

Sanjeev Uppal, Licensee vs The State Of Andhra Pradesh on 4 October, 2024

APHC010572312018

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3333]
(Special Original Jurisdiction)

FRIDAY ,THE FOURTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

CRIMINAL PETITION NO: 8213/2018

Between:

Sanjeev Uppal, Licensee . . .PETITIONER/ACCUSED

AND

The State Of Andhra Pradesh . . .RESPONDENT/COMPLAINANT(S)
and Others

Counsel for the Petitioner/accused:

1. A SATYASIRI

Counsel for the Respondent/complainant(S):

1. PUBLIC PROSECUTOR (AP)

The Court made the following:

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VS,J
CrIp_8213_2018

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.830 of 2016 on the file of the Additional Judicial First Class Magistrate at Tadepalligudem, registered for the offence punishable under Sections 3 (1) (zz) (ix) (xi), 26 (2) (i) of the Food Safety and Standards (Food Products and Food Additives) Regulations, 2011 and punishable under Section 59 (i) of Food Safety and Standards Act, 2006 (for short "FSS Act").

2) Petitioner herein is accused No.2. Respondent No.2, Food Safety Officer is the complainant. Respondent No.2 lodged complaint alleging that on 28.12.2015, he visited the retail shop of the accused No.1 and found 10 packets of sealed Heritage Basmati Rice in wooden shelf and on suspicion that the rice was substandard/unsafe, he purchased 4 packets of the rice and paid Rs.4000/- towards its cost. The complaint further states that respondent No.2 herein issued a notice in form VA under Rule 2.4.1(3) by disclosing his intention to send the purchased Heritage Basmati Rice to the Food Analyst, State Food Laboratory, Hyderabad. Later, each part of the Heritage Basmati Rice of 4 sealed packets were divided and each one Kg Heritage Basmati Rice sealed packet was kept in dry, empty plastic jars and tied with thread and seal. Further, Form VA notice was sent to the manufacturer on the same day and that on 29.12.2015, respondent No.2 sent one part of the sample packet along with Memorandum to the Food Analyst, Hyderabad. The remaining three parts along with form VI memorandum in triplicate with specimen impression of the VS,J Crlp_8213_2018 Food Safety Officer handed over to the Food Safety Designated Officer, West Godavari District obtained acknowledgement dated 28.08.2015. After examination, the Food Analyst, State Food Laboratory, Hyderabad submitted his report stating that the sample is insect infested and does not conform to Uric Acid limit. Hence, it is unsafe. Thereafter, the Food Safety Officer gave intimation to the Food Safety Designated Officer for issuing notice to FBO. On 19.01.2016 the Food Safety Designated Officer send notice under Rule 2.4.6.(1) and Section 46 (4) of FSS Act, 2006 along with Food Analyst Report to the accused. The Petitioner herein then preferred an appeal in Form VIII before the Food Designated Officer and the Food Designated Officer requesting to sent another sample of the rice to the Referral Laboratory, Ghaziabad. The Referral Laboratory gave a certificate stating that the sample shows presence of '12 living and 9 dead insects'. The Food Analyst and the Referral Laboratory found the sample is above the standards in all aspects.

3) Thereafter, the Food Designated Officer, i.e., respondent No.3 instructed respondent No.4 herein to launch prosecution against the petitioner. Based on the letter of the Food Designated Officer in Lr.No.005II-06368/2015 dated 18.05.2016, the Commissioner for Food Safety, respondent No.4 herein gave his sanction under Section 30(2) (e) of the Act for initiating prosecution. Based on the sanction vide Rc.No.529/F2/2016 dated 06.09.2016, respondent No.2 herein filed the complaint in C.C.No.830 of 2016 in the Court of the Additional Judicial First Class Magistrate, at Tadepalligudem. The present petition has been filed to quash the said C.C.No.830 of 2016.

VS,J Crlp_8213_2018

4) On 04.09.2019, when the present petition came up for admission, this Court passed the following interim order.

"

Therefore, post the matter on 19.09.2019. The further proceedings in C.C.No.830 of 2016 on the file of learned Additional Judicial Magistrate of First Class, at Tadepalligudem, are stayed".

5) During hearing, learned counsel for the petitioner vehemently contended that without arraying the company/manufacturer, which produced the alleged adulterated food item, only adding the licensee as an accused is against the provision under Section 66 of the FSS Act and it would amount to abuse of the process of the Court, on this ground alone the proceedings against the petitioner are liable to be quashed.

