

Al Faheem Meatex Pvt.Ltd. vs State Of U.P. And 2 Others on 17 February, 2023

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 50

Case :- MATTERS UNDER ARTICLE 227 No. - 1258 of 2023

Petitioner :- Al Faheem Meatex Pvt.Ltd.

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Syed Safdar Ali Kazmi, Mohd. Imran

Counsel for Respondent :- G.A.

Hon'ble Ram Manohar Narayan Mishra, J.

Instant petition under Article 227 of the Constitution has been filed by the appellant challenging order dated 23.01.2023 passed by Learned Sessions Judge, Meerut in criminal revision No. 909 of 2022 as well as criminal revision No 922 of 2022 (State of U.P. Vs. Director Al-Faheem Meatex Pvt. Ltd. and Another), whereby revision preferred by the State has been allowed and impugned order dated on 17.10.2022 and 21.12.2022 passed by learned A.C.J.M. Court No.5, Meerut in Case Crime No. 131 of 2022 under Sections 417/ 269, 276, 272, 273, 120B I.P.C., P.S. Kharkhauda, District Meerut wherein the processed Buffalo meat of 2,14,438kg was seized from the premises of present petitioner and was directed to be released in his favour with certain conditions enumerated in the later order are set aside and matter is remanded to Judicial Magistrate to get collected adequate samples and after receiving report of samples from laboratory final order be passed regarding the seized meat by 16.02.2023.

Brief facts leading to present petition are that on 31.03.2022 a raid was conducted on premise of the petitioner. It was found that due to pending investigation, the prosecution moved application for destroying the processed meat and the company also moved an application for release of meat. Vide impugned order dated 17.10.2022 the learned Magistrate allowed an application for sending

samples to NABL accredited laboratory. Testing report of 30 samples were received and the processed meat was found as per standard under Food Safety and Standard Act, 2006. Thereafter, the learned Magistrate released the processed meat by second impugned order dated 21.12.2022.

The grievance of the State before Revisional Court was that while taking samples at the time of raid many samples were found of sub-standard level as per the standard prescribed by guidelines No.2.5 (ii) of Sampling Guidelines issued by Food Safety and Standard Authority of India. At least 98 samples should have been sent for analysis but the learned Trial Court had only ordered for analysis of 30 samples, therefore, the finding that of the Court below that the whole lot is as per standard is erroneous. The stand of petitioner side before the Revisional Court was that after issuing of the impugned order 17.10.2022, the learned Magistrate directed for taking 30 samples from the seized processed meat and therefore, no illegality can be found in the impugned order. It was also submitted that the shelf value of meat expire on 07.03.2023 and the prosecution only intended to pass the time so that the meat could be destroyed and respondent might have suffered huge financial loss to the tune of crores of rupees. By the second impugned order 21.12.2022, the seized meat was directed to release by learned Magistrate subjected to certain conditions while deciding both the revisions simultaneously by a common order, learned Court of Sessions passed following order" Revision petition no.909 of 2022 and revision petition no. 922 of 2022 are allowed. Impugned orders dated 17.10.2022 and 21.12.2022 are hereby set aside. Learned Magistrate is directed to call report regarding number of samples to be collected from Food Safety Officer and/or Designated Officer, Meerut within three days. After receiving the report regarding number of samples to be collected. He is also directed that such samples are collected within three days thereafter and the report of the same after laboratory test be filed on or before 13.02.2023. The prosecution be also directed to collect the samples and send the same to any laboratory of their choice. After receiving report of samples final order be passed regarding the seized meat of 16.02.2023. It is made clear that if lab report of samples are not received by 13.02.2023, this order shall become non-est and impugned orders will be revived. Record be send back immediately along with a copy of this judgment. Parties are directed to appear before the Court concerned on 25.01.2023?.

Present petition has been filed by the petitioners feeling aggrieved by the above order of Revisional Court and a prayer has been made therein that the impugned order of Revisional Court be set aside and the order of Trial Court regarding release of the processed meat be made effective immediately, otherwise the petitioners will suffer huge loss. The petitioner is bearing Rs. 8 lakh per month towards electricity charge only in the maintenance of processed meat in deep freezer in the campus of the petitioner apart from other ancillary expenses.

