
(2009) 08 CHH CK 0031
In the Chhattisgarh High Court

Hindustan Lever Limited and Another	Vs	APPELLANT
The State of Chhattisgarh		RESPONDENT

Date of Decision : 27-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 13(2), 16(7)

Citation : (2009) 4 CGLJ 414 : (2010) CriLJ 552 : (2010) 2 Crimes 687

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

T.P. Sharma, J.—This petition u/s 482 of the Code of Criminal Procedure, 1973 (for short "the Code") is for quashment of criminal proceeding pending before the Court of Judicial Magistrate First Class, Raipur in Criminal Complaint Case No. 511/2003 for the offence punishable u/s 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954 (for short "the Act").

2. Quashment is prayed on the ground that petitioner No. 2 K. Venkatramani is not the nominee appointed by petitioner No. 1 in the State of Chhattisgarh u/s 17(2) of the Act, therefore continuance of criminal proceeding against the person not connected with the commission of offence would amount to abuse of the process of the Court. Quashment is also prayed on the ground that prosecution has been launched against petitioner No. 1 intentionally and deliberately after lapse of more than 1 1/2 years of the date of taking sample of the food product which was permitted for use within three months from date of its manufacture and any prosecution without affording opportunity of analysis of the sample by the Central Food Laboratory in terms of Section 13(2) of the Act has caused serious prejudice to petitioner No. 1.

3. I have heard learned Counsel for the parties and perused copy of the complaint and copies of other documents filed on behalf of the petitioners.

4. Brief facts leading to filing of this petition are that petitioner No. 1 is a Company which manufactures Atta and petitioner No. 2 is an appointed nominee of petitioner No. 1 u/s 17(2) of the Act. Other co-accused persons Shankarlal and Inder Chand are sellers and authorized agents of the Company to sell the Atta. On 15-9-2001, the sample of Atta manufactured by petitioner No. 1 was purchased from accused Shankarlal which was sold to him by co-accused Inder Chand. After completing the formalities and the procedure prescribed, the sample was sent for analysis to the State Public Analyst and on analysis the Atta was found adulterated vide report dated 22-10-2001. Name of nominee of the Company was enquired by the Food Inspector from the Joint Director, Food and Drugs Administration, Raipur who intimated the Food Inspector the name of petitioner No. 2. Again the Food Inspector enquired the matter from petitioner No. 2 on which the Company/petitioner No. 1 has intimated the Food Inspector vide letter dated 21-2-2002 that Mr. Pankaj Agrawal is nominee for Raipur area. Finally the complaint was filed on 30-5-2003 before the Judicial Magistrate First Class, Raipur who took cognizance of the offence against the petitioners and two other co-accused persons.

5. The petitioners have filed this petition u/s 482 of the Code on the ground that on the date of alleged offence, petitioner No. 2 was not the appointed nominee u/s 17(2) of the Act for the Company, therefore, petitioner No. 2 is not responsible for any offence. The said Atta was manufactured on 10-8-2001 and the sample was taken on 15-9-2001. It was specifically written in the notice given u/s 7 of the Act that "best use before three months" and the said time expires on 10-11-2001, but the complaint has been filed much after the said date i.e. on 30-5-2003. The accused has a right to analyze the sample by the Director, Central Food Laboratory in terms of Section 13(2) of the Act, but his valuable right of analysis has been denied by the prosecution which caused serious prejudice to the petitioners.

6. Learned Senior Advocate appearing on behalf of the petitioners argued that petitioner No. 1 has intimated the Assistant Commissioner, Local Health Authority, Food & Drugs Administration-Chhattisgarh vide its letter dated 7-4-2001 that vide resolution dated 18th December, 2000, the Company has nominated Mr. Pankaj Agrawal as the Nominee of the Company for the State of Chhattisgarh u/s 17(2) of the Act in relation to the storage, sales, distribution and marketing of the entire range of foods including Atta. Further, in reply to the letter dated 7-2-2002, again the Company has intimated the Food Inspector, Food & Drug Administration vide its letter dated 15-2-2002 that Mr. Pankaj Agrawal is nominee u/s 17(2) of the Act. However, the complainant has not made Mr. Pankaj Agrawal as party and has made petitioner No. 2 as party. Therefore, any criminal proceeding against petitioner No. 2 is not maintainable and the same is abuse of the process of the Court.

