
(2014) 11 BOM CK 0074

In the Bombay High Court

Case No : Criminal Application Nos. 230, 231 and 960 of 2012

Aravind Shankar Manegaonkar (Pripietor)

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Evidence Act, 1872 — Section 114

Penal Code, 1860 (IPC) — Section 272, 273, 274, 275, 276

Prevention of Food Adulteration Act, 1954 — Section 13, 13(2), 13(5), 13(5), 14A

Citation : (2014) 4 BomCR(Cri) 613

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Advocate : Sandeep S. Deshmukh, Advocate for the Appellant; S.K. Tambe, APP, Advocate for the Respondent

Judgement

T.V. Nalawade, J.—All the three proceedings are filed under section 482 of Criminal Procedure Code (Cr.P.C.). In all the proceedings reliefs are claimed for quashing of the criminal cases filed against the applicants under the provisions of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act"). The prayer for setting aside the order of issue process is also made. The first proceeding is filed in respect of R.C.C. No. 136/1999, presently pending in the Court of Chief Judicial Magistrate, Jalna. The second proceeding is filed in respect of R.C.C. No. 69/1998 presently pending in the Court of J.M.F.C., Shripur, Dhule and the third proceeding is filed in respect of proceeding bearing No. 380/2010 (Old R.C.C. No. 1735/2001), presently pending in the Court of J.M.F.C., Aurangabad. Both the sides are heard.

2. In the first case, it is contended by the complainant that the applicant/accused was a dealer, agent of one company by name Corn Products at the relevant time and his work involved storing and supplying mixed fruit jam, food item of the company. He had supplied the product to accused No. 1 from where samples were collected by the complainant. Three samples were collected on 19.12.1996

and they were closed glass bottles of 500 grams each. The complainant, Food Inspector, sent one sample to Public Analyst on 20.12.1996. The complainant received report of Analyst, which is to the effect that the sample contains preservative sulfur dioxide and its quantity is 54.65 parts per million (ppm) as against its permitted quantity of 40 ppm. The complaint is filed for contravention of provisions of sections 7(i) r/w. 2(ia)(a), section 2(ia)(m), 7(v) and Rule 55 of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as "the Rules") and the contravention is punishable under sections 16 and 17 of the Act.

3. The second proceeding is in respect of complaint filed against the applicant, who is a vendor and proprietor of M/s. 4 Gupta Trading Company. On 31.1.1997, the complainant visited the shop of the applicant and purchased 3 closed bottles of 500 grams each of Orange Marmalade (Kissan). The complainant sent one of the samples on 1.2.1997 to Public Analyst. The report of Analyst was received by complainant on 28.2.1997. The report is to the effect that there is adulteration as the quantity of preservative sulfur dioxide is 68.5 ppm as against permissible quantity of 40 ppm. The complaint is filed for the contravention of similar provisions which are mentioned in the aforesaid complaint and the contravention is punishable under sections 16 and 17 of the Act.

4. The applicant from the third proceeding is manufacturer of food article Marvo cream. On 13.4.1999 the complainant purchased 500 grams of MARVO cream from 14 k.g. packed tin. The tin was having label and the description of the food article which was present on the label was noted in Form No.VI. Three samples were prepared from this quantity purchased by the Food Inspector. On 15.4.1999 the complainant sent one sample for analysis. The report of Public Analyst was received on 14.5.1999 and it is to the effect that the food article is misbranded. It is reported that the food article is of "Vanaspati" and not of "cream" as shown on the label. The report is also given to the effect that the sample does not conform the standards of cream. The complaint is filed for contravention of the provisions of section 7(ii) r/w. sections 2(ix)(c), 2(ix)(e) and section 2(ix)(k) which is punishable under sections 16 and 17 of the Act. The applicant/accused No. 7 is manufacturer and so, the complaint is filed in respect of manufacture of such food article and also for stock and sell.

5. In the first two proceedings, the learned counsel for the applicants argued that the delay was caused in filing the complaint and the complaint was filed after the expiry of shelf life period of the food articles and so, there was no compliance of provisions of section 13(2) of the Act. It was submitted that the applicants virtually lost the right to send the second sample for analysis due to late filing of complaint as the sample must have become unfit for testing. In the third proceeding, it was argued by the learned counsel for the applicant that the article was not misbranded and it could have been used for bakery items. It is the case of applicants from first two proceedings that the shelf life period of food article was only 12 months and as the complaint was filed after expiry of shelf life period, there was no possibility of exercise of right given to the accused to get

the second sample tested and so the proceedings need to be quashed. The learned counsel for the applicants placed reliance on some reported cases.