6) He further contended that the prosecution against the petitioner is untenable as the filing of the complaint by respondent No.2, written sanction by the Commissioner of Food Safety are arbitrary and not in consonance with the procedure established under the FSS Act. As per Regulation 2.4.6 (5), the percentage of animal origin should not be above 0.10 percent of the weight of the sample, but the report of the Food Analyst does not state as to what extent or what percentage of insects are present in the rice packet of one kg i.e. 1000 grams. In the absence of such determination, when a standard is prescribed and no analysis has been made in conjunction with the standards, the report of the Food Analyst that the rice is „insect infested and hence it is unsafe is vague and illegal. He further contended that as per Rule 2.4.1, notice has to be served on the manufacturer in Form V and that the VS,J Crlp_8213_2018 Food Safety Officer has to obtain signature of the witness on all forms and documents and requested to allow present petition.

7) Learned Assistant Public Prosecutor representing respondent No.1 contended that the Food Analyst opined in his report dated 12.01.2016 that the sample is unsafe as it is insect infested and does not conform to Uric Acid Limit. Further, on 29.02.2016 Food Safety Designated Officer sent another part of sample along with Form No.VIA containing his specimen impression seal to the Referral Laboratory, Ghaziabad. The Director Referral Laboratory, Ghaziabad delivered his certificate Form A No.346/Apr/16-AP stating that the sample shows presence of „12 living and 9 dead insects . Therefore, the proceedings initiated against the petitioner herein cannot be quashed and requested to dismiss the petition.

8) Having heard the submissions made by the learned counsel representing both parties and on perusal of the material available on record, the point that arises for consideration is as follows:

"Whether the proceedings against the petitioner herein in C.C.No.830 of 2016 on the file of the Additional Judicial First Class Magistrate, Tadepalligudem, are liable to be quashed by exercising jurisdiction under Section 482 of Cr.P.C.?"

P O I N T:

9) The petitioners filed the present petitions under Section 482 of Cr.P.C.

10) Section 482 of Cr.P.C saves the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any VS,J Crlp_8213_2018 Court or otherwise to secure the ends of justice. It is an obvious proposition that when a Court has authority to make an order, it must have also power to carry that order into effect. If an order can lawfully be made, it must be carried out; otherwise it would be useless to make it. The

authority of the Court exists for the advancement of justice, and if any attempt is made to abuse that authority so as to produce injustice, the Court must have power to prevent that abuse. In the absence of such power the administration of law would fail to serve the purpose for which alone the Court exists, namely to promote justice and to prevent injustice. Section 482 of Cr.P.C confers no new powers but merely safeguards existing powers possessed by the High Court. Such power has to be exercised sparingly in exceptional cases and this power is external in nature to meet the ends of justice.

11) Time and again, the scope of powers of this Court under Section 482 of Cr.P.C. were highlighted by the Apex Court in long line of perspective pronouncements, which are as follows:

12) Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent power to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in VS,J Crlp_8213_2018 conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious. In that event there would be no justification for interference by the High Court as held by the Apex Court in "Mrs.Dhanalakshmi v. R.Prasanna Kumari"

13) Admittedly, in the present case, the petitioner herein is the Licensee of M/s LT Foods limited. In the cause title of the complaint filed by respondent No.2, the petitioner was arrayed as Licensee of M/s LT Foods Limited.

14) The first and foremost contention of the learned counsel for the petitioner is that without arraying the company, which produced the alleged adulterated food item, only adding the licensee as an accused is against the provision under Section 66 of the FSS Act.

15) Section 66 of the Act deals with "offences by companies", which reads thus:

"66. Offences by companies.-

(1)Where an offence under this Act which has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well

as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that where a company has different establishments or branches or different units in any establishment AIR 1990 SC 494 VS,J Crlp_8213_2018 or branch, the concerned Head or the person in-charge of such establishment, branch, unit nominated by the company as responsible for food safety shall be liable for contravention in respect of such establishment, branch or unit:

Provided further that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2)Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

16) The above section shows that in case of offences are committed by the company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence.

In the present case, the petitioner is licensee, but, the manufacturer, who manufactured the goods, was not arrayed as an accused and even notice was not issued to the manufacturer.

17) It is mandatory to issue notice to the manufacturer as per Rule 2.4.1 of the Food Safety and Standards Rules, 2011 and the same is extracted hereunder for better appreciation.

