, Central Food Laboratory, Ghaziabad within 10 days from the date of receipt of Section 13(2) intimation and the petition was numbered on 20.2.2003 and the same was ordered on 21.2.2003.

4. In pursuance of the order, second sample of food article was originally sent to Central Food Laboratory, Directorate General of Health Services, Calcutta on 26.5.2003 along with necessary demand draft, but the same was returned back from Calcutta on the ground that the same ought to have been sent to the Director, Central Food Laboratory, Ghaziabad on 24.2.2004 and again, it was sent back from Ghaziabad to Central Food Laboratory, Pune on 4.3.2004 and thereafter, it was sent to Ghaziabad on 6.4.2004 and the second sample was received by the Director, Central Food Laboratory, Ghaziabad, where it was tested and the report dated 30.4.2004 was sent to the Judicial Magistrate Court, Karaikal along with covering letter dated 30.4.2004/18.5.2004 and the same was received by the concerned Judicial Magistrate along with report on 24.5.2004 and the report is to the effect that "the same does not conform to the standards of Atta as Alcoholic acidity with 90% Alcohol is more than the maximum prescribed limit" and Atta is hence reported to be adulterated. Thereafter, the accused came forward with Cr.M.P. No. 2619/2004 in STR. No. 189/2003 u/s 258 Cr.P.C to discharge him from the charges on the ground of violation of mandatory requirement of Section 13(2) of the Act.

5. It is contended by the Learned Counsel for the accused 1 to 3 that there is a delay in sending Section 13(2) statutory intimation to the accused to get the sample of the food article kept by the Local (Health) Authority, to be analysed by the Central Food Laboratory and again there is a delay in sending second sample to the Central Food Laboratory as such the statutory benefit given to the accused u/s 13(2) of the Act is lost to them because of the delay in getting the sample analysed by Central Food Laboratory and the same deprived the accused from availing the valuable opportunity given to him under the Act to verify the correctness of the report of the Public Analyst, Pondicherry. The Learned Counsel for the accused also contended that as the report of the Central Food Laboratory overrides the report of the Public Analyst, the time limit specified u/s 13(2) is to be strictly adhered to and the failure to do so resulted in deprivation of the statutory benefit available to the accused u/s 13(2) of the Act and the failure to allow the accused to avail such statutory benefit vitiates the entire proceedings and the case cannot be hence, proceeded with and the accused are to be discharged from the charges.

6. The relief so claimed is seriously opposed by the complainant on the ground that there is no delay till the second sample is sent to Central Food Laboratory and the delay in sending the second sample to the Central Food Laboratory is only due to change of jurisdiction of Central Food Laboratory and also due to delay on the part of the Court in sending the sample and is not due to any act of commission or omission on the part of the complainant.

7. Heard the rival submissions made on both sides.

8. The order of the trial court is challenged mainly on the ground of violation of Section 13(2) of the Act, under which the accused is given the right to make an application to the Court within 10 days from the receipt of the copy of the report of Public Analyst to have the second sample of the article of food kept by the Local (Health) Authority to be tested by the Central Food Laboratory. Though Section 13(2) does not prescribe any time limit for sending statutory intimation to the accused along with the copy of the report of the Public Analyst, the time limit prescribed under Rule 9-B of the Prevention of Food Adulteration Rules, 1955 is within 10 days from the receipt of the report from the Public Analyst to the person concerned. For better appreciation, Section 13(1) and 13(2) of the Act and Rule 9-B of the Rules are extracted herein:

"S. 13(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.

S. 13(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 persons 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.

Rule 9-B Local (Health) Authority to send report to person concerned -

The Local (Health) Authority shall (within a period of ten days) after the institution of prosecution forward a copy of the report of the result of analysis in Form III delivered to him under sub-rule (3) of rule 7 by registered post or by hand, as may be appropriate, to the person from whom the sample of the article was taken by the Food Inspector and simultaneously also to the person, if any, whose name, address and other particulars have been disclosed u/s 14-A of the Act:

Provided that where the sample conforms to the provisions of the Act or the rules made thereunder and no prosecution is intended under sub-section (2) or no action is intended under sub-section (2-E) of section 13 of the Act, the Local (Health) Authority shall intimate the result to the vendor from whom the sample has been taken and also to the person, whose name, address and other particulars have been disclosed u/s 14-A of the Act, within 10 days from the receipt of the report from the Public Analyst.

The combined appreciation of section 13(2) and rule 9-B would reveal that the report of the Public Analyst shall be sent within 10 days after the institution of prosecution by registered post or by hand either to the accused from whom the sample is taken by the Food Inspector and also to any other person whose name, address and other particulars have been disclosed u/s 14-A of the Act to enable the accused within 10 days from the receipt of the report to apply for getting the second sample being analysed by Central Food Laboratory.