6. For the considering the submissions made by the learned counsel for the applicants, the provisions of the Act and the Rules need to be seen. The term "adulterated" is defined in section 2(ia) and the relevant portion is as under :-

"2.(ia) "adulterated"- an article of food shall be deemed to be adulterated:-

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or represented to be;

(b)

(k) if the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits;"

The term "misbranded" is defined in section 2(ix) and the relevant portion for the present matters is as under :-

2. (ix) "misbranded"- an article of food shall be deemed to be misbranded -

(a)

(c) if it is sold by a name which belongs to another article of food;

(d)

(e) if false claims are made for it upon the label or otherwise;"

Section 7 of the Act prohibits the manufacture, sale etc. of certain articles of the food and the relevant portion of this section is as under :-

7. Prohibition of manufacture, sale, etc. of certain articles of food :- No person shall himself or by any person on his behalf, manufacture for sale or store, sell or distribute :-

(i) any adulterated food;

(ii) any misbranded food;

(iii)

Explanation: - For the purpose of this section, a person shall be deemed to store any adulterated food or misbranded food or any article of food referred to in clause (iii) or clause (iv) or clause (v) if he stores such food for the manufacture therefrom of any article of food for sale."

7. For the offence made punishable under section 7, no "mens rea" is required to be proved. Thus, in such a case, the prosecution is required to make out the case of contravention of some provisions of sections of the Act, Rules and if, there is such contravention, the Court is not expected to quash the proceeding. In the

case reported as Andhra Pradesh Grain and Seed Merchants Association Vs. Union of India (UOI) and Another, [Andhra Pradesh Grain and Seed Merchants Association and Ors. Vs. Union of India and Anr.] and in the case reported as Sarjoo Prasad Vs. The State of Uttar Pradesh, , the Apex Court has made interpretation and has discussed constitutional validity of relevant provisions.

8. When the contravention of the provisions of the Act and the Rules is there, the argument of the learned counsel for the accused that the food article was not injurious to health, cannot be accepted as there is strict liability for the contravention. So, if the offence is made out from the material collected and which is mentioned in the complaint, the cognizance can be taken and such cognizance cannot be called as bad and even, this Court is not expected to quash the proceeding. It needs to be kept in mind that when there is report of Analyst, the burden is on the accused to prove that there was no adulteration or the adulteration was found due to natural causes for which the accused is not responsible.

9. The provision of section 13(2) of the Act is as under :-

"13. Report of public analyst :- (1) (2) On receipt of the report of the result of the 9 analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the person from whom the sample of the article of food was taken and the person, if any, whose name, address and particulars have been disclosed under section 14-A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory."

The provision shows that the Local (Health) Authority needs to inform to the accused about the report of analysis and within a period of ten days of the receipt of the intimation, the accused is expected to exercise his right for sending the second sample to Central Food Laboratory. The provision shows that the accused needs to file application for exercising the right and he is expected to pay the charges for the same. The provision of section 13 (5) and remaining part of section 13 come in to play if accused does not exercise the right given to the accused under 10 section 13(2). The provision of section 13(5) runs as under :-

"(5) Any document purporting to be a report signed by a public analyst unless it has been superseded under sub-section (3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory may be used as evidence of the facts stated therein in any proceeding under this Act or under section 272 to 276 of the Indian Penal Code (45 of 1860)."

So, if the accused does not exercise the right given under section 13(2) of the

Act, the report of the Public Analyst needs to be used as evidence against the accused.

10. So far as the defence taken by the accused in respect of late filing of the complaint, filing of the complaint after expiry of shelf life period of food article is concerned, the nature of adulteration as described in Rule 55 needs to be seen. In case of the food article like mixed fruit jam or orange marmalade, it is laid down in Rule 55 of the Rules that the preservative like sulfur dioxide or (underline added) benzoic acid can be used. If the preservative is sulfur dioxide, then its quantity should not exceed 40 ppm and if it is benzoic acid, its quantity should not exceed 200 ppm. In the first case, the quantity of sulphur dioxide was found 54.65 ppm and in the 11 second case, the quantity of sulphur dioxide was 68.5 ppm and further benzoic acid was used and its quantity was 52.55 ppm. Thus, there was clear contravention of Rule 55. The third case is of misbranding and altogether different substance is found in the bottle and as both "Vanaspati" and "cream" are defined under different provisions, there is no need of more discussion of the report given by Public Analyst.

11. In the first two proceedings, the contention of the applicant is that due to delay caused in filing the complaint, which was filed apparently after the shelf life period of the food article, there was no opportunity to the applicants to send second sample for analysis as provided under section 13 of the Act. It was submitted that it needs to be presumed that the sample had become unfit for testing.