"2.4.1: Procedure for taking sample and manner of sending it for analysis:-

VS,J Crlp_8213_2018 The Food Safety Officer while taking sample of food for analysis under Clause A of sub-section (1) of Section 38 and section 47 (except 47 (5) of the Act, shall also follow the procedure specified hereunder:

(1)

(2)

(3)

(4) in case the food business operator discloses that the product has been obtained from the manufacturer, the distributor or supplier, a notice shall also be given to such manufacturer, distributor or supplier"

18) In the present case, the respondents have not followed the Rule 2.4.1 and no notice was issued to the manufacturer/supplier of the petitioner. Further, notice in Form VA intimating the petitioner about the intention of the Food Safety Officer to send Heritage Basmati Rice collected from the shop of petitioner for analysis is not affixed with witness signatures. Even on perusal of the said notice, no witness signatures are found on the notice issued to the petitioner.

19) In "Hindustan Unilever Limited Vs. State of Madhya Pradesh²", relied on by the learned counsel for the petitioner, the Apex Court held as follows:

"Clause (a) of sub-section (1) of Section 17 of the Act makes the person nominated to be in charge of and responsible to the company for the conduct of business and the company shall be guilty of the offences under clause (b) of sub-section (1) of Section 17 of the Act. Therefore, there is no material distinction between Section 141 of the NI Act and Section 17 of the Act (2020) 10 SCC 751 VS,J Crlp_8213_2018 which makes the Company as well as the Nominated Person to be held guilty of the offences and/or liable to be proceeded and punished accordingly. Clauses (a) and (b) are not in the alternative but conjoint. Therefore, in the absence of the Company, the Nominated Person cannot be convicted or vice versa."

20) As regards special statutes which provides for prosecution of the Directors for the offences committed by the companies, it is settled law that the Directors cannot be prosecuted in isolation where the company has not been made an accused (See: "Aneeta Hada Vs. Godfather Travels and Tours Pvt. Ltd.³" and "Sanghi Brothers Indore (p) Ltd. Vs. Premchand⁴")

21) In "Sharad Kumar Sanghi Vs. Sangita Rane⁵" relied on by the learned counsel for the petitioner, the Apex Court held as follows:

"In the case at hand as the complainant's initial statement would reflect, the allegations are against the company, but the company has not been made arrayed as a party. Therefore, the allegations have to be restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against the company. There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened on certain statutes."

22) The law laid down in the said judgments is squarely applicable to the present facts of the case as in the present case (2012) 5 SCC 661 2011 SCC Online MP 1299 (2015) 12 SCC 781 VS,J Crlp_8213_2018 also, respondent No.2 filed complaint against the petitioner herein, who is licensee of M/s Lt Foods Limited, without impleading the said firm as an accused.

23) The complainant visited the shop of petitioner on 28.12.2015 at about 02.00 p.m. and taken samples. As per Section 42 (3) of the Act, the Designated Officer after scrutiny of the report of Food Analyst shall decided as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution. In the case on hand, respondent No.3 herein gave his recommendation to the Commissioner 13.05.2016, which is beyond the prescribed period, as such it is in violation of Section 42 (3) of the FSS Act. In such case, respondent No.3 should not have recommended for prosecution. Respondent No.3 should have considered that the number of insects present were de minimis and which were beyond the control of the Manufacturer, especially when the Manufacturer has submitted its Analysis report given by the Government notified laboratory of the rice bags in question, wherein it is clearly stated that there is no presence of insects at the time of packaging. Further, rice is grown in the fields and presence of larvae or insects in the rice is natural and beyond the control of any human agency. Spraying of excessive pesticides or using extreme processes for killing all larvae or insects are harmful to humans. These larvae may hatch in favourable/moist conditions. Presence of some insects due to larvae in the rice is a common and natural occurrence, that is beyond the control of the manufacturer and if their presence is in small number and when VS,J Crlp_8213_2018 there is no damage to the rice, the same do not cause any harm to the consumer. Therefore, the recommendation made by respondent No.3 for initiating prosecution is not in accordance with law.

24) In the present case, as the manufacturer was not arrayed as a party to the proceedings, recommendation for prosecution was made beyond the period stipulated in Section 42 (3) of the FSS Act and no notice was issued to the manufacturer as mandated in Rule 2.4.1 of the Food Safety and Standards Rules, 2011 and for other reasons discussed above, this Court is of the opinion that the continuation of the proceedings against the petitioner herein is an abuse of process of law. Therefore, the criminal petition deserves to be allowed.

25) Accordingly, the criminal petition is allowed. The proceedings against the petitioner herein in C.C.No.830 of 2016 on the file of the Additional Judicial First Class Magistrate, Tadepalligudem are hereby quashed.

26) The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE V.SUJATHA 04.10.2024 Ksp