

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA

In the matter of an Appeal made
in terms of Article 154P (6) of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.

CA (PHC) 56/2010
PHC Anuradhapura
Application No-HCRA 47/2009
M.C. Anuradhapura Case No-57931

R.A. Prageeth Jaliya Jayathilaka
Authorized Officer under the Food Act
and Public Health Inspector,
Vijayapura,
Anuradhapura.

Complainant

Vs.

Raigam Marketing Services(Pvt) Ltd
No. 277, Koswatta Road,
Kiriwattuduwa,
Homagama.

Accused

And

Raigam Marketing Services(Pvt) Ltd
No. 277, Koswatta Road,
Kiriwattuduwa,
Homagama

Accused-Petitioner

Vs.

- (1) R.A. Prageeth Jaliya Jayathilaka
Authorized Officer under the Food Act
and Public Health Inspector,

Vijayapura,
Anuradhapura.

Complainant-Respondent

- (2) Hon. Attorney General
Attorney General's Department,
Colombo 12.

Respondent

And

Raigam Marketing Services(Pvt) Ltd
No. 277, Koswatta Road,
Kiriwattuduwa,
Homagama.

Accused-Petitioner-Appellant

Vs.

- (1) R.A. Prageeth Jaliya Jayathilaka
Authorized Officer under the Food Act
and Public Health Inspector,
Vijayapura,
Anuradhapura.

**Complainant-Respondent-
Respondent**

- (2) Hon. Attorney General
Attorney General's Department,
Colombo 12.

Respondent-Respondent

And Now Between

- (1) Raigam Marketing Services(Pvt) Ltd
No. 277, Koswatta Road,

Kiriwattuduwa,
Homagama.

**Accused-Petitioner-Appellant-
Petitioner**

Vs.

- (1) R.A. Prageeth Jaliya Jayathilaka
Authorized Officer under the Food Act
and Public Health Inspector,
Vijayapura,
Anuradhapura.

**Complainant-Respondent-
Respondent-Respondent**

- (2) Hon. Attorney General
Attorney General's Department,
Colombo 12.

**Respondent-Respondent-
Respondent**

**Before : H.C.J. Madawala , J
&
L.T.B. Dehideniya, J**

**Counsel : Anil Silva P.C. with Ranil Samarasekera for the Accused-
Petitioner-Appellant-Petitioner
V. Hettige DSG for the Respondent-Respondent-Respondent**

Written Submissions on : 23 /02 /2017

Decided On : 02 /05 /2017

H. C. J. Madawala , J

The Accused-Petitioner-Appellant-Petitioner Raigam Marketing Services (Pvt) Ltd who was the Accused in MC Anuradhapura case No. 57931 and was the Accused-Petitioner in PHC Anuradhapura application No. HCRA 47/2009 and is the Accused-Petitioner CA Appeal No. CA(PHC) 56/2010 to set aside the order dated 11th September 2009 made by the Learned Magistrate in MC Anuradhapura case No. 57391 acting in terms of section 18(2) of the Food Act is bad in law and the order dated 10th May 2010 made by the Hon High Court Judge in PHC Anuradhapura Application No. HCRA No. 47/2009 is bad in law.

Having considered the fact that the consolation of the license in question is discretionary and the assertion of the Appellant that the discretion has not been properly exercised together with the fact that the company in question covers around 500 workman's and 1300 dealers this court issued a stay order dated 27/6/2013 staying the connected proceedings in the Magistrate Court of Anuradhapura until the appeal is disposed of. Thereafter when this matter came up for argument on 11/11/2016 both parties were heard in support of their respective cases. Thereafter both parties were directed to file their written submissions and judgment was reserved on 2/5/2017. We have heard counsel and as perused and considered the written submissions tendered to court by both parties. The Complainant-Respondent-Respondent authorized

officer under the provisions of the Food Act and public health Inspector of Wijayapura had instituted MC Anuradhapura case No. 57931 against the Accused-Petitioner-Appellant on summons returnable date the Accused-Appellant representative appeared in court and the charge sheet in MC Anuradapura case No 57391 was read out to him in open court. Thereupon the representative of the Accused-Appellant pleaded guilty to the said charge read out to him in open court. Consequent to the tendering of the plea of guilt, the Learned Magistrate enlarged the said representative of the Accused-Appellant on bail and called for a previous conviction report and postponed the case to the 28th August 2009.

