

(2017) 03 MP CK 0165
In the Madhya Pradesh High Court
Case No : 8562 of 2015

GAJRAJ MEENA & OTHERS

APPELLANT

Vs

STATE OF MADHYA PRADESH & ANOTHER

RESPONDENT

Date of Decision : 08-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Prevention of Food Adulteration Act, 1954](#), [Section 13](#), [Section 7\(1\)](#)

Citation : (2017) 03 MP CK 0165

Hon'ble Judges : G.S.Ahluwalia

Bench : Single Bench

Advocate : Surendra Singh, Sourabh Agarwal, Girdhari Singh Chauhan

Judgement

1. This petition under Section 482 of CrPC has been filed for quashing the criminal proceedings in Criminal Case No.10555/2011 pending in the Court of ACJM, Gwalior for offences punishable under Section 7(1)(3) (5)/16(1) of Prevention of Food Adulteration Act, 1954.

2. The necessary facts for the disposal of the present application in short are that on 04/08/2011, the Food Inspector collected the samples of New Saffola Gold, Saffola Tasty, Saffola Active and New Saffola Packed Jar from Prachi Enterprises. After adopting the formalities, the samples were sent to Public Analyst who, in its report dated 06/09/2011, found that the samples of New Saffola Gold and Saffola Tasty were as per the specifications and Saffola Active Packed Pouch and the New Saffola Packed Jar were found Adulterated. Accordingly, the complaint was filed on 22/11/2011.

3. The important dates for the disposal of the present application in short are as under:- 1. Samples were taken on 04/08/2011.

2. Date of packaging of new Saffola Active Packed pouch was 30/03/2011 and was best before six months from packaging.

3. Date of Packaging of new Saffola Packed Jar was 21/05/2011 and was best before nine months from packaging.
4. Report of Public Analyst was received on 06/09/2011.
5. Complaint was filed on 22/11/2011.
6. Notices were issued by local authority under Section 13(2) of Prevention of Food Adulteration Act on 25/11/2011.
7. Notice was received by the applicant on 30/11/2011.
8. Application filed for re-testing on 07/12/2011.

4. It is contended by the counsel for the applicants that although the applicant had filed an application on 07/12/2011 for re-testing of the samples but instead of passing any order for re-testing, the Trial Court issued notices to the respondent. By order dated 07/01/2013, the case was fixed for 30/01/2013 for arguments on the application filed under Section 13(2) of Prevention of Food Adulteration, Act. The application filed under Section 13(2) of Prevention of Food Adulteration Act remained pending and ultimately on 30/07/2015, the applicant filed an application that the shelf life of the product has already expired and delay of about 43 months have already taken place and now no useful purpose would be served by sending the second sample for re-testing, therefore, it was prayed that the applicant be discharged. It is submitted that no order was passed on the said application and the respondents were directed to file reply to the said application. However, by order dated 30/07/2015, the Trial Magistrate directed the authorities to send the second sample of the product to the Central Food Laboratory as required under Section 13(2) of the Prevention of Food Adulteration Act. It is contended by the counsel for the applicant that once the shelf life of the product has already expired, then the valuable right of the applicant under Section 13(2) of Prevention of Food Adulteration Act is taken away as a result of which the applicant is entitled for discharge.

4. In support of his contention, the counsel for the applicants relied upon the judgments of the Supreme Court passed in the cases of M/s. Northern Minerals Ltd. and Ors. v. State of Rajasthan and Anr. reported in AIR 2016 SC 2543, Hindustan Unilever Ltd. v. State of Rajasthan and Anr. reported in (2016) 1 FAC 251, Calcutta Municipal Corporation v. Pawan Kumar Saraf and Anr. reported in AIR 1999 SC 738, Municipal Corporation of Delhi v. Ghisa Ram reported in AIR 1967 SC 970.

5. The counsel for the applicants further relied upon the judgment of this court passed in the case of Prakash Desai and Anr. v. State of M.P. reported in (2015) 2 FAC 441 and judgment passed by this Court in the case of S Pathak v. State of M.P. dated 01/03/2016 passed in MCRC No.5359/2011.

6. It is submitted by the counsel for the applicants that the application was filed within the period of ten days from the date of receipt of the copy of the report of

Public Analyst, then if the second samples are sent after the shelf life of the product is over, then the valuable right of a party as guaranteed under Section 13(2) of Prevention of Food Adulteration Act is violated and hence the entire prosecution stands vitiated. Thus, it is clear that under these circumstances, the applicant is entitled for discharge and the proceedings are liable to be quashed.

