

Mohd. Rafique Mitha Bhatiya vs The State Of Telangana on 4 April, 2022

Author: K. Lakshman

Bench: K. Lakshman

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HON'BLE SRI JUSTICE K. LAKSHMAN
CRIMINAL PETITION Nos.209 AND 224 OF 2020

COMMON ORDER:

Crl. P. No. 209 of 2020 and Crl. P. No. 224 of 2020 are filed to quash the proceedings against the Petitioners in C.C. No. 15 of 2019 and C.C. No. 12 of 2019 respectively, both pending on the file of the I Metropolitan Magistrate (Municipal Court), Chudi Bazar, Hyderabad.

2. Heard Mr. Aadesh Varma, learned counsel for the petitioners in both the petitions and learned Public Prosecutor appearing on behalf of the respondents.

3. The lis and the Petitioners involved in the criminal petitions are the same. Therefore, they were heard together and are disposed of vide the following common order.

4. Facts of the case

i) The de facto complainant/Respondent No. 2 herein is the Food Safety Officer, South Zone, Hyderabad. On 05.12.2016, along with the officials of the vigilance and enforcement department, he visited the business of Petitioner No. 2/Accused No. 2 for inspection. During his visit, Petitioner No. 1/Accused No. 1 claimed to be the manager of Petitioner No.1's business premises/processing unit and was conducting business. During the inspection, Respondent No. 2 found 180 Chilli Seed bags to be used in the processing of Chilli powder which will be used for human consumption. Respondent No. 2 also found Langer Garam Masala kept to be sold to the public for human consumption.

ii) On suspicion, Respondent No. 2 in presence of a witness purchased 2kgs of Chilli Seeds and 2kgs of Langer Garam Masala for sending it to analysis. The 2kgs of Chilli Seeds was divided into 4 equal parts and each part was labelled, wrapped, sealed and signed. The same was done with the 2kgs of Langer Garam Masala which was also divided into 4 equal parts and each part was labelled, wrapped, sealed and signed.

iii) A panchnama was prepared in presence of the witnesses, details of which were read over to Petitioner No. 1. On 06.12.2016, the sealed samples of the Chilli Seeds and Langer Garam Masala

were sent to the Food Analyst, State Food Laboratory, Nacharam, Hyderabad, for analysis.

iv) An analysis report of the Chilli Seeds bearing No. 626/2016-17 dated 15.12.2016 with a cover letter dated 16.12.2016 was sent by the Food Analyst to the Designated Officer, South Zone, GHMC and the same was forwarded to Respondent No. 2. In the report, it was stated that the Chilli Seeds contained molds and therefore, were unsafe.

v) Similarly, an analysis report of Langer Garam Masala bearing No. 657/2016-17 dated 19.12.2016 was sent along with a cover letter dated 19.12.2016 by the Food Analyst to the Designated Officer, South Zone, GHMC and the same was forwarded to Respondent No. 2. In the report, it was stated that the sample of Langer Garam Masala contains Salmonella, a pathogen which is injurious to health. Further, the label does not contain a lot number. Therefore, the sample of the Garam Masala was unsafe.

vi) With respect to the Chilli Seeds and Langer Garam Masala, separate notices were sent to the accused informing them that if they so desired, they can appeal against the Food Analyst's report.

vii) On 28.12.2016, Respondent No. 2 addressed a letter to the Commissioner, Food Safety, Telangana seeking sanction to launch prosecution against the Petitioners herein under the Food Safety and Standards Act, 2006 (hereinafter 'the Act, 2006') for selling unsafe Langar Garam Masala containing salmonella. The Commissioner, Food Safety vide proceedings Rc. No. 1024/FSS-3/2017 dated 09.02.2019 granted sanction to prosecute the Petitioners herein for sale of unsafe Garam Masala. Referring to Section 77 of the Act, 2006 it was contended that the Commissioner approved the sanction after lapse of one year due to administrative reasons.

viii) Similarly, on 12.01.2018, Respondent No. 2 addressed a letter to the Commissioner, Food Safety, Telangana seeking sanction to launch prosecution against the Petitioners herein under the Act, 2006 for selling unsafe Chilli Seeds. The Commissioner, Food Safety vide proceedings Rc. No. 1017/FSS- 3/2017 dated 14.11.2019 granted sanction to prosecute the Petitioners herein for sale of Chilli Seeds containing molds. Referring to Section 77 of the Act, 2006 it was stated that the Commissioner approved the sanction after lapse of one year due to administrative reasons.

ix) Based on the sanction order dated 09.02.2019, a complaint bearing C.C. No. 12 of 2019 was filed before the I Metropolitan Magistrate (Municipal Court) Chudi Bazar, Hyderabad on 31.10.2019. The said complaint was filed under Sections 3(1)(zz)(iii), 21(1) and 26(2)(i) of the Act, 2006.

x) Similarly, based on the sanction order dated 14.11.2019, a complaint bearing C.C. No. 15 of 2019 was filed before the I Metropolitan Magistrate (Municipal Court) Chudi Bazar, Hyderabad on 04.12.2019. The said complaint was also filed under Sections 3(1)(zz)(iii), 21(1) and 26(2)(i) of the Act, 2006.

xi) Therefore, the present criminal petitions are filed to quash the proceedings in C.C. No. 12 of 2019 and C.C. No. 15 of 2019.