On the 28th August 2009 the previous conviction report was available and same was filed of record. The representative of the Appellant admitted the 12 previous conviction and the case was postponed to 11th September 2009 for the Appellant to make a plea in mitigation and the Learned Magistrate after having heard the plea in mitigation imposed the following sentence on the Appellant.

The said sentence are;

- (i) A fine of Rs.5000/- under the provisions of section 18(1) of the Food Act;

- (ii) A notice to be published in three newspapers of all three languages under the provisions of section 18(2) (a) of the Food Act; and
- (iii) Cancellation of any licence or registration certificate issued to the Appellant under the Food Act or any other law for manufacture, import, preparation, storage and distribution of food products under the provisions of section 18(2) (b) of the Food Act.

Being aggrieved by the aforesaid sentence, the Appellant instituted a revision Application in the provincial High Court of North Central Province Holden at Anuradhapura in PHC Anuradhapura Application No. 47/2009 seeking to revise the aforesaid sentence.

However the Hon. High Court Judge made an order on 10th May 2010 without hearing the Appellant. Being aggrieved by the said dismissal, the Appellant lodge this appeal in this court. The President Counsel for the Accused-Appellant submitted that in terms of section 18(2) of the Food Act where a person convicted for an offence under this act or any regulations made there under is convicted for a second or subsequent offence of a like or similar nature under this act or any regulations made there under, the court convicting him for the second or subsequent offence may-

- (a) Cause the name and the address of the person convicted and the offence and the punishment imposed for that offence to be published in such newspaper or in such other manner as the court may direct and recover the cost of publication from the person convicted as if it were a fine imposed on him;
- (b) Cancel the licence (if any) issued to the person convicted for the manufacture, importation, preparation, storage, sale and distribution of food under this act or any other law and inform the relevant licensing authority accordingly.

It was submitted that in accordance with the provisions contained in the aforesaid section 18(2) of the Food Act that the Learned Magistrate is empowered to make any one or more of the orders set out in section 18(2)(a) and /or 18(2)(b) where a person is convicted for an offence under this act or any regulations made thereunder is convicted for a second or subsequent offence of a like or a similar nature under this act or any regulations made thereunder, the court convicting him for the second or subsequent offence may on being satisfied the Learned Magistrate has convicted and sentenced the Accused as aforesaid.

It was contended that on a perusal of the report it does not provide sufficient information in relation to the nature of the offences in respect of which aforesaid 12 convictions have been made. It was further contended

that it was that the said report was insufficient for me to be satisfied that the present conviction of the Appellant is the second or subsequent offence of a like or similar nature under this act or any regulations made thereunder which is a prerequisite in terms of section 18(2) of the Food Act. Therefore no court could act under section 18(2) of the Food Act and make any order acting in terms of section 18(2) of the Food Act would be bad in law. It was also submitted despite the aforesaid lack of information in relation to the nature of the offences contained in the said previous conviction report the Learned Magistrate proceeded to make orders under section 18 (2) of the Food Act. It was also submitted that the Senior State Counsel who appeared on behalf of the Respondents too submitted that there is no material to be satisfied that the Appellant has been convicted of offence of a like or similar nature under the Food Act or any regulations made thereunder before and as such the order of the Learned Magistrate dated 11th September 2009 acting under 18(2) of the Food Act should be set aside as it is bad in law.

It was also submitted that the Learned High Court Judge in PHC application No HCRA 47/2009 dated 10th May 2010 preceded to dismiss the revision application without having considered the above. Thus the said order of the Provincial High Court Judge Holden in Anuradhapura dated 10th May 2010 is also bad in law and should be set aside.

