

M. Mahesh Kumar vs The State Of Telangana on 27 September, 2024

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THE HONOURABLE SRI JUSTICE E.V. VENUGOPAL

CRIMINAL PETITION No.7131 OF 2020

ORDER :

This Criminal Petition is filed seeking to quash the proceedings in C.C.No.2 of 2018 as against the petitioners/accused Nos.1 to 3 on the file of the learned Judicial First Class Magistrate, at Jogulamba, Gadwal (for short, "the trial Court").

2. Heard Mr.Leoraj, learned counsel for the petitioners and Mr.E.Ganesh, learned Assistant public Prosecutor appearing for respondent-State.

3. The brief facts of the case are that on 17.04.2017, at about 3:00 P.M., respondent/complainant and his office sub-ordinate inspected M/s.Aditya Birla Retail Limited, at More Super Market, D.No.1-4-35/2, Rajiv Circle, Gadwal. It is stated that at the time of inspection, petitioner/accused No.1 was found transacting the business and on enquiry, he disclosed that he is the FBO & Manager of the above said premises. Then, the Food Safety Officer, secured the witness viz., G.Madhusudhan and inspected the said premises. It is stated that on inspection, Mango fruits weighing approximately 20 Kgs were found in loose condition. It is further stated that they were kept in plastic crates and stored along with other fruits. The FBO, stated that the said stock was meant for sale to public for human consumption. It is submitted that on suspicion of adulteration, the Food Safety Officer purchased 12 Mangoes from the said stock and paid costs of Rs.140/-. He issued notice in Form-V A to the Food Business Operator/accused No.1 and informed him that the purchased sample shall be sent to the Food Analyst, for the purpose of analysis. It is stated that the purchased sample was divided into four equal parts, each part having three mangoes placed in clean, dry, empty plastic containers and tightened the caps sealed with sealing wax. A label bearing code No.030/06645/2017 was pasted on each sample container. The label was acknowledged by the FBO and each sample container was wrapped with fairly thick brown paper and pasted with gum. The paperslip issued by the Designated Officer, Jogulamba, Gadwal District bearing code number was pasted on each sample container from bottom to top running around the same container. Then the Food Safety Officer obtained the signatures of FBO and the witness on each sample container in such a manner that both the paperslip and brown paper carries a part of signatures of FBO and witness. The Food Safety Officer sealed each sample container at four distinct places, one at top, one at bottom and remaining sides of the sample containers covered with knots. The Food Safety Officer, drafted the panchanama and incorporated all the sampling procedures laid down as per the provisions of Food Safety and Standards Act, 2006. (for short, "the Act"). It is stated that the Food

Safety Officer issued notice as per Section 47(1)(c)(iii) of Act to the vendor stating that he has an opportunity to send one part of the sample to any other NABL accredited laboratory for analysis.

4. On 17.04.2017, one part of the sample along with a copy of Form VI Memorandum and another copy of Form-VI memorandum having specimen seal was handed over separately to the Food Analyst at the State Food Laboratory, Hyderabad by hand. The remaining three parts of the sample along with three copies of Form VI memorandum in a seal packet was handed over to the Designated Officer, Jogulamba Gadwal District under acknowledgment for safe custody. Upon analysis, the Food Analyst sent his report in Form-B vide report bearing No.47/2017-18 dated 29.04.2017 to the Food Safety Designated Officer, who received it on 06.05.2017 and forwarded it to the Food Safety Officer. After receipt of the Food Analyst report, Food Safety Designated Officer, has sent a notice along with the copy of the Analytical Report to the accused for sending another part of the sample to the referral laboratory as required under Section 46(4) read with Rule 2.4.6 of the Food Safety and Standards Rules, 2011 (for short, "the Rules"). As opinion of the Food Analyst as per the Form-B report is extracted as under:-

"I am of the opinion that the sample contains Calcium Hydroxide on the surface. Hence, it is injurious to health. It is unsafe as per 3.1 zz of the Act. Presence of Calcium Hydroxide on the surface of the fruit indicates the use of Calcium Carbide for ripening purpose. It is the violation of 2.3.5 of (Prohibition and Restrictions on Sales) Regulations, 2011. Hence, it is unsafe and prohibited"

5. On 18.05.2017, the Food Safety Officer submitted all the relevant documents to the Designated Officer, Mahabubnagar District and the same were submitted to the Commissioner of Food Safety, Hyderabad for further orders. The Commissioner, upon perusing the detailed report, issued orders for prosecution under Section 30(2)(e) of the Act vide Rc.No.1134/FSS-3/2017, dated 29.07.2017, which is received by the FSO on 18.08.2017 and a complaint was filed before the Court for the offences punishable under Section 3(1)(zz)(iii) and 26(2)(i) of the Act, 2006 read with Regulation 2.3.5 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011 punishable under Section 59(i) of the Act and the same was taken cognizance on 18.01.2018.

6. Learned counsel for the petitioners submitted that the Food Analyst Report bearing No.47/2017-18 dated 29.04.2017 was not sent to the petitioners and respondent had not filed any proof to indicate the service of report on petitioner No.1 along with the complaint. He further stated that the method adopted by the Food Analyst is not an approved one and the Food Analyst ought to have analysed the fruits by adopting the method of Indian Pharmacopoeia (IP). Learned counsel for the petitioners further stated that in similar circumstances, this Court vide common order dated 25.09.2024 in Criminal Petition Nos.7888 and 7925 of 2019 quashed the proceedings initiated against the petitioners therein. He relied upon the decisions passed by the Hon'ble Supreme Court in A. Pavani Vs. State of Andhra Pradesh 1, M.Y.Jagadesh and others Vs. State of Andhra Pradesh and another 2, Mehmood Ul Rehman Vs. Khazir Mohammad Tunda and Others 3 and sought to quash the impugned proceedings.

7. Opposing the same, learned Assistant Public Prosecutor submitted that unless and until a full-fledged trial is conducted, the truth cannot be elicited. Therefore, he seeks to dismiss the Criminal Petition.

8. Having regard to the submissions made by both the learned counsel, upon perusing the material available on record and the decision passed the Hon'ble Supreme Court in M/s.Neeharika Infrastructure Private Limited Vs. State of Maharashtra and Others 4, this Court is of the opinion that the Court while quashing the F.I.R., by exercising power under Section 482 of Cr.P.C., has to consider whether the allegations in the F.I.R disclose the commission of a cognizable offence or not; the Court is not required to consider on merits, whether or not, the merits of the 2006 (2) ALD (Crl.) 204 (AP) 2 2006 (2) ALD (Crl.) 375 (AP) 3 (2016) 1 Supreme Court Cases (Cri) 124 4(2021) 4 S.C.R. 1044 allegations make out a cognizable offence and the Court has to permit the investigating agency/police to investigate the allegations in the F.I.R. Hence, this Court is not inclined to entertain the Criminal Petition at this stage and the Criminal petition is liable to be dismissed.

9. Accordingly, this Criminal Petition is dismissed. However, the appearance of the petitioners, before the trial Court, is dispensed with on each and every adjournment. However, the petitioners shall appear before the trial Court as and when specifically required. The Petitioners are at liberty to avail alternate remedies, as available under law, including filing an application under Section 239 of Cr.P.C., if not filed yet.

Miscellaneous Petitions, pending if any, shall stand closed.

_____ E.V.VENUGOPAL, J Date: 27.09.2024 ESP