Learned counsel for the petitioner and learned A.G.A. in-charge for the case for State and perused the material on record. Learned counsel for the petitioner submitted that the Revisional Court itself has observed in operative part of the impugned order that if the report of the samples are not received by the 13.02.2023, this order shall become non-est and impugned order will be revived. As many as 98 samples have been taken from the bulk of packets of processed meat and sent for examination to Central Food Laboratory, Ghaziabad at the instance of State authority. However, this is admitted fact that the analysis report of 98 samples have not been received by the Court below by

13.02.2023, the deadline fixed in the impugned order passed by learned Sessions Judge, the effect of the operative order of learned Sessions Judge is that release order passed by learned Magistrate by the order dated 21.12.2022 would be effective immediately and there are no need of any further order. However to stall the physical release of the processed meat which is subject matter of the case an application was moved on behalf of State on 13.02.2023 before Sessions Judge, learned Magistrate at the instance of State respondent wherein he stated that the process of analysis of 98 samples of buffalo meat is underway in the laboratory, which will take at least 10 days time and a prayer was made to grant 10 days time and a prayer was made to grant 10 days time for filing analysis report thereof. Learned Magistrate in its order order of learned Sessions Judge granted two days time to State for filing analysis report and fixed date of 15.02.2023 for filing the report.

Learned counsel for the petitioner further submitted that an application was also moved by State authorities on same day before learned Sessions Judge which was criminal Misc. application no. 155/23 which was registered and notice was issued to petitioners for 15.02.2023. On 15.02.2023, notice was issued to present petitioner who is opposite party in criminal misc. case before Sessions Judge for 16.02.2023. On 16.02.2023 learned Sessions Judge after hearing the counsels for parties passed following order "Heard. The expiry of the meat in question is 07.03.2023 and therefore, any further delay will indirectly result into nullification of order of this Court. At the same time, it is to be ensured that if the seized meat is found adulterated, the same should not be used for human consumption. Thus, in opinion of this Court, it would be proper to issue further direction to the respondents/owner of the meat to furnish an undertaking to the effect that till 21.02.2023 they shall not allow the released meat for consumption by anybody and will destroy the same immediately if found not fit for consumption under supervision of the authorities, even if the same is within transit in India. Further, the released meat shall not leave India till 21.02.2023." He lastly submitted that after 13.02.2023 passing of no order either by learned Magistrate or by Sessions Judge was called for as Sessions Judge Court in Revisional Court itself observed that " It is made clear that if report of samples are not received by 13.02.2023, this order become non-est and impugned orders will be revived."

Therefore, if food analysis report was not filed by the State laboratory till 13.02.2023, there was no action either for learned Magistrate of Sessions Judge to extend the time for filing chemical analysis report up to 21.2.2023 as pleaded by learned A.G.A. appearing for the State. The orders passed by learned Sessions Judge as against property as the matter is already subjudiced before the Hon'ble Court and this Court has seized of the matter. Inasmuch as the first order passed by in the criminal revision by Revisional Court is itself challenged in present petition. The revisional order of Sessions Court as well as the subsequent order passed in criminal misc. application No.155/2023 are liable to set aside and the release of processed meat is to be effected immediately pursuant to orders of learned Magistrate dated 21.12.2022 is to be given effect as the shelf life of the processed meat is liable to expire on 07.03.2023 as everyday delay will cause irregular loss to the petitioners.

Per contra, learned A.G.A. appearing for the State submitted that the learned Revisional Court has not passed any fresh order in dereliction of revisional order except giving few days time to the state applicant therein to enable it to file chemical analysis report of the samples subsequently, taken by compliance of the order of Sessions Court in criminal revision, the Sessions Court in order dated