7. Per contra, it is submitted by the counsel for the State that by order dated 30/07/2015, the Trial Magistrate had already directed for sending the second sample for re-testing to the Central Food Laboratory and, therefore, at this stage, the prosecution proceedings cannot be quashed against the applicants and he cannot be discharged. Heard the learned counsel for the parties.

8. If the facts and circumstances of the case are considered, then it would be clear that the samples were taken on 04/08/2011 and the report from the Public Analyst was received on 06/09/2011. The complaint was filed on 22/11/2011 and the copy was sent by the Public Health Authority to the applicant on 25/11/2011. The copy of the report of the Public Analyst was received by the applicant on 30/11/2011 and the application, for retest under Section 13(2) of Prevention of Food Adulteration Act, was filed on 07/12/2011. From the sample which was collected on 04/08/2011, it is clear that the shelf life of Saffola Active Packed pouch was six months from its packaging i.e., 30th March, 2011 and the shelf life of Saffola Packed Jar was nine months from the date of its packaging i.e., 21/05/2011. Thus, it is clear that the shelf life of Saffola Active was up to 30/09/2011 whereas the shelf life of Saffola Packed Jar was up to 21/02/2013. The application for re-testing as provided under Section 13(2) of Prevention of Food Adulteration Act was filed on 07/12/2011. From the order-sheets of the Trial Court, it appears that on 22/11/2011, the Trial Court took cognizance of the offence and fixed the case for 19/12/2011. It appears that on 07/12/2011, an application under Section 13(2) of Prevention of Food Adulteration Act was filed by the applicant no.1 which remained pending till 30/05/2015. On 30/05/2015, undisputedly, the shelf life of both the products i.e., Saffola Active and Saffola Packed Jar has already expired. Therefore, under these circumstances, it is clear that after the shelf life of a product is over, the remedy available to the applicants under Section 13(2) of Prevention of Food Adulteration Act is of no use.

9. In view of the judgment passed by the Supreme Court in the cases of M/s. Northern Minerals Ltd. and Ors. (supra), Hindustan Unilever Ltd. (supra), Calcutta Municipal Corporation (supra), Municipal Corporation of Delhi (supra) and the High Court in the case of Prakash Desai (supra) reported in (2015) 2 FAC 441 and judgment passed by this Court in the case of S Pathak v. State of M.P. dated 01/03/2016 passed in MCRC No.5359/2011, this Court is of the view that once the shelf life of the product is over, no useful purpose would be served by obtaining the report from the Central Food Laboratory for the sake of convenience. Section 13 of the Food Adulteration Act is reproduced as under:-

"13. Report of public analyst.- (1) The public analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of the result of the

analysis of any article of food submitted to him for analysis.

(2) On receipt of the report of the result of the 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 persons from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under section 14A, 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.

(2A)

(2B)

(2C)

(2D)

(2E)

(3) The certificate issued by the Director of the Central Food Laboratory 54 [under sub-section (2B)] shall supersede the report given by the public analyst under sub-section (1).

(4)

(5)"

10. It has not been denied by the prosecution that the application, as required under Section 13(2) of the Prevention of Food Adulteration Act, was filed within a period of ten days from the receipt of copy of the report. When the said application is filed, it was obligatory on the part of the Court to direct the Local Health Authority to send the second sample of the seized article for analysis to the Central Food Laboratory but unfortunately, the application filed under Section 13(2) of Prevention of Food Adulteration Act remained pending and could be decided only on 30/07/2015 when the applicant filed an application for his discharge. From the provision of Section 13(3) of the Prevention of Food Adulteration, it is clear that the report of Central Food Laboratory shall supersede the report of Public Analyst and, therefore, once the shelf life of the product is over, no useful purpose would be served by sending the samples for re-testing to Central Food Laboratory and as the valuable right of the applicant has been violated, therefore, this Court is of the considered view that it is a fit case where the proceedings pending against the applicant are liable to be quashed.

11. Accordingly, it is directed that criminal proceedings in the case of 10555/2011 pending in the Court of JMFC, Gwalior qua the applicants are hereby

quashed. The application succeeds and is hereby allowed.