

# **Mr P V G Srinivasa Rao, Warangal Dist. vs State Of Ts., Rep. By P.P. on 19 September, 2022**

**Author: D.Nagarjun**

**Bench: D.Nagarjun**

THE HON'BLE DR. JUSTICE D.NAGARJUN

CRIMINAL PETITION No.4422 of 2017

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure by the petitioner-accused to quash C.C.No.996 of 2015 on the file of learned VI Additional Judicial First Class Magistrate at Warangal, the cognizance of which was taken for the offences under Section 3(1)(zz)(VII), 26 (2)(i) and 27

(i) read with Section 3.1 2(1)(6) of Food Safety Standards and Food Additives Regulations, 2011 punishable under Section 59

(i) of Food Safety and Standards Act, 2006.

2. The facts in brief as per the complaint filed by the respondent - Food Safety Officer, Warangal are as under:

a) On 02.08.2013 at 5.00 PM the Respondent - Food Safety Officer, Warangal visited M/s. Reliance Super Market and Reliance Fresh Limited, D.No.7-7-348, Machili Bazar, Hanumakonda, Warangal District and found the petitioner-

accused was operating the business. The respondent - Food Safety Officer purchased 2 kilograms of vegetable biryani, which was cooked and being sold by paying Rs.240/- and obtained cash receipt. The respondent has served notice in Form VA to the petitioner and informed that he will be sending the sample of said biryani to the food analysis. He has divided the biryani, which was divided into four equal parts of 500 grams each and placed in a dry plastic container and then added 2 ml of formalin and packed tightly as per the procedure and put the labels.

b) A Panchanama was also drafted in the presence of the witnesses. The petitioner was informed vide notice dated 02.08.2013 that as per Section 27 (1)(c)(iii) and Rule 2.4.5 of the Food Safety and Standards Act, 2006, there is a provision to refer the remaining part of the sample to accredited laboratory, if the petitioner desires by paying analysis charges after making an application to the Food Safety Officer, Warangal. However, the petitioner has not availed such an opportunity given to him. The respondent has sent one of the samples including Form VI to Food Analysis by registered post on 03.08.2013 i.e., on the very next date of purchasing biryani and also sent the required

documents to him.

c) On 03.08.2013 itself the Food Safety Officer has deposited second and third samples before the Food Safety Designated Officer, Warangal. The fourth sample was also deposited before the Food Safety Designated Officer on 12.08.2013. However, the petitioner has not availed an opportunity of sending the sample to accredited laboratory. The food analyst after analyzing the food sample has sent a report dated 14.08.2013 vide report bearing No.599/2013 in Form-B to the Food Safety Designated Officer, which was received on 19/08/2013 stating that the sample contains added synthetic colour and it is unsafe.

d) On 19.08.2013 the Food Safety Designated Officer, Warangal has issued a notice to the petitioner enclosing the report of the analysis intimating the petitioner to prefer an appeal in case if he is aggrieved within 30 days. A detailed report was submitted to the Commissioner, Food Safety, Telangana by the Food Safety Designated Officer and finally prayed the Court to take cognizance of the offence against the petitioner-accused for the offence under Section 3(1)(zz)(VII), 26 (2)(i) and 27 (i) read with Section 3.1 2(1)(6) of Food Safety Standards and Food Additives Regulations, 2011 punishable under Section 59 (i) of Food Safety and Standards Act, 2006. Aggrieved by the same, the petitioner-accused has filed the present criminal petition on the following grounds:

i) A reading of Section 66 of the Food Safety and Standards Act, 2006, it mandates arraying of the Company as an accused but in the complaint the Company is not made as an accused.

ii) When statute prescribes a period of limitation, the complaint shall be filed within limitation, failing which the complaint is not maintainable. The complaint filed by the respondent is hopelessly barred by limitation.

iii) When no standards have been prescribed for the vegetable biryani, drawing sample, sending the same for analysis and filing of the complaint is unwarranted.

iv) There is no averment in the complaint as to the role of the petitioner in committing the alleged offence.

v) It is settled principle that sanction for initiation of prosecution against the accused has to be obtained within four months but in the case on hand, such sanction was obtained after a period of one year.

vi) Arraigning of a company as an accused is imperative but in the case on hand, the Company is not made as accused.

vii) Taking cognizance of the offence against the petitioner by the learned trial Court itself is illegal.

4. Now the point for determination is:

"Whether the proceedings against the petitioner-accused in C.C.No.996 of 2015 on the file of learned VI Additional Judicial First Class Magistrate at Warangal, can be quashed under Section 482 of the Code of Criminal Procedure?

5. Heard Sri S.Leo Raj, learned counsel for the petitioner- accused and Sri S.Ganesh, learned Assistant Public Prosecutor.

6. There is no dispute from the petitioner-accused that the respondent - Food Safety Officer has visited M/s. Reliance Super Market and Reliance Fresh Limited, D.No.7-7-348, Machili Bazar, Hanumakonda, Warangal District on 02.08.2013 at 5.00 PM and purchased pre-cooked biryani weighing about 2 kilograms by entertaining doubt that it does not contain the standards prescribed under the Food Safety and Standards Act. The respondent has sent the samples to the prescribed laboratory after following the due procedure and the analysis report discloses that the sample of biryani was not safe for consumption on account of adding synthetic colour and rest of the samples were deposited by the Food Safety Officer, one of which could have utilized by the petitioner for sending the sample to the accredited laboratory and one of the other sample could have been utilized for preferring appeal after 30 days of receipt of the analyst report. In any case, the petitioner has not utilized those two opportunities.

7. The main contention of learned counsel for the petitioner is that the complaint is not filed within limitation as prescribed and thereby the criminal proceedings against the petitioner in this case can be quashed on account of filing of the complaint beyond limitation.