16.02.2023 has itself addressed both the exigencies whether the sample corresponds to prescribe standard or it is found sub-standard and it is stated that therein if the seized meat is found adulterated the same should not be used for human consumption and finally directed that release of meat shall not leave India till 21.02.2023, thus, the release has already taken effect subject to the observations made in order dated 16.02.2023. Learned A.G.A. also further contended that the scope of interference of this Court in orders of District Court is limited and this Court should not exercise the original jurisdiction vested in District Courts with regard to enquiry trial release of case property. He cited judgment of Apex Court in D.N. Banerjee Vs. PR Mukherjee, AIR 1953 SC58, Waryam Singh Vs. Amarnath AIR 1954 SC 215, Shalini Shyam Shetty Vs. Rajendra Shankar Patil 2010 (8) SCC 329, Garment Craft Vs. Prakash Chand Goel 2022 SCC Online Supreme Court 29, in support of his contention in this case Hon'ble Apex Court observed that the High Court while exercising supervisory jurisdiction does not act as a Court of first appeal to re-appreciate, reweigh all the evidence or facts upon which the determination of challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusions, for that of the inferior Court or Tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set aside grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The relief under Article 227 should be given sparingly and only to ensure there is no miscarriage of justice. He next submitted that the report of analyst of 98 samples for examination is necessary in the case due to fact that the matters relates to public health at large.

However, he concedes that the learned Sessions Judge in order dated 16.02.2023 has specifically observed "No further time be extended by this Court"

In peculiar facts of the case, interplay of competing interest of parties is evident, on the one hand the petitioner stating is that they have not committed any offence, the Directors of petitioner company have already applied for renewal of the licence for operating the slaughter house from Agricultural and Processed Food Product Export Development Authority before its expiration. A copy of license issued by FSSAI dated 28.03.2017 valid till 27.03.2022 has been filed as Annexure No.8 to the present petition and prior to its expiry, the company had submitted an application for renewal of licence along with requisite license fee on 12.03.2022. Therefore, there is no lapse on the part of the petitioner's company. The raw meat and other materials seized from this part are already disposed of by State Agency and at present only the question of release of processed meat kept in 9,600 packets weighing 2,14,438.8 kg is under question. The processed meat of certain items were sold during investigation which value approximately Rs.3.5 crores and after expiry of shelf life the subject matter will lose its efficacy and will reduce to waste matter as it would not be conducive for human consumption. On the other hand, the stand of State is that if the samples are found of sub-standard then it will be treated as spurious to public health and the petitioner cannot be permitted to sell the meat for human consumption. Therefore, the chemical analysis report must come for perusal of the Court before any final order is passed for release of the said meat for public in favour of the company for public consumption.

No stay order has been passed in present petition restraining the Courts below to pass any order in the matter. The miscellaneous order passed by Court's below is with regard to extension for time for around a week on application prosecution initially given in impugned order dated 23.01.2023 passed by Revisional Court after cut off 13.02.2023. The prosecution had to move the Courts below for extension of time as the report was not forthcoming from a laboratory in spite of their efforts.

In order dated 16.02.2023 passed in misc. application No. 155/2023 learned Sessions Judge has addressed both the eventualities in report of the sample if it corresponds to standard or otherwise it falls short of the prescribed standard with regard to processed meat which is subject matter of present case. The present petitioners are directed by learned Sessions Judge to furnish an undertaking to the effect that till 21.02.2023 they shall not allow to release meat for consumption by anybody and will destroy the same immediately if found not fit for consumption, vision of the authorities, even if the same is within transit in India, further the meat shall not be sent outside the country till 21.02.2023. It is also made clear that no further time will be extended by the Court.

I find no infirmity or outreach in the impugned order passed by revisional Court which is under challenge in present petition as well as subsequent orders which are brought to the notice of this Court passed in 15.02.2023 by Sessions Judge, therefore, petition is dispose of in the light of subsequent order passed by learned Sessions Judge dated 15.02.2023 and he is directed to ensure the compliance of that order by all concerned and if the chemical analysis report is not placed before the Sessions Court by 21.02.2023 the release order passed by learned Magistrate on 21.12.2022 will take effect immediately and no further time will be given to State for submitting the laboratory report. If the report is filed and samples not substantially correspond to the standard prescribed by FSSAI, the Sessions Court will pass appropriate order in the matter immediately in accordance with law on 21.02.2023 or next day.

In view of the above observations, the petition is dispose of.

A self attested and net generated copy of this order shall be produced by learned counsel for the petitioner appearing before the Court of Sessions, before the Court concerned to ensure compliance and same will be verified by the Court before acting upon same.

Order Date :- 17.2.2023 Nitika