7. As regards the question of criminal proceeding against petitioner No. 1-Company, learned Senior Advocate further argued, it has been specifically

mentioned in the food article that "best use before three months", the Atta was manufactured on 10-8-2001, the sample was taken on 15-9-2001 and the same was for use within three months i.e. till 10-11-2001, but the prosecution has been launched on 30-5-2003 after more than 1 year 6 months. Therefore, even if the Company applies for analysis by the Director, Central Food Laboratory in terms of Section 13(2) of the Act same would be futile exercise and would be of no help, hence any prosecution and denial of valuable right provided under the Act in favour of the Company would be abuse of the process of the Court. Learned Senior Advocate also submits that the petitioners are competent to approach the High Court directly u/s 482 of the Code without filing any application before the Court concerned who has taken cognizance of the offence against the petitioners. Learned Senior Advocate placed reliance in the matter of Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, in which the Apex Court has held that in appropriate case if complaint does not disclose the commission of offence against the petitioners, then they may directly approach the High Court u/s 482 of the Code without approaching the Court of Judicial Magistrate First Class for discharge or otherwise quashment of the complaint case pending against them. Learned Senior Advocate further placed reliance in the matter of G. Sagar Suri and Another Vs. State of U.P. and Others, in which while dealing with same question the Apex Court has held that for filing petition u/s 482 of the Code filing of any application before the Magistrate for discharge is not sine qua non. Learned Senior Advocate also placed reliance in the matter of Municipal Corporation of Delhi Vs. Ghisa Ram, in which the Apex Court has held that inordinate delay in prosecution - Sample becoming decomposed and hence impossible of analysis - Accused deprived of his valuable right - Conviction cannot be sustained. Learned Senior Advocate further placed reliance in the matter of State of Haryana Vs. Unique Farmaid P. Ltd. Ors., in which the Apex Court has held that in case of parallel provisions in the Insecticides Act, for re-analyzing the sample after expiry of the period of use of the insecticide, sending of sample to Central Insecticides Laboratory is of no consequence and complaint is liable to be quashed. Learned Senior Advocate also relied upon the matter of Shri. Rohit Mull and Anr. v. The State of Goa 2006 (1) FAC 57 : 2006 Cri LJ (NOC) 138 (Bom) in which Goa Bench of the Bombay High Court has held that sending of notices u/s 13(2) of the Act after expiry date of product, right of petitioners-accused to get samples analyzed from CFL frustrated and proceedings are liable to be quashed. Learned Senior Advocate further relied upon the matter of Suresh Narayan and Others Vs. State of M.P., in which the Madhya Pradesh High Court has held that milk or milk products like ice cream etc. gets deteriorated within 10 months from date of lifting, therefore, sending second sample for examination to Central Food Laboratory is of no use and allowing the prosecution of accused would therefore be nothing but abuse of process of Court of law.

8. On the other hand, learned Additional Advocate General appearing on behalf of the State/respondent vehemently argued that the Food Inspector has enquired

the name of nominee of the Company from the Deputy Director, Food and Drug Administration, who intimated the name of petitioner No. 2, therefore, whether petitioner No. 2 was nominee on the date of commission of offence or another person Mr. Pankaj Agrawal was nominee, is a question of fact and at the stage of petition u/s 482 of the Code it is not possible to enquire about the disputed facts. The petitioners have not filed application before the trial Court for their discharge on the aforesaid ground and have directly approached the High Court without making exceptional case. The petitioners are required to show that if the allegation made in the complaint is admitted in its face value, even then conviction would not be possible, and therefore, the criminal proceeding may be quashed. But, in the present case, the petitioners admit the allegation made in the complaint and the same is sufficient for their conviction.

