

Sai Surya Enterprises, vs The State Of A.P on 15 September, 2022

Author: M.Ganga Rao

Bench: M.Ganga Rao

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.955 OF 2022

ORDER:

This writ petition is filed to issue a Writ of Mandamus declaring the action of the respondents 3 and 4 in seizing the Cashew husk of 60 Tonnes/1600 bags on 20.12.2021 from the petitioner's godown bearing Door No.2-10 situated in Duppalapudi Village, Anaparthi Mandal, East Godavari District, as illegal and arbitrary.

2. On 20.12.2021 at about 2.00 p.m., the Additional District Food Safety Officer and the Food Inspector along with In-charge Sub-Inspector of Anaparthi and others came to his premises/godown and seized 1600 bags/60 tonnes of cashew husk powder, took sample in a quantity of 4 Kgs. from out of 1 bag weighing 40 Kgs. The proceedings were recorded under mediatorsnama. The godown was locked and sealed by the Food Officers in the presence of mediators and handed over the seized stock to the Deputy Tahsildar and informed the godown In-charge to see that the stock is kept in the same condition.

3. The case of the petitioner is that the Station House Officer of Bikkavolu P.S. raided the premises bearing No.4-139, Rajya Lakshmi Rice Mill of R.S.Peta of Bikkavolu at about 11.30 a.m. on 10.12.2021 and seized Tea powder found there suspecting to be an adulterated tea powder under the Mediator report and recorded the confessional statement of two persons found there. On the basis of the same, he registered the Crime No.277 of 2021 of Bikkavolu P.S. for the offences under Sections 269, 271, 272, 420 r/w 34 I.P.C. It is alleged that while seizing the Tea powder, they also found 1850 Kgs. of detergent powder, 3100 Kgs. of Clay powder and 250 Kgs. of Cashew nut peel. Based on the confessional statement, the petitioner was added as 4 th respondent in the said crime. Then, the petitioner approached this Court by way of Criminal Petition and got stay of the same. The seizure of the cashew husk from the petitioner's premises is illegal, arbitrary and in violation of free trade guaranteed under Article 19 of the Constitution of India. Aggrieved by the same, the petitioner has come up with the present writ petition.

4. Sri Raja Reddy Koneti, learned counsel appearing for the petitioner, would contend that the seized stock is only cashew husk/cashew nut peel and not cashew shell powder or cashew husk powder. The seized cashew husk/cashew nut peel is not a 'food' item as contemplated under Section 3(1)(j) of the Food Safety and Standards Act, 2006 (for short 'the Act') and it is not meant for human consumption. It is also not a primary food, genetically modified or engineered food and it is not

'adulterant' as defined under Section 3(1)(a) of the Act and 'extraneous matter' falls within the definition of Section 3(1)(i) of the Act used for the preparation of food item. The material seized is not used as an adulterant as required under Section 38(6) of the Act which needs to be found in the possession of a manufacturer or dealer of adulterated food and not needs to be doing business in the product said to be used for various industrial purposes. The petitioner is doing business since last 10 years having GST TIN bearing No. 37ATDPK00054A1ZC and no complaints were made with regard to his business. He is purchasing the cashew husk/cashew peel from the cashew industries located in and around the areas and selling the same to the various consumers. As the cashew husk/cashew peel is used for various purposes like pigmentation, tanning, pan masala, etc., it is a general item and seized product is cashew husk/cashew peel and not even the powder as alleged in the seizure panchanama/mediatornama. It is not at all a food item and the provisions of the Act will not attract and the respondent authorities are illegally seized the said stock and kept under the lock and key. This Court, on 20.01.2022, directed the respondents to release the godown, but the stocks are under seizure. He further submits that cashew husk and cashew peel are not seized in the godown along with any other items to prepare adulterated tea powder for consumption of the human beings. He further states that the tea powder is a general item sells for consumption as a food item and it is being used as an adulterant for preparation of tea if used along with milk powder. Even if the said product is being used as an adulterant in any food product having purchased the same from any person/seller, the same cannot be seized as it is available in the general market and not a product meant exclusively for adulterating any specified food item. As the seizure of the cashew husk or cashew peel even if it is a cashew husk powder, without admitting the same, it would not come within the meaning of 'food' or 'adulterant' as defined under the provisions of the Act and thereby its seizure is illegal.

5. Per contra, learned Government Pleader for Medical & Health appearing for the respondents, while reiterating the averments of the counter, would contend that the SHO registered the crime vide FIR No.277 of 2021 on 10.12.2021 and provided the copy of FIR and mediators report regarding conduct of proceedings and lifting of samples of Tea powder (loose) on suspicion through the Food Safety Officer on 10.12.2021 at the rice mill on the statements of one Golugurli Anil Sekhar Reddy and Munimutti Rama Rao that the petitioner has supplied the Cashew husk powder to them for manufacturing spurious tea powder which is used for human consumption in the name of Arun Enterprises and put to sale in the market. On the basis of confessional statement, the petitioner was added as accused No.4 in the crime. Basing on the FIR No.227/2021 of Bikkavolu P.S., the 4th respondent along with S.I. of Police and his staff and the staff of the Revenue Department in the presence of District Assistant Food Controller by name B.Srinivas visited the Sai Surya Enterprises godown by securing the mediators i.e., Penumaka Raju, V.R.O. of Duppalapudi Village and Yeditha Krishna Prasad resident of Duppalapudi Village, where they found 1500 bags of Cashew shell powder (each bag containing the 40 Kgs.) in the godown. The Food Safety Officer visited the premises of the petitioner and as per the procedure contemplated under Section 38 of the Act, seized 1500 bags of cashew shell powder under the cover of Mediators report dated 20.12.2021 and kept it in the godown for safe custody due to difficulty to transport the huge quantity of seized property under the cover of served copy of Form No.II to Allamuri Sai Pavan Kumar, who is In-charge of the godown as per the procedure and kept the godown under lock and key in the surveillance of Deputy Tahsildar, Anaparthi. The Food Safety Officer lifted the sample as per Section 38 of the Act and sent