12. In the first proceeding, the report dated 24.1.1997 was received on 6.2.1997 and the complaint was filed on 10.8.1999. In the second proceeding, the report dated 28.2.1997 was received on 13.3.1997 and the complaint was filed on 12.5.1998. Both the samples were immediately sent to Public Analyst by the Food Inspector and no argument was advanced in respect of this circumstance. It was submitted by the learned 12 counsel for the applicants that the food article from the first proceeding was manufactured in September 1996 and the shelf life period was of 12 months. In the second proceeding, it was submitted that the shelf life period was 12 months and the complaint was filed 21 months after the date of manufacture of the food article.

13. The learned counsel for the applicants placed reliance on one so called order/circular issued by Commissioner of Food and Drugs Administration, Maharashtra State. He submitted that in order dated 1.3.2006, the Commissioner has given directions to the concern officers and filing of the case is not allowed, if the quantity of preservative used is beyond the permissible limit. He submitted that for other substances, the permitted quantity of the same preservative is much more and so, it can not be presumed that addition of more preservative created danger to the health. This Court has carefully gone through the provisions of sections 23 and 24 of the Act. In section 23, the power of Central Government to make Rules is discussed and it is made clear that only Central Government has the power to make Rules regarding the quality of the food articles, the quantity

of preservative which can be used for preservation of the food articles etc. In section 24, some power 13 is given to the State, but that is only in respect of the procedure of giving licence etc. The State Government has no power to define the standards of quality or to fix the limits of preservative etc. Under the Rules prepared by the Central Government, such standards are fixed by the Central Government and the State Government has no power in that regard whatsoever. If there is really such order issued by the Commissioner, then this circumstance is not only surprising, but shocking and it speaks volume about the approach of the concerned with regard to the implementation of the Act, which is made in public interest. This Court has no hesitation to observe that if there is such order, it is against the spirit of the object behind the Act and it need not be considered by the officers enforcing the provisions of the Act. Registrar Judicial is expected to send copy of this order to the concerned department of the Government for doing needful in this regard.

14. The relevant provisions of the Act and the Rules show that nowhere in the scheme of the Act and the Rules, it is mentioned that after particular period of the date of manufacture, it needs to be presumed that the sample cannot be analysed for any purpose. If the definition of "adulteration" is considered and the relevant Rules are considered, it can be said 14 that the adulteration may be of many kinds.

15. The proviso to section 13(5) of the Act runs as under :-

"Provided that any document purporting to be certificate signed by the Director of the Central Food Laboratory not being a certificate with respect to the analysis of the part of the sample of any article of food referred to in the proviso to sub-section (1A) of section 16] shall be final and conclusive evidence of the facts stated therein.

Explanation :- In this section, and in clause (f) of sub-section (1) of section 16. "Director of the Central Food Laboratory", shall include the officer for the time being in charge of any Food Laboratory (by whatever designation he is known) recognised by the Central Government, for the purposes of this section."

Section 114, illustration (e) of the Evidence Act is also available for use of the report of Public Analyst. The rules of evidence, the procedure given in Cr.P.C. and the provisions of the Act can lead to only one inference that Court is required to decide the question whether or not there was adulteration. For deciding this question, the Court is expected to use the expert opinion. If the legislature has given safeguards, some rights to the accused, those needs to be used as per the provisions made in the Act 15 and the Rules. The Court cannot presume that the prejudice is caused to the accused due to the circumstance like delay caused in filing of the case in every case. Considering the object behind the Act, it is necessary for the Courts to keep in mind that it needs to be left with the legislature to declare as to what is harmful and what needs to be prevented under such Act.

16. When it is the case of use of preservative and the preservative is used beyond permissible limit, the aforesaid position of law needs to be kept in mind. The preservative like sulphur dioxide is chemical substance and so, it is up to the accused to show that due to the delay caused in analysis, the sample must have become unfit and sample must have deteriorated due to natural process and so, the quantity of SO₂ used initially cannot be ascertained in such a sample. The Court cannot presume that such change might have occurred. The aforesaid provisions show that the Court is expected to leave such point to the expert. Thus, different cases of food adulteration need to be dealt with differently. In the present case, it can not be presumed that sample must have become unfit on the date of filing of complaints. It was up to the expert to say whether sample had been unfit. In view of this position of law and the facts and circumstances of the case, this Court has no hesitation to observe that the proceedings cannot be quashed and the order of issue process cannot be set aside. Quashing of proceeding on such a ground will be playing in the hands of complainant side and accused.