9. This is a petition u/s 482 of the Code for quashment of criminal complaint pending before the Court of Judicial Magistrate First Class, Raipur. Power u/s 482 of the Code is exceptional in nature and should be used sparingly. While dealing with exercise of power u/s 482 of the Code in the matter of Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, the Apex Court has held thus,

8. Exercise of power u/s 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All Courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsa esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to

prevent abuse. It would be an abuse of process of the Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

10. In the present case, the petitioners have directly approached this Court without filing any petition before the Judicial Magistrate First Class. In the circumstances, the petitioners are required to show exceptional case for quashment of criminal complaint against them. Para 9 of the complaint reveals that firstly, the Food Inspector enquired the matter relating to nominee of the Company, from the Deputy Director, Food & Drug Administration, Raipur who informed the name of petitioner No. 2. When the Food Inspector asked consent from petitioner No. 2, petitioner No. 1 has informed him vide its letter dated 21-2-2002 that Mr. Pankaj Agrawal is nominee of the Company u/s 17(2) of the Act for Raipur region and the Company had sent different copies of letters to the Food Inspector which the complainant has filed along with the complaint. Letter dated 15-2-2002 reveals that Mr. Pankaj Agrawal is nominee of the Company u/s 17(2) of the Act. It has been specifically mentioned in the letter dated 15-2-2002 that Mr. Pankaj Agrawal is nominee of the Company with regard to storage, sales, distribution and marketing of branded staple foods comprising of salt, wheat and wheat products. The petitioners have filed original intimation dated 7-4-2001 sent to the Assistant Commissioner/Local Health Authority, Food and Drugs Administration - Chhattisgarh much before the taking of sample on 15-9-2001 along with a copy of resolution dated 18-12-2000, which reveals that Mr. Pankaj Agrawal has been nominated as nominee of the Company u/s 17(2) of the Act in relation to the storage, sales, distribution and marketing of the entire range of foods business excluding tea, coffee, ice-creams and frozen desserts to include in particular, (i) Oils and Dairy Fats (ODF) comprising of Refined Oil, Vanaspati, bakery fats, Fat spreads and other Vegetable oil products and Dairy Products; (ii) Culinary Products comprising of jams, squashes, ketchup, soups, tomato paste/puree and other processed fruit/ vegetable products; (iii) spices, seasonings and dressings, etc. and pre-mixes thereof; (iv) Bakery products including, yeast, baking powders, Corn flour etc; (v) Staples including Atta, salt, sugar, cereals, pulses and preparations thereof; (vi) Powders/Mixes for Preparation of - Soups, Broths, Sauces, Desserts, Bakers products, Beverages, Syrups, Jellies, Ice-creams, Custard, Snacks & Cakes, Energy drinks and other food products; (vii) Spreads such as mayonnaise, tartar etc. & Gravies and mixes thereof; (viii) Confectionary items viz. Jelly bits etc. in the western region including in specific the States of Maharashtra, Madhya Pradesh, Gujarat, Goa, Chhattisgarh and the Union Territory of Daman & Diu and Silvassa.

11. The provisions of Section 17(2) of the Act read as follows:

Any company may, by order in writing, authorize any of its directors or managers (such manager being employed mainly in a managerial or supervisory capacity) to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this Act and may give notice to the Local (Health) Authority, in such form and in such manner as may be prescribed, that it has nominated such director or manager as the person responsible, along with the written consent of such director or manager for being so nominated.

Explanation.- Where a company has different establishments or branches or different units in any establishment or branch, different persons may be nominated under this sub-section in relation to different establishments or branches or units and the person nominated in relation to any establishment, branch or unit shall be deemed to be the person responsible in respect of such establishment, branch or unit.