the sample to Food Analyst, State Food Laboratory, Hyderabad for analysis as per Section 47 of the Act. He has drawn the attention of this Court to the definitions of 'Food' under Sections 3(1)(j), 3(1)(k), 3(1)(zk) and 3(1)(zm) of the Act and also the duties of Food Authority under Section 16(1) of the Act besides the provisions of Section 19 of the Act to state that no article of food shall contain any food additive or processing aid unless it is in accordance with the provisions of the Act and regulations made thereunder. For the purpose of Section 19 of the Act, "processing aid" means any substance or material, not including apparatus or utensils, and not consumed as food ingredient by itself, used in the processing of raw materials, foods or its ingredients to fulfil a certain technological purpose during treatment or processing and which may result in the non-intentional but unavoidable presence of residues or derivatives in the final product. He also refers to the provisions of Section 41 of the Act to state that the Food Safety Officer may search any place, seize any article of food or adulterant, if there is a reasonable doubt about them being involved in commission of any offence relating to food, and shall thereafter inform the Designated Officer of the actions taken by him in writing: Provided that no search shall be deemed to be irregular by reason only of the fact that witnesses for the search are not inhabitants of the locality in which the place searched is situated. During the course of search and seizure, the Search Officer has to follow the provisions of Section 100 of Cr.P.C. As per the orders of this Court dated 20.01.2021, in the presence of mediators i.e., Penumarthy Raju, V.R.O. of Duppalapudi Village and Sri J.Sasidhar, Deputy Tahsildar, Anaparthi, they handed over the lock and key of the godown to the petitioner. However, the seized stocks are under the custody of the authorities.

6. Having considered the facts and circumstances of the case, submissions of the learned counsel and on perusal of the record, it is found that the seized article is cashew shell powder from the petitioner's godown on 20.12.2021, even otherwise seized article i.e., cashew husk or cashew peel is not a 'food' item as defined under the provisions of Section 3(1)(j) of the Act or 'adulterant' as defined under Section 3(1)(a) of the Act, but it is used in the process of preparation of adulterated tea powder. However, the seized article is not adulterated and is not a food item meant for human consumption and it is kept for general sale for the customers to use for various purposes like pigmentation, tanning, pan masala, etc. Mere using the cashew shell powder by the accused Nos.1 to 3 in Crime No.277/2021 of Bikkavolu P.S. and on the confessional statement of the said accused, the petitioner was added as accused No.4 in the said crime, that itself does not allow the authorities to come to the conclusion that the seized cashew shell powder is using for preparation of adulterated tea powder meant for human consumption.

7. The High Court of Madras, while dealing with the provisions of the Essential Commodities Act, 1955 in the case of Thiyagarajan Vs. State by Inspector of Police, Civil Supplies C.I.D., Erode¹, held that Tea is not a foodstuff, it is only a beverage and it would not specify the definition of 'food' and also Coffee is a beverage and the contents are more or less similar to that of a Tea. Thus, it cannot be stated to be a foodstuff as held by the Hon'ble Apex Court in S.Samuel, M.D., Harrisons Malayalam and another Vs. Union of India [AIR 2005 SC 218] as well as Division Bench of this Court in Brooke Bond India Ltd. Vs. Union of India and others [1984(15) ELT 32 (A.P.)]. The learned counsel for the petitioner submits that if somebody uses a product available in general market even for adulteration of any food item, the product which is not at the place where adulteration is going on, cannot be seized and relied on the decision rendered by the High Court of 2011(4) CTC 445 Madras in the case

of Vellaisamy Vs. State 2, wherein while dealing with the provisions of the Prevention of Food Adulteration Act and the Rules made thereunder and following its own decision in S.Arunachalam Vs. State rep. by the Inspector of Police, Tirunelveli [1993(2) FAC 139 = 1993 L.W. (Crl.) 211], held that the bags of cashew husk powder can be used as adulterants to adulterate tea dust. It is further held that the intimation under the Act had not been forwarded to the petitioner, that alone would be sufficient to hold in favour of the petitioner as non-service of such intimation affects the very foundation of the prosecution and no super-structure can exist without foundation, since collapse will be necessary outcome. Coming to the case on hand, the petitioner is not a dealer in food items and is exclusively doing business in cashew husk/peel. Hence, the seizure of the cashew husk from the petitioner's godown, is illegal and arbitrary. Hence, this Court found force in the contentions of the learned counsel for the petitioner.

8. This Court, after considering the provisions of the Act and the circumstances under which the seizure is made in the premises of the petitioner's godown, came to the conclusion that 1993 SCC Online Mad 544 the contra contentions of the learned Government Pleader are unsustainable under law.

9. Accordingly, the Writ Petition is allowed. The respondent authorities are directed to release the seized stock to the petitioner forthwith. No order as to costs.

10. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE M.GANGA RAO 15-09-2022 anr THE HON'BLE
SRI JUSTICE M.GANGA RAO WRIT PETITION No. 955 OF 2022 15-09-2022 anr