

M/S. Chenguang Biotechp Ltd vs The State Of Telangana on 1 June, 2021

Author: K. Lakshman

Bench: K. Lakshman

THE HONOURABLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION No.4588 OF 2020

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. to quash the order dated 05.03.2020 in Crl.M.P.No.71 of 2020 in C.C.No.639 of 2019 passed by the II Additional Judicial Magistrate of First Class, Khammam and confirmation order dated 26.06.2020 passed by the Principal Sessions Judge, Khammam in Crl.R.P.No.29 of 2020.

2. The petitioner herein is Accused No.4 in C.C.No.639 of 2019. The offences alleged against the petitioner herein are under Sections 3(1)(z)(iii) 21(1), 26(2)(i) and 59(i) of the Food Safety and Standards Act, 2006 (for short 'the Act').

3. The petitioner herein claiming to be owner of the seized property i.e., 99,629 bags of red chilli seeds (as per the seizure report, 78,857 bags are available physically, each bag containing 40 kgs) filed a petition under Section 451 Cr.P.C vide Crl.M.P.No.71 of 2020 in C.C.No.639 of 2019 seeking release of the seized stock and the II Additional Judicial Magistrate of First Class, Khammam vide order dated 05.03.2020 dismissed the said petition. Aggrieved by the said order, the petitioner herein filed Revision petition vide Crl.R.P.No.29 of 2020 and the Principal Sessions Judge, Khammam vide order dated 26.06.2020 also dismissed the said Revision petition. Therefore, the petitioner herein filed the present petition under Section 482 Cr.P.C.

4. The petitioner herein/A-4 filed the petition under Section 451 of Cr.P.C seeking release of the subject stock on the ground that it is the owner of the said stock and that the respondent did not follow the procedure laid down under the Act while conducting search, drawing samples and while seizing the subject stock. The subject stock was kept in Swarna Bharathi Cold Storage Private Limited, Pallipadu Village, Konijerla Mandal, Khammam District. It is also contended by the petitioner that the 1st respondent did not follow the rules and regulations contemplated under the Act. It has paid substantial amount towards rent to Accused No.2/cold storage. Therefore, on the said ground, the petitioner sought release of the seized stock.

5. The 1st respondent has opposed the said petition on the ground that it has followed the procedure laid down under law while conducting search, drawing samples and while seizing the stock and there is no procedure irregularity committed by it. He further submits that the said aspect has to be looked into in the very calendar case itself, but not in the petition filed by the petitioner seeking

release of the seized stock under Section 451 of Cr.P.C. The learned Magistrate has dismissed the said petition vide order dated 05.03.2020 on the ground that the seized stock i.e., chilli seeds are not safe for human consumption as it contains toxins and it is a preserved product. It also observed that if the seized stock is released, the petitioner is intending to sell the same for human consumption, which is unsafe and releasing the stock at this stage is nothing but playing with the public health. It is further observed by the learned Magistrate that the petitioner itself admitted that it has lifted some of the bags from the cold storage after the alleged seizure. As per the seizure report, though 99,629 bags were seized, there are only 78,857 bags available in the cold storage. Learned Magistrate also observed that though the respondents have admitted the same, this is not the stage to decide the count of the bags in the absence of the material on record.

6. Learned Principal Sessions Judge, Khammam vide order dated 26.06.2020 dismissed the Revision petition filed by the petitioner herein vide Crl.R.P.No.29 of 2020 observing that the pleadings before the trial Court show that the life of the seized stock is only 48 months and that there is no material on record to show when the stock was harvested and processed before it was kept in the cold storage. It also observed that with the said admission of the petitioner that after 48 months, the chilly seeds become unsafe, the 48 months has to be commenced from the date of harvest and their separation from the processing method and that when the records are silent with regard to the date of harvest and process before they were stored, this Court cannot determine such stock is still safe for release. Learned Principal Sessions Judge has also referred to the procedure to be followed for the purpose of conducting search, drawing samples and seizing of the stock. With the said discussions and observations, the learned Revision Court held that in the absence of material with regard to shelf life of the seized stock, the release of the seized stock results in great danger to the public health. It has further observed that though the inspection and seizure of the Food Safety Officer was widely published in the news papers in the year 2016 and though the Revision petitioner has good source of information about the inspection and seizure, it has filed the present petition after a lapse of four years. Thus, there are lapses on the part of Food Business Operator in not asking for release of the stock. With the said findings, learned Revisional Court dismissed the Revision Petition filed by the petitioner.

