

Amluya Anand vs State on 8 March, 2022

Author: Sandeep Mehta

Bench: Sandeep Mehta

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR
S.B. Criminal Misc(Pet.) No. 545/2020

Amluya Anand S/o Shri Anmol Kumar, Aged About 24 Years, By
Caste Brahmin, Resident Of Damuchak, North Side Of Civil Sdo
Residence, Mujjafarpur (Bihar), At Present Manesar, Gurgaon
(Haryana).

----Petitioner

Versus

State, Through Vinod Sharma, Food Safety Officer (Designated
Officer Food Safety), Office Of Chief Medical And Health Office,
Nagaur.

----Respondent

For Petitioner(s) : Mr. Vishal Sharma
For Respondent(s) : Mr. Arun Kumar, PP

HON'BLE MR. JUSTICE SANDEEP MEHTA

ORDER

Date of Pronouncement :- 08/03/2022

Order Reserved on :- 17/02/2022

The instant misc. petition has been filed by the petitioner herein seeking quashing of orders dated 07.04.2015 & 24.01.2020 whereby the learned ACJM, Merta took cognizance against the petitioner and dismissed the application filed by the petitioner under Section 468 Cr.P.C. read with Section 77 of the Food Safety and Standards Act, 2006 (hereinafter referred to as 'the Act of 2006') and to quash the entire proceedings of the criminal case No.145/2015 instituted against the petitioner in the said court.

(2 of 7) [CRLMP-545/2020] Briefly stated the facts relevant and essential for disposal of the misc. petition are noted hereinbelow:-

On 24.10.2011, the Food Safety Officer-cum-CMHO, Nagaur reached Swastik Milk Chilling Centre, Devgarh Road, Thanwla District Nagaur associated with Amul Dairy, Mehsana. The petitioner herein was present at the centre as a representative of the Amul Dairy. The Food Safety Officer, collected samples of mixed milk from the chilling tank installed in the unit after following the procedure under the Food Safety and Standards Act, 2006 and Rules framed thereunder. One part of the sample was deposited with the Food Analyst, Jodhpur from where, a report dated 03.11.2011 was received to the effect that the sample of the mixed milk was substandard. Copy of the report was sent to the chilling centre. The petitioner requested for re-examination of the second part of the sample through the Referral Food Laboratory, Ghaziabad from where a report dated 10.09.2012 was received regarding the sample being unsafe. The Food Safety Officer thereafter, procured sanction for prosecution from the Joint Director, Medical and Health Services Zone, Ajmer who granted permission to launch the prosecution vide authority letter dated 11.04.2014. The complaint came to be filed in the court of Chief Judicial Magistrate, Nagaur on 12.09.2014. However, as the said court lacked jurisdiction to entertain the complaint, it was returned to the Food Safety Officer and came to be presented afresh on 07.04.2015 in the court of ACJM, Merta. On the same day, the learned trial court proceeded to take cognizance against the petitioner and the other accused persons for the offences punishable under Sections 26(2)(i) and 59 of the F.S.S. Act and summoned them for trial.

(3 of 7) [CRLMP-545/2020] The petitioner upon appearance, filed an application dated 06.11.2017 seeking re-examination of the preserved sample through the Central Food Laboratory. The Food Safety Officer filed reply to the said application with an assertion that the second sample had already been examined through the Referral Food Laboratory, Ghaziabad and the report thereof was final and accordingly, the prayer for re-examination of the sample through the Central Food Laboratory could not be acceded to. Before any order could be passed by the trial court on the said application of the petitioner, another application came to be filed on his behalf under Section 77 read with Section 26 (2)(i) and 59 of the Act of 2006 and Section 468 Cr.P.C. for dropping of the proceedings. The said application came to be dismissed by order dated 24.01.2020.

The petitioner has approached this Court through this petition under Section 482 Cr.P.C. for quashing of the order taking cognizance dated 07.04.2015, the order dated 24.01.2020 whereby the application for dropping of the proceedings on the ground the same being time-barred was dismissed and so also to quash entire proceedings of the complaint (supra).

Shri Vishal Sharma, learned counsel representing the petitioner drew the Court's attention to Section 59 of the Act of 2006, as per which, the punishment for being found in possession unsafe food is 6 months imprisonment with fine which may extend to one lac rupees. Shri Sharma referred to Section 77 of the Act of 2006, which reads as 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."