17. Though the other ground was not argued, there is ground mentioned in the application that the applicants are entitled to the relief due to delay caused in the trial of the case. It has become necessary to observe that many such cases are pending in the Trial Courts and in many cases, the proceedings are filed even in this Court and proceedings filed in the Courts are pending for more than 10 years or so and in many cases stay is granted by this Court. When the samples were taken prior to year 1999 and the cases were filed in the year 1999 and 2001, the applicants approached this Court in the year 2012. Even when stay is not granted, the Courts of subordinate judiciary are reluctant to proceed with the matter only due to pendency of such matter. The persons involved as accused in such cases are ordinarily rich and they play all tactics to see that the cases do not make progress. The proceedings like present one are filed when the matters become old and the trial court starts insisting for making progress in the matters. This Court has no hesitation to observe that many interesting facts will come out if the relevant data in this regard is collected and some research is made. This Court has no hesitation to observe that only on the ground of delay caused in conducting the trial, such cases cannot be quashed as the legislation is in public interest.

18. Some cases were cited by the learned counsel for the applicants. Those cases are as under :-

(i) Cri. Appln. No. 1197/2011 dated 14.3.2012 [Himanshu Rambhau Prasad and Ors. Vs. The State of Maharashtra and Anr.] by the Hon"ble Bombay High Court.

(ii) Shivkumar alias Shiwalamal Narumal Chugwani Proprietor of Kanhaiya General Stores Vs. State of Maharashtra at the instance of Subhash Madhukar Choudhary .

(iii) Petitions for Special Leave to Appeal (Cri) No. 6332/2010 (State of

Maharashtra Vs. Shivkumar @ Shiwalamal N. Chugwani] decided by Apex Court.

(iv) Gangadhara Palo Vs. The Revenue Divisional Officer and Another, .

(v) SNP Shipping Services Pvt. Ltd. Vs. Kara Mara Shipping Co. Ltd. and Others, .

(vi) Cri. Appln. No. 836/2011 [Shri. Sanjeev Bacchiram Bhatt & Ors. Vs. The State of Maharashtra and Anr.] decided by Bombay High Court.

(vii) 2006 (1) Bom.C.R. (Cri.) 258 (Panji Bench) [Rohit Mull of Mumbai and Anr. Vs. State of Goa].

(viii) Cri. Petition No. 1398/2002 [Praful Takkar 18 and Anr. VS. The State of AP] decided by Andhra Pradesh High Court.

(ix) 2006 (1) FAC 235 (Andhra Pradesh High Court) [Vinod Namviar, Regional Sales manager, (Foods) and others Vs. State of A.P.].

The learned counsel for the applicants submitted that even in case of preservative used in excess quantity, the proceeding was quashed when the complaint was filed late. This Court has discussed the relevant provisions. This Court has considered the facts and circumstances of this case also. This Court holds that the observations made in the cases cited by the learned counsel for the applicants are of no use to them to get the relief due to relevant provisions of law already discussed.

19. In the third case, copy of form No. VI was prepared by the complainant on the basis of description on label of the food article. The description is as under :-

"Details of Food : 1500 gms of Marvo cream taken from 14 kg packed tin and it is labelled as under.

"Masterline - Bakery service Marvo for creaming Aerated Bakery shortening. Not for direct use. Made from vegetable oils only. Net wt. 14 Kgs. Batch No. MVC .C .06112. Packed on Nov. 98. 19 [Ingredients - Vegetable oils, permitted antioxidants, vitamins and microgn.] Manufactured by Hindustan Lever Ltd. 165/166 backbay Reclamation Mumbai 400020 GHAZIABAD Factory. No any label on chakart."

20. The report of the Analyst is as under :-

"The sample of Marvo cream bearing code No. ABD/107/MCA & Sr. No. 1868 of L(H)A is of Vanaspati & is not of cream hence it is misbranded sample does not conform to the standards of cream as per P.F.A. Rules 1955."

21. The title given on the label like cream and the opinion given by the Analyst are sufficient to make out the case of misbranding. Surprisingly, one xerox copy of another label is produced by the applicant in this proceeding along with the proceeding in support of defence. However, during the argument, the learned counsel for the applicant admitted that this label appears to be different than the label which is described in Form No. VI by the complainant. In any case, the case

of the complainant needs to be considered as it is for the purpose of present proceeding. The defence that even Vanaspati 20 can be used for bakery item cannot be accepted when it is case of misbranding.

22. In view of the discussion made above, all the three proceedings stand dismissed. Registrar Judicial is to send the copy of this order to the concerned department of the State Government.