7. Learned counsel for the petitioner would submit that both the learned II Additional Judicial Magistrate of First Class and learned Principal Sessions Judge, Khammam erred in dismissing the petition filed by the petitioner seeking release of the stock. By referring to the notification issued by the Ministry of Health and Family Welfare (Food Safety and Standards Authority of India) vide F.No.2-15015/30/2010 he would submit that there is no 'shelf life' for the red chilli seeds. He would further submit that since the red chilli seeds are by- products, there is no 'shelf life' prescribed in the said regulations. Seized stock was kept in the Swarna Bharathi Cold Storage Ware House Private Limited, Pallipadu Village, Konijerla Mandal, Khammam District and the petitioner has paid Rs.2,50,00,000/- as rent on half yearly basis to Accused No.2 from four years. The petitioner has to pay balance amount of nearly 25 lakhs towards rent for the year, 2020 by December. He further submits that if the stock is released subject to any surety, the losses can be reduced in pandemic period as there is some demand in the market as of now. According to the petitioner, the value of the seized stock is about Rs.5 crores. With the said submissions, learned counsel for the petitioner sought to release the seized stock by quashing the above said order passed by the learned

Magistrate, confirmed by the learned Principal Sessions Judge, Khammam.

8. Learned Public Prosecutor representing the 1st respondent, on instructions, would submit that the products seized are red chilli seeds which will be used after processing. Referring to regulation 2.9.3 of the above said Regulations, learned Public Prosecutor would submit that Chilies and Capsicum (Lal Mirchi) whole -means the dried ripe fruits or pods of the Capsicum annum L & Capsicum frutescent L. The pods shall be free from mould, living and dead insects, insect fragments, rodent contamination. The product shall be free from extraneous colouring matter, coating of mineral oil and other harmful substances. Chilies and Capsicum (Lal Mirchi) powder means the powder obtained by grinding clean ripe fruits or pods of Capsicum annum L & Capsicum frutescens L. It shall be free from mould, living and dead insects, insect fragments, rodent contamination. The product shall be free from dirt, extraneous colouring matter, flavouring matter, mineral oil and other harmful substances. He would further submit that though in the said regulation, 'shelf life' of the seized stock is not mentioned, but as per the food analyst, the sample drawn from the stock contains moulds and salmonella and salmonella is a pathogen which is injurious to health. Hence, it is unsafe. By referring to the same, he also submits that in the event of release of the stock, there is every possibility of the petitioner selling the said stock which is unsafe for public health. He further submits that the petitioner is a Chinese company and admittedly it is Accused No.4 in C.C.No.639 of 2019. With the said submissions, learned Public Prosecutor sought for dismissal of the present petition.

9. The above said facts would reveal that the stocks were seized by the 1st respondent, samples were sent to the food analyst and food analyst submitted his report dated 14.12.2016 opining that the samples contain moulds and salmonella and salmonella contains pathogen which is injurious to human health. Hence it is unsafe. Where as the learned counsel for the petitioner would submit that the stock is kept in the cold storage in order to extend the life of the stock and the period of 48 months does not apply to the stock stored in the cold storage. If stored well, the Chill seeds remain viable for years. With the said submissions, learned counsel for the petitioner contends that the contentions of the 1st respondent and the findings of the learned Magistrate and Revision Court that the shelf life of the seized stock is 48 months is erroneous. The petitioner in paragraph 10 of the grounds of the criminal petition has stated that the report of the Food Safety Officer discloses that the sample do not contain any moulds and salmonella as was made out in the report furnished by the Food Analyst. The said contention would reveal that the report of the Food Safety Officer is contrary to the report submitted by the Food Analyst, Nacharam, Hyderabad vide report No.621/2016 & 2017 dt.14.12.2016.