9. In this case, the inspection of the petitioner's premises was done by the complainant on 30.9.2002 and on the same day, food article was taken by him and the same was sent to the Public Health Laboratory for analysis on 1.10.2002. The report of the Public Analyst was dated 30.10.2002 and the private complaint was filed on 27.1.2003 which was taken on file on 30.1.2003, but the intimation u/s 13(2) of the Act along with Public Analyst report was sent to the accused on 7.2.2003 (which was received by the accused on 10.2.2003) and the same is sent beyond 10 days after the institution of the complaint on 27.1.2003. Though the accused has filed such application within 10 days from the date of receipt of statutory intimation, the accused has in his application complained of about the delay in receiving the report and he sought the second sample to be tested by Central Food Laboratory without prejudice to his right to raise the delay as one of the grounds at the appropriate time.

10. Further, the application for sending the sample to the Central Food Laboratory was ordered as early as on 17.2.2003, but the sample was sent to Central Food Laboratory on 26.5.2003 and because of change of jurisdiction, the same was again sent to the concerned Central Food Laboratory, Ghaziabad on 6.4.2004 and the same was tested within one month and the report was received on 24.5.2004. It is seriously argued on the side of the petitioners that the date of manufacture of the product is 13.8.2002 and the date for best use of the product is before 13.12.2002 and as "Atta" is manufactured from wheat, it has a tendency to undergo various types of biological changes on storage which leads to increase in Alcoholic acidity and if wheat atta is stored for a prolonged period, alcoholic acidity content of the wheat Atta would also increase in due course and it cannot stand for 20 months and the sample is, on the date of analysis by Central Food Laboratory on 30.4.2004, unfit for analysis and is likely to get adulterated because of biological changes and the report to that effect is only due to delay in sending the product to the laboratory for analysis.

11. The Learned Counsel for the petitioners by relying upon the judgements reported in (i) 2002 1 LW (Crl) 201 (M.Chinnachamy and others v. R.Satyanarayanan) (ii) 2005 2 LW (Crl.) 598 (C.Suresh and others v. The state represented by its Food Inspector in-charge (Panchayat Union, Erode), Govt. Primary Health Centre Chitode, Erode District and (iii) 2006 1 L.W. (Crl.) 65 (1.Nirmala Rajasabapathy and others v. Food Inspector, Coimbatore City Municipal corporation, Coimbatore), would seriously argue that the right given to the accused u/s 13(2) to ask for sending the sample for analysis is valuable right and if the sample is caused to be sent with inordinate delay and if it is sent at time unfit for analysis, the valuable right can be said to be lost to the accused and hence, the right of the accused available u/s 13(2) has been frustrated due to delay and inaction on the part of the authority concerned and on the part of the Court, as such, the proceedings is vitiated and no proceedings can be permitted to go on against the accused and the proceedings is liable to be set aside. this Court finds considerable force in the argument so advanced on the side of the petitioners/accused.

12. Our High Court in the judgment reported in 2006 1 LW (Crl) 65 has, by relying upon the views expressed in the earlier judgments reported in [Ahmed Dadabhai Advani Vs. State of Maharashtra](#), [Municipal Corporation of Delhi Vs. Ghisa Ram](#), 2001 (2) CTC 546 (Mohamed Meeran v. G. Deenadayalu, 1991 (1) FAC 222 (Ahmed Dadabhai Advani v. State of Maharashtra and 2005 2 LW (Crl) 598 (C.Suresh and others v. the State) held that "the right conferred by section 13(2) of the Act on the vendor is a very valuable right and the prosecution is expected to proceed in such a manner that right will not be denied to the vendor and Rule 9-B makes it obligatory on the part of Local Health Authority to serve a copy of the result of analysis within ten days after the institution of the prosecution and "institution of prosecution" means filing of complaint before Court which has jurisdiction and not taking of cognizance" and on failure to do so, the right of the accused is lost and the proceedings are liable to be quashed and accordingly quashed the proceedings.

13. Applying the same ratio herein, this Court is of the view that because of the delay in sending the report to the accused after 10 days from the date of institution of the complaint and the delay in sending the second sample to the Central Food Laboratory after more than one year in respect of wheat product, the right of the accused in getting the sample for analysis before it becomes unfit is lost. As rightly argued by the Learned Counsel for the petitioners, the possibility of the sample undergoing biological changes due to lapse of time resulting in probable increase in alcoholic acidity, cannot at all be ruled out. In that event, the delay caused serious prejudice to the petitioner in availing his valuable statutory right and the same vitiates the proceedings against the accused and the same is hence liable to be quashed. The order rejecting the application for discharge, without verifying the time limit prescribed under the Act and without considering the implication of the delay upon the statutory right available to the petitioners under the statute, is factually and legally unsustainable.

14. In the result, the criminal revision is allowed by setting aside the order dated 6.3.2007 made in Crl.M.P. No. 2619 of 2004 in S.T.R. No. 189 of 2003 on the file of the Judicial Magistrate-II, Karaikal and Crl.M.P. No. 2619 of 2004 in STR. No. 189 of 2003 is ordered and the accused 1 to 3 are discharged from the charges levelled against them. Consequently connected Miscellaneous Petition is closed.