5. Contentions of the Petitioner

- i) Under Section 77 of the Act, 2006 no sanction for prosecution can be granted by the Commissioner after the expiry of one year. Reliance was placed on the orders passed by this Court in Crl.P.No. 8410 of 2018 and Cr.L.P. No. 262 of 2019.
- ii) The Commissioner failed to record any reasons in writing for approving the launch of prosecution against the Petitioners at a delayed stage.
- iii) Therefore, the proceedings in C.C. No. 12 of 2019 and C.C. No. 15 of 2019 are liable to be quashed.

Learned Public Prosecutor would submit that there are serious allegations against the petitioners. The Food Safety Officer after following the due procedure laid down under the Act and after obtaining the report from the Food Analyst filed the complaint. As regards period of limitation, he would submit that the period of limitation prescribed can be extended for two more years to approve prosecution and in the case on hand, there is such an extension. In view of the same, the complaint filed by the Food Safety Officer is within the period of limitation. Therefore, he sought to dismiss the present petition.

7. Findings of the Court

- i) From the facts of the case, it is clear that the main contention of the Petitioner is that sanction for prosecution was granted by the Commissioner after a lapse of one year. Further, it was contended that the Commissioner failed to provide any reasons for the delay in grant of sanction for prosecution. This according to the Petitioner contravenes Section 77 of the Act, 2006. The text of Section 77 of the Act, 2006 is extracted below:

"77. Time limit for prosecutions. -

Notwithstanding anything contained in this Act, no court shall take cognizance of an offence under this Act after the expiry of the period of one year from the date of commission of an offence. Provided that the Commissioner of Food Safety may, for reasons to be recorded in writing, approve prosecution within an extended period of up to three years."

- ii) A bare reading of Section 77 clearly indicates that a statutory limitation of one year is fixed within which sanction for prosecution is to be granted. To that extent this Court is in agreement with the orders relied upon by the Petitioners herein.
- iii) However, Section 77 also provides an exception in the form of a proviso by granting power to the Commissioner to extend the period of granting sanction by providing reasons to be recorded in writing. In other words, only in cases where reasons for delay in sanction exist and such reasons are recorded by the Commissioner can a prosecution be approved under the Act, 2006 after a lapse of

one year.

iv) This Court does not agree with the view taken by the Learned Single Judge in order dated 10.09.2018 passed in Crl.P.No. 8410 of 2018 that only consent of the Commissioner under Section 77 is to be obtained for initiating prosecution under Section 77 after a lapse of one year. The relevant portion of the said Order is extracted below:

"Therefore, the Court shall not take cognizance if the complaint is filed beyond one year from the date of commission of offence except on consent given by Commissioner of Food Safety as per the proviso annexed to Section 77 of the F.S.S.Act."

v) As stated above, it is not merely consent but a written reasoned order that is required to be given by the Commissioner explaining the delay in sanctioning prosecution.

vi) Now coming to the facts of the case, it is not in dispute that the inspection was conducted on 05.12.2016 and sanction for prosecution in C.C. No. 12 and C.C. No. 15 was granted on 09.02.2019 and 14.11.2019 respectively. The grant of prosecution was way beyond the period of one year as prescribed under Section 77 of the Act, 2006.

vii) The sanction orders dated 09.02.2019 and 14.11.2019 stated the delay was due to administrative reasons. However, the reasons and more particularly the reasons for delay in sanctioning prosecution was not mentioned. According, to this Court no reasons explaining the cause of delay were stated which contravenes Section 77.

viii) It is to be noted that statutory period of limitation is fixed by the legislature to have time bound proceedings. The time limit of such limitation can only be extended when justifiable reasons exist and which are recorded in writing. In the present case, the same were absent.

8. Conclusion:

i) Therefore, in light of the aforesaid discussion, the proceedings in C.C. No. 12 of 2019 and C.C. No. 15 of 2019, both on the file of I Metropolitan Magistrate (Municipal Court), Hyderabad, are liable to be quashed and accordingly the same are hereby quashed against the petitioners herein.

ii) Both the Criminal Petitions are accordingly allowed.

As a sequel, the miscellaneous petitions, if any, pending in the Criminal Petitions shall stand closed.

_____ K. LAKSHMAN, J 4th April, 2022 Mgr