The Learned DSG appearing for the 1st Complainant-Respondent-Respondent-Respondent and the 2nd Respondent-Respondent-Respondent submitting that under section 18(2) (b) the Accused-Petitioner-Appellant-Petitioner continues to engage in the offence the licence to be cancelled. In case No 78647 in the Kahatagasdigiliya Magistrates Court the Accused-Petitioner-Appellant-Petitioner was warned that if he persists the licence will be cancelled. However the Accused-Petitioner-Appellant-Petitioner did continue the offence having scant regard for the court order and the entire court system. Once again he was charged for the offence of labeling and pleaded guilty. The Learned Magistrate then having due regard to the all the previous convictions made order preventing the Accused-Petitioner-Appellant-Petitioner from further manufacturing the red string hoppers flour. The Accused-Petitioner-Appellant-Petitioner has appeal to the marked red string hoppers flour without stating the expiry date. The Learned Magistrate and the Learned High Court Judge in case No 11/2010 made order dismissing appeal. The Accused-Petitioner-Appellant-Petitioner also filed a revision application to the High Court of Anuradhapura under case No 47/2009 which was also dismissed on 10/5/10 and it is against the order that the Accused-Petitioner-Appellant-Petitioner has appealed to this court. It was submitted that the main argument of the Accused-Petitioner-Appellant was that the previous conviction do not state if they were similar offences. However it was submitted that the Accused-Petitioner-Appellant-

Petitioner have considered the possession that the 12 previous convictions were of similar offences, in the submissions at the Magistrates Court. At that stage the Accused-Petitioner-Appellant-Petitioner did not state that he is challenging the certificate of previous convictions nor did he at least make any attempt to distinguish the previous convictions. It was submitted that the prosecution made submissions at page 27/29. The Accused-Petitioner-Appellant-Petitioner was first convicted in 2001. Then in 2003, 2004, 2006 and 2009 the Accused-Petitioner-Appellant-Petitioner had been convicted of similar offences. The Learned Magistrate at page 29 has stated very clearly that the Accused-Petitioner-Appellant-Petitioner has conceded to the 12 previous convictions and these previous conviction are similar offences.

The Accused-Petitioner-Appellant-Petitioner who had taken the position that the previous conviction were not a similar offences and has taken up this grounds of appeal for the 1st time before this court. It was contended that the Accused-Petitioner-Appellant-Petitioner having considered to that fact and not taking it up as a ground in the appeal nor the revision, is now barred from taking up in this appeal.

It was submitted that the item in dispute is red string hopper flour. This is an item bought by mainly the common consumer. It was this item that was sold without stating the expiry date. When the primary necessities of life

are sold without any concern for the health and wellbeing simply to make a profit, the only protection is the Food Act.

In **MC Leod V. Buchanan (1940 2All E.R. 179)** it was held that ;

“intention to commit a breach of statute need not be, shown. The breach in fact is enough. Social defense reasonably overpowers individual freedom to injure, in strict liability.”

In **Sunil Kumar V. State of Haryana (2012 5 SCC 398)** the **Supreme Court of India** held thus;

“.....these economic offences committed by white collar criminals are unlikely to be dissuaded by the gentle probationary process, neither casual provocation nor motive against particular persons but planned profit making from numbers of consumers furnishes the incentive- not easily humanized by the therapeutic probationary measure.” This was a case filed for relief after losing in courts below, and it was held that the application cannot be entertained- Judicial process should not be permitted to be abused-“ This judgement is particularly pertinent to the case before the court. In that the Accused-Petitioner-Appellant-Petitioner, has appealed to the High Court of Anuradhapura, while that appeal was going on filed a revision application, and now seeks to appeal against the order of revision application.”

It was contended on behalf of the Respondent that the Magistrates Court order is not to close the industry. It is only to refrain from manufacturing that particular product namely the red string hopper flour and it is incorrect

to state that the whole industry will have to be closed. Accordingly the 1st Claimant Respondent-Respondent-Respondent and the 2nd Respondent-Respondent-Respondent moved that this court be pleased to dismiss the petition of the petitioner with cost and grant such other and further relief this court shall deem fit.

We have considered the submissions of both parties. We are of the view that the Magistrate has come to a correct finding regarding the previous convictions been similar offences committed by the Accused which has been duly admitted by the Accused. We do not think that we should interfere with the findings of the learned Magistrate. We hold that the said order of the Magistrate is only to the item to refrain from manufacturing that particular product Viz red string hopper flour and it is incorrect to state that the order for cancelation of licence in to the whole industry.

As such we disallow the appeal and affirm the order of the Learned Magistrate dated 11/09/2009 and the order of the Learned High Court Judge of Anuradhapura in case No. 47/2009 dated 10/05/2010.

Appeal is disallowed with costs of Rs.25,000/-.

Judge of the Court of Appeal

L.T.B.Dehiddeniya, J

I agree.

Judge of the Court of Appeal