

Veeramaneni Jithendher vs The State Of Telangana on 8 April, 2024

THE HONOURABLE SMT. JUSTICE K. SUJANA

CRIMINAL PETITION No.11248 of 2023

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') to quash the proceedings against the petitioners/accused Nos.1 and 2 in C.C.No.2477 of 2023, on the file of the learned Judicial Magistrate of First Class, Bhainsa, registered for the offences punishable under Sections 273, 336 read with 34 of Indian Penal Code, 1860 (for short 'the IPC') and Section 59 (iii) of the Food Safety and Standards Act, 2006 (for short 'the Act').

2. Brief facts of the case are that respondent No.2/de facto complainant lodged a complaint before the Police, Basara Police Station, Nirmal District against the petitioners stating that petitioner No.1 is the contractor of S.S. Caterings Mess and petitioner No.2 is the Mess In-charge of Basar IIIT i.e., Rajeev Gandhi University of Knowledge Technologies, Basar (for short 'RGUKT'). On 15.07.2022, the IIIT Basar E-1 and E-2 students ate egg fried rice in lunch time at RGUKT S.S. Catering Mess. On the same day at 03:30 p.m., when around 36 students of E-1 and E-2 were suffered from stomach ache, SKS,J head ache and vomits, some students were shifted to IIIT Basar Hospital and some students were referred to Nizamabad Hospital for treatment. Thereafter, he came to know that the petitioners negligently prepared the quality less food and supplied to the students. Basing on the said complaint, Police registered a case in Crime No.79 of 2022 and after completion of investigation, they filed charge sheet before the Judicial Magistrate of First Class, Bhainsa.

3. Heard Sri K. Upendar Reddy, learned counsel appearing on behalf of the petitioners as well as Sri S. Ganesh, learned counsel appearing on behalf of respondent No.1-State. Though notice served upon respondent No.2, none appeared on his behalf.

4. Learned counsel for the petitioners submitted that on the date of incident in the menu, there is no egg fried rice, but only boiled egg is there. In the contract agreement also there is no menu of egg fried rice, but some students, who participated in dharna and agitation, forced the petitioners to prepare egg fried rice and taken lunch at 03:30 p.m., instead of 12:30 p.m., to 02:30 p.m. The students, who have vomited, had taken some snakes in the canteen and thereafter, they SKS,J had taken egg fried rice, which was forcibly got prepared after lunch timings due to which the students, who had taken lunch in the odd timings, got vomited.

5. Learned counsel for the petitioners further submitted that half of the seized food samples and vomit samples were sent to Forensic Science Laboratory, Hyderabad for analysis and remaining half of the seized food and vomit samples were sent to RIMS, Adilabad for micro biology culture and sensitivity report. According to the FSL, Hyderabad, there is no poisonous substance found in the samples. The RIMS, Adilabad opined that, the isolated organism is Klebsiella Pneumonia. No toxin

producing bacteria is isolated. Learned counsel further submitted that Klebsiella Pneumonia can be associated with diarrhea like illness. But proper hand hygiene and washing of vegetables before preparing food can prevent the illness. As per the scientific study, in the stored food and stored water also Klebsiella pneumonia is found.

6. Learned counsel for the petitioners further submitted that since ten years the petitioners were doing catering business in Government Departments and Hostel mess and there is a contract to that effect and the same is continuing.

SKS,J As per the Government Contract tenders, if any criminal cases are registered against the contractors, they are not eligible for participating in the tenders. Because of this no fault liability, the petitioners are not in a position to participate in the tenders and the allegations against the petitioners are vague, as such prayed the Court to quash the proceedings against them.

7. On the other hand, learned Assistant Public Prosecutor appearing for respondent No.1 submitted that the report of RIMS, Adilabad shows that if the food is prepared without washing the vegetables, the bacteria will develop which will cause diarrhea. Therefore, the same requires trial and prayed the Court to dismiss the petition.

8. Having regard to the rival submissions made by both the learned counsel and having gone through the material available on record, to quash the proceedings under Section 482 of Cr.P.C, the Court has to see whether the averments in the complaint prima facie shows that it constitute the offence as alleged by the Police.

9. At this stage, it is pertinent to note the Judgment of the Hon'ble Supreme Court in State of Madhya Pradesh vs. SKS,J Surendra Kori 1, wherein in paragraph No.14 it is held as follows:

"The High Court in exercise of its powers under Section 482 Cr.P.C. does not function as a Court of appeal or revision. This Court has, in several judgments, held that the inherent jurisdiction under Section 482 Cr.P.C., though wide, has to be used sparingly, carefully and with caution. The High Court, under Section 482 Cr.P.C., should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of wide magnitude and cannot be seen in their true perspective without sufficient material."

10. As seen from the record, the allegations against the petitioners are that they prepared egg fried rice and the same was unhygienic, due to which, 36 students got vomited. Perusal of FSL report reveals that there is no poisonous substance in the food and the RIMS, Adilabad report reveals that Klebsiella Pneumonia was found in the samples and the same can be associated with diarrhea like illness. But, proper hand hygiene and washing of vegetables before preparing food can prevent the illness. Whether the non-hygenic condition is (2012) 10 Supreme Court Cases 155 SKS,J not a proper explanation and the report given by RIMS is not proper, whether the said bacteria is harmful

or not can be decided after full-fledged trial only.

11. In view of the above discussion as well as the law laid down by the Hon'ble Supreme Court in State of Madhya Pradesh (supra), this Court does not find any merit in the criminal petition to quash the proceedings against the petitioner and the same is liable to be dismissed.

12. Accordingly, the criminal petition is dismissed.

Miscellaneous applications, if any pending, shall also stand closed.

_____ K. SUJANA, J Date: 08.04.2024 SAI