8. The Respondent - Food Safety officer has collected sample on 02.08.2013 stating that the sample contains synthetic colour and analyst report was received on 14.08.2013 and the respondent has obtained sanction for initiating prosecution on 19.10.2015 and accordingly the complaint is filed. Section 77 of the Food Safety and Standards Act, 2006 reads as under:

"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."

9. As per the above provision of law, the Court shall not take cognizance of the offence, if it is filed after expiry of one year of the date of commission of offence. In the case on hand, it is admittedly the analyst report was received on 14.08.2013. Therefore, the complaint should have been filed within one year as per Section 77 of the Food Safety and Standard Act, which falls on or before 13.08.2014. The complaint was admittedly filed on 19.10.2015, which is beyond the period of one year from the date of offence.

10. Learned Assistant Public Prosecutor representing Food Safety Officer has submitted that the time to reckon the limitation starts from the date of receiving of sanction, which is 05.02.2015 and thus, from the date of receiving of permission for initiating prosecution, the complaint is well within limitation. On the other hand, it is submitted by learned counsel for the petitioner that the analyst report was received from the laboratory stating that the food sample contains artificial synthetic colour and thereby not safe for consumption and from that onwards the offence is stated to have been committed and as such limitation has to be calculated from the date of receipt of analyst report.

11. Obtaining of sanction by the respondent - Food Safety Officer for initiating prosecution is internal affair of the department of the respondent No.2 i.e., government wing. There is no rule or procedure that from the date of receiving of permission for initiating prosecution, the limitation starts to run. The respondents came to know that the sample is not in accordance with the standards only on receipt of analysis report. In case, the report is positive from the analyst, then there could not have been any offence and thereby the report, which is received against the petitioner is crucial in order to determine whether offence is committed and if so, from which date the offence is committed.

12. Learned counsel for the petitioner has submitted that maximum period of four months has to be taken to obtain sanction from the government to initiate prosecution against the petitioner and in support of this contention, he relied upon a ratio in *Manzoor Ali Khan v. Union of India and others*<sup>1</sup>, wherein it was held as follows:

1 (2015) 2 Supreme Court Cases 33 "15. Time-limit of three months for grant of sanction for prosecution must be strictly adhered to.

However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office."

13. Therefore, considering the ratio laid down in the above said citation, the complaint filed before the Court is beyond limitation and therefore, on this ground alone the petition can be allowed and case against the petitioner-accused can be quashed.

14. The other ground taken by the learned counsel for the petitioner is that the respondent has not added the Company as one of the accused and relied upon an authority *Sharad Kumar Sanghi v. Sangita Rane*<sup>2</sup>, wherein it was held by the Hon'ble Supreme Court as follows:

"11. 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 2 (2015) 12 Supreme Court Cases 781 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. It has been so held by a three-Judge Bench in *Aneeta Hada v. Godfather Travels and Tours Private Limited*<sup>6</sup> in the context of Negotiable Instruments Act, 1881."

15. In order to fasten vicarious liability in respect of the offence committed by the Company, the law is very much settled. Any prosecution initiated against any employee or the manager or the person, who is incharge of the Company will not sustain unless, the company is made as one of the accused. In the case on hand, the respondent Food Safety Officer has directly made the petitioner as the accused designating him as Manager of the Company. The respondent should have made M/s. Reliance Super Market and Reliance Fresh Limited as accused No.1 and petitioner as Accused No.2. Not only that, the respondent while making the Company as one of the accused, should also mention as to how and why the other accused are vicariously liable. There could be several persons working in the M/s. Reliance Super Market and Reliance Fresh Limited. Only the person or persons, who are in-charge and are responsible for the day to day affairs of M/s. Reliance Super Market and Reliance Fresh Limited can only be fastened the criminal liability. In the case on hand, neither the company is made as accused nor there is any mention as to how the petitioner is responsible for the day to day affairs of the company.

16. It is true that the petitioner is only business operator working in M/s. Reliance Super Market and Reliance Fresh Limited, which is a body corporate registered under the Company Act. The petitioner is working as an employee in M/s. Reliance Super Market and Reliance Fresh Limited. Therefore, in view of the principle laid down in the above said authority and also considering the facts of the case on hand, it is clear that the offence is committed not by the petitioner but by the Company and hence, without making Company as prime accused, the Manager cannot be made as an accused.

17. It is also submitted by the learned counsel for the petitioner that taking cognizance of the case itself is bad as there is no standard prescribed under the Food Safety Standards Act, 2006 in respect of standards of biryani. Therefore, according to the learned counsel for the petitioner, unless standards are fixed under the statute, the respondent cannot obviously allege that the petitioner has violated the rules by not following the standards. On going through the Food Safety Standards Act, it is clear that there are no standards fixed for biryani either in the statute or rules and thereby the respondent - Food Safety Officer cannot allege that the petitioner has not maintained the standards of biryani. The learned counsel for the petitioner has relied upon an authority in *Hindustan Lever Limited v. Food Inspector and another*<sup>3</sup> wherein the Hon'ble Supreme Court ruled as under:

"Any prosecution in regard to an article for which no standards have been laid, applying the standards for other articles would not be sustainable."

18. Accordingly the criminal petition is allowed and the proceedings in C.C.No.996 of 2015 on the file of learned VI Additional Judicial First Class Magistrate at Warangal against the petitioner-accused are hereby quashed.

As a sequel, the miscellaneous Petitions, pending if any, shall stand closed.

\_\_\_\_\_ DR. D.NAGARJUN, J Date: 19.09.2022 AS 3 (2006) 1 Supreme  
Court Cases (Crl) 288