

Bose Mathew vs The State Of Kerala on 4 March, 2022

Author: K.Haripal

Bench: K.Haripal

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE K.HARIPAL
FRIDAY, THE 4TH DAY OF MARCH 2022 / 13TH PHALGUNA, 1943
CRL.MC NO. 5738 OF 2021
AGAINST THE ORDER IN CC 430/2008 OF JUDL. MAGI. OF FIRST CLASS-III, KOTTAYAM

PETITIONER/ACCUSED No. 2:

BOSE MATHEW,
AGED 65 YEARS
S/O.P.M.MATHAI, PANAPARAMBIL, PER00R, KOTTAYAM DISTRICT-686 637.
BY ADVS.
K.M.FIROZ
AGI JOSEPH

RESPONDENT/STATE-COMPLAINANT:

- 1 THE STATE OF KERALA,
REPRESENTED THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.
- 2 THE FOOD INSPECTOR,
LOCAL HEALTH AUTHORITY, CHANGANACHERRY CIRCLE, CHANGANACHERRY,
KOTTAYAM DISTRICT-686 101, (NOW HAVING OFFICE AT FOOD SAFETY CIRCLE
OFFICE, 5TH FLOOR, REVENUE TOWER, CHANGANASSERY, CHANGANACHERRY,
KOTTAYAM-686 101).
BY ADV ADDL.DIRECTOR GENERAL OF PROSECUTION

ADGP - SRI. GRACIOUS KURIAKOSE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04.03.2022, THE COURT
ON THE SAME DAY PASSED THE FOLLOWING:

Crl. M. C. NO. 5738 OF 2021

ORDER

Petitioner is the 2nd accused in C.C. No. 430 of 2008 on the file of the Judicial First Class Magistrate's Court-III, Kottayam where he along with five others were alleged to have committed offences punishable under Sections 2(1a) (m), 7(1), 16(1) (a) of Prevention of Food Adulteration Act, hereinafter as referred to as the Act, read with Rule 5 of Appendix B of A- 32 of the PFA Rules, 1955.

2. The proceedings were initiated by the 2nd respondent, Food Inspector after taking three bottles of mineral water from the outlet run by the 1st accused. It is contended that when examined through the Government Analyst, it did not conform to the standards prescribed and thus criminal proceedings were initiated. The 1st accused is the vendor of the shop, the 2nd accused, the petitioner is the person who had allegedly supplied the items to the 1st accused and accused Nos. 3 to 6 were said to be the manufacturers. The case was taken on file as C.C. No. 862 of 2000. By judgment dated 31.10.2008 all accused except the 2nd accused were found not guilty and were acquitted under Crl. M. C. NO. 5738 OF 2021 Section 248(i) of the Cr.P.C. The case against the petitioner was split up and refiled as C.C. No. 430 of 2008 and thereafter removed to the register of Long Pending cases. Now the case stands registered as L.P. No. 91 of 2020. The petitioner has approached this Court under Section 482 of the Cr.P.C. for quashing the proceedings on the ground that all the co-accused stand acquitted.

3. I heard the learned counsel for the petitioner and also the learned Additional Director General of Prosecution representing the respondents.

4. The facts are not in dispute. The proceedings were initiated by the 2nd respondent alleging the offences stated supra. One of the three mineral water bottles purchased from the shop of the 1st accused was sent for examination by the Government Analyst who had reported that it did not conform to the standards prescribed for the item and that was how the proceedings were initiated. Six witnesses were examined on the side of the prosecution when other accused had faced trial. Crl. M. C. NO. 5738 OF 2021 Exts. P1 to P24 were also marked. Thereafter one witness was examined as DW1 and Exts. D1 and D2 were marked and by Annexure A2 judgment all accused except the petitioner were found not guilty and exonerated. Petitioner strongly relies on Annexure- A2 judgment and submits that he is entitled to get the benefit of the same. According to him, even if the petitioner is put to trial, the possibility of entering a conviction is remote.

5. I have ascertained from the learned Additional Director General of Prosecution, whether any appeal has been preferred against the said verdict. According to him, that has not been challenged. That means, Annexure-A2 judgment dated 31.10.2008 has become final. In the circumstances, the petitioner is entitled to draw inferences based on the reasoning adopted by the learned Magistrate in acquitting the co-accused.

6. The learned Magistrate, on evidence, has found that the bottles were not sealed at the time when seized by the 2nd respondent. Annexure A3 also has been relied on. In fact, the prime consideration in acquitting the co-accused was for taking Crl. M. C. NO. 5738 OF 2021 mineral water bottles without being sealed. No doubt, in proceedings under the Act, when samples are drawn, it is

peremptory that it should be taken in a foolproof condition. It being a highly technical offence, unless all the procedural formalities are followed in letter and spirit, that would result in exoneration of the culprit. Here, the bottles were not sealed and the accused had highlighted the above lacuna on the part of the complainant.

7. Moreover, relying on Ext. D2 certificate of analysis issued by the Central Food Laboratory in respect of the same product having the same batch number, it was found that the sample conformed to the standards of mineral water laid down under item No. A, 32 of Appendix B of PFA Rules. This aspect also was considered by the learned Magistrate while acquitting the co-accused.

8. As rightly pointed out by the learned counsel for the petitioner, even if the petitioner is put to trial, the above-stated positions cannot change. As stated earlier, Annexure-A2 has CrI. M. C. NO. 5738 OF 2021 become final. In the circumstances, there is little scope for successful prosecution of the petitioner and it would be a futile exercise in trying the petitioner.

9. On this consideration, the proceedings against the petitioner in L.P. No. 91 of 2020 on the file of the Judicial First Class Magistrate's Court-III, Kottayam are quashed and the petitioner shall stand exonerated.

The Criminal Miscellaneous Case is allowed as above.

Sd/-

K. HARIPAL JUDGE RMV/02/03/2022 PETITIONER ANNEXURES Annexure A1 TRUE COPY OF THE COMPLAINT DATED 06.10.1999 UNDER SECTION 20 OF THE PFA ACT 1954 WITH PARTICULARS OF CHARGE.

Annexure A2 TRUE COPY OF THE JUDGMENT DATED 31.01.2008 PASSED BY THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE III, KOTTAYAM IN CC NO.862 OF 2008.

Annexure A3 TRUE COPY OF THE MAHAZAR DATED 06.01.1999.

TRUE COPY P.A.TO JUDGE