12. Section 17(2) of the Act authorizes the Company to nominate a nominee of the Company against whom the prosecution may be launched. It is clear from the enquiry made by the Food Inspector and the reply received by the Food Inspector which has been mentioned in para 9 of the complaint itself that Mr. Pankaj Agrawal was nominated as nominee of the Company relating to food products especially of wheat & wheat products. Atta is admittedly a wheat product. Details of food products have been mentioned in the resolution dated 18-12-2000 where the specific word "Atta" has also been mentioned. Therefore, admittedly, launching of prosecution against petitioner No. 2 after knowing the fact that petitioner No. 2 was not the nominee of the Company on the date of alleged commission of the offence and one Mr. Pankaj Agrawal was nominee of the Company, is not sustainable under the law and continuance of such proceeding would amount to abuse of the process of the Court.

13. Section 17 of the Act specifies as to who may be the accused in case of offences by companies i.e. according to Clause (a) the nominee and according to Clause (b) the company, if nominee is nominated or authorized under Sub-section (2) of Section 17 of the Act.

14. As regards the question of continuance of criminal proceeding against petitioner No. 1 Company, admittedly, the Atta was for best use within three months from the date of its manufacture. Report of the analysis reveals that the Atta was found adulterated on 20-10-2001 much before the date of its best use i.e. 10-11-2001, but the prosecution has not been launched before 10-11-2001 and it has been launched after 1 1/2 years of its manufacture on 30-5-2003. The Prevention of Food Adulteration Act, 1954 is a special Act which provides deterrent punishment and also provides safeguard to the accused. The Act further provides valuable right to analyze the sample from the Director, Central Food Laboratory u/s 13(2) of the Act which reads as follows:

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 u/s 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 analyzed by the Central Food Laboratory.

15. As held by the Apex Court in the case of Municipal Corporation of Delhi Vs. Ghisa Ram, inordinate delay in prosecution, sample becoming decomposed and hence impossible of analysis, accused deprives of his valuable right. Para 7 of the said judgment reads thus,

(7) It appears to us that when a valuable right is conferred by Section 13(2) of the Act on the vendor to have the sample given to him analysed by the Director of the Central Food Laboratory, it is to be expected that the prosecution will proceed in such a manner that that right will not be denied to him. The right is a valuable one, because the certificate of the Director supersedes the report of the Public Analyst and is treated as conclusive evidence of its contents. Obviously, the right has been given to the vendor in order that, for his satisfaction and proper defence, he should be able to have the sample kept in his charge analysed by a greater expert whose certificate is to be accepted by Court as conclusive evidence. In a case where there is denial of this right on account of the deliberate conduct of the prosecution, we think that the vendor, in his trial, is so seriously prejudiced that it would not be proper to uphold his conviction on the basis of the report of the Public Analyst, even though that report continues to be evidence in the case of the facts contained therein.

16. While dealing with the question of valuable right of the accused in case of the Insecticides Act, the Apex Court has held in the matter of State of Haryana Vs. Unique Farmaid P. Ltd. Ors., that sending of sample to Central Insecticides Laboratory at late stage is of no consequence and the complaint is liable to be quashed. Para 11 of the said judgment reads thus,

11. Sub-section (1) of Section 30 which appears to be relevant only prescribes in effect that ignorance would be of no defence but that does not mean that if there are contraventions of other mandatory provisions of the Act, the accused have no remedy. Procedure for testing the sample is prescribed and if it is contravened to the prejudice of the accused, he certainly has the right to seek dismissal of the complaint. There cannot be two opinions about that. Then in order to safeguard the right of the accused to have the sample tested from the Central Insecticides Laboratory, it is incumbent on the prosecution to file the complaint expeditiously so that the right of the accused is not lost. In the present case, by the time the

respondents were asked to appear before the Court, expiry date of the insecticide was already over and sending of sample to the Central Insecticides Laboratory at that late stage would be of no consequence. This issue is no longer *res integra*. In *State of Punjab Vs. National Organic Chemical Industries