He urged that admittedly in the present case, the complaint came to be filed for the first time in the Court of CJM, Nagaur on 12.09.2014 i.e., after 2 years, 9 months and 19 days of the sampling procedure. The complaint was returned by the learned CJM, Nagaur on account of lack of jurisdiction and came to be filed afresh in the court of ACJM, Merta on 07.04.2015 i.e., more than 3 years and 4 months from the date of drawing of the sample. Shri Sharma urged that as per Section 77 of the Act of 2006, the complaint has to be filed within a period of one year from the date, the sample is drawn. The said period can be extended for a period upto three years by the Commissioner of Food Safety by a reasoned order in writing. However, in the present case, no order for extension of time for filing complaint was passed by the Commissioner Food Safety. Shri Sharma relied upon the following judgments:-

(1). Sri.V.V.S.S.R. Prakash Rao vs. The State of Telangana :

CRLP No.8410 of 2018 decided on 10.09.2018 (2) Pankaj Mahajan vs State of Himachal Pradesh: Cr.

MMO No.277 of 2016 decided on 26.04.2017 (5 of 7) [CRLMP-545/2020] and urged that since the complaint was filed beyond the statutory period of one year provided for taking cognizance as laid down by Section 77 of the Act of 2006 and since, no approval was granted by the Food Safety Commissioner for extension of time to file the complaint, the proceedings have to be quashed as being time-barred.

Learned Public Prosecutor referring to the reply, vehemently urged that the Joint Director, Medical and Health Services, Ajmer has granted sanction to prosecute the accused and other accused persons in the present case and thus, learned ACJM Merta has rightly taken cognizance against the accused persons vide order dated 07.04.2015. He contended that the application for dropping of the proceedings was not maintainable as the learned Magistrate is not empowered to review its own order. He argued that the orders under challenge are not liable to interference and sought dismissal of the misc. petition.

I have given my thoughtful consideration to the submissions advanced at bar and have gone through the material available on record.

It is relevant to mention here that neither in the entire complaint, the sanction letter dated 30.08.2013 and the reply of the State Government is a whisper made regarding extension of time to

file the complaint. As the sample was drawn on 24.10.2011, the complaint had to be filed within a period of one year as per the mandate of Section 77 of the Act of 2006. Even the first presentation of the complaint in the court of CJM Nagaur, (6 of 7) [CRLMP-545/2020] (who did not have jurisdiction) was done on 12.09.2014 by which time also, the limitation for filing complaint had lapsed. The language of Section 77 of the Act of 2006 is mandatory and the Court is prohibited from taking cognizance if the complaint is filed after expiry of period of one year from the date of commission of offence. Even if it is assumed that the date of commission of offence would be counted from the date of receipt of the report of the Food Analyst i.e., 03.11.2011, then also, the complaint had to be filed within a period of one year 03.11.2011 or latest by one year from the date of report of Referral Food Laboratory, Ghaziabad which was issued on 10.09.2012. Even if the factual matrix regarding the date of commission of offence is stretched with reference to the report of the Referral Food Laboratory, Ghaziabad dated 10.09.2012, on which date the fact regarding the food sample being unsafe was affirmed then also, the complaint had to be filed within one year of the said report. However admittedly, first presentation of the complaint was made on 12.09.2014 which was also well beyond the mandatory period of 12 months provided under Section 77 of the Act of 2006. It is not in dispute that no order for extension of time for filing complaint was issued by the Commissioner of Safety. Thus, it is manifest that the complaint under challenge was filed well beyond the mandatory period of limitation. Hence, the trial court could not have taken cognizance as, neither the complaint was in limitation nor did the Commissioner, Food Safety/competent authority grant any extension for filing of the complaint under proviso to Section 77 of the Act of 2006.

(7 of 7) [CRLMP-545/2020] As a consequence, the proceedings of the criminal case No.145/2015 being barred by limitation cannot be allowed to continue. The misc. petition thus, succeeds and is allowed. Accordingly, the proceedings of the criminal case No.145/2015 instituted against the petitioner instituted in the court of Addl. Chief Judicial Magistrate, Merta are quashed. Stay application is also disposed of.

(SANDEEP MEHTA),J 9-Sudhir Asopa/-

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