10. Whether the 1st respondent-Food Safety Officer has followed the procedure laid down under the Act and the Rules and Regulations made therein while conducting search, drawing samples and seizing stocks are the aspects to be considered by the trial Court during the trial in the said CC.No.639 of 2019. They are triable issues. Liberty will be given to the petitioner/A- 4 to take such defence during the trial in the said CC. Neither the petitioner nor the 1st respondent can take such contentions in a petition filed by the petitioner under Section 451 Cr.P.C seeking release of the stocks. But unfortunately, learned Principal Sessions Judge, Khammam has referred to the Regulations and provisions of the Act and gave certain findings in paragraph nos.26, 27, 28, 29, 30

and 31 of the order dated 26.06.2020 in CrI.R.P. No.29 of 2020, holding that notice has not been issued to petitioner/A-4 and samples were drawn in the presence of an employee of the cold storage when the inspection was made. The notice facilitate the owner of the stock to avail the remedies contemplated to him. It also held that the report of the Food Analyst was not placed on record. It further held that it is not possible for the Food Safety Officer to draw samples from each of the bag when multiple number of bags were intended to be inspected, the random collection of samples would suffice the compliance of procedure of collection of samples. The Revisional Court also observed that the pleadings before the trial Court show that the life of the stock was only 48 months. There is no material on record when the stock is harvested, processed and stored in the cold storage. While making such observations and findings, the Revisional Court failed to appreciate that the said findings would certainly influence the trial Court/II Additional Judicial Magistrate of First Class, Khammam who is an inferior Officer to Revisional Court in C.C.No.639 of 2019. Thus, the Revisional Court erred in giving such findings in a revision petition filed by the petitioner challenging an order of the II Additional Judicial Magistrate of First Class, dismissing the petition filed by the petitioner under Section 451 Cr.P.C seeking release of the stocks.

11. The Hon'ble Apex Court in *Sundebhai Ambhalal Desai v. State of Gujarat*¹ and also in several other judgments and this Court in several judgments categorically held from time to time that keeping seized property in custody of the police / (2002) 10 SCC 290 Court will not serve any purpose. The seized property in a crime has to be returned to the owner of the property on satisfying his ownership with regard to the said property and on verification of the documents and also on imposing of certain conditions.

12. It is specifically contended by the learned counsel for the petitioner herein that petitioner has already paid an amount of Rs.2,50,00,000/- as rent on half yearly basis to Accused No.2- cold storage from the last four years for keeping the stock in the cold storage and that the petitioner has to pay balance amount of Rs.25 lakhs towards rent, by December, 2020. According to him, the cost of the seized stock itself is about Rs.5 crores. Therefore, the petitioner had already paid 50% of the amount towards rent in respect of the seized stock. It has filed documents in proof of the same. In the regulations issued by the Ministry of Health and Family Welfare, there is no mention about the 'shelf life' of the red chilli seeds. According to the learned counsel for the petitioner, since the stock was kept in the cold storage, it can be used for years together.

13. In view of the said facts and also considering the principle laid down by the Hon'ble Apex Court in the above said judgment and also the considering the fact that the petitioner has already paid an amount of Rs.2,50,00,000/- toward rent to accused No.2-cold storage, this Court is inclined to grant relief to the petitioner herein. Admittedly, petitioner is a Chinese company represented by its Manager Mr.Zheng Yaofang, who is also a person belonging to China. The learned II Additional Judicial Magistrate of First Class and learned Principal Sessions Judge, Khammam would have considered the said aspects. Therefore, according to this Court, both the Courts have erred in dismissing the petition filed by the petitioner under Section 451 Cr.P.C. seeking release of the seized stock.

14. In view of the above said facts, both, order dated 05.03.2020 passed by the II Additional Judicial Magistrate of First Class and order dated 26.06.2020 passed by the learned Principal Sessions Judge, Khammam confirming the order dated 05.03.2020 are not in appreciation with the law down by the Hon'ble Apex Court and this Court. Therefore, the order dated 05.03.2020 passed in Crl.M.P.No.71 of 2020 in C.C.No.639 of 2019, passed by the II Additional Judicial Magistrate of First Class, Khammam and the confirmation order dated 26.0.2020, passed by the Principal Sessions Judge, Khammam are quashed.

15. Accordingly, this Criminal Petition is allowed. The learned II Additional Judicial Magistrate of First Class is directed to release the seized stock on imposition of certain conditions to its satisfaction.

Miscellaneous petitions pending, if any, shall stand disposed of.

_____ K. LAKSHMAN, J Date: 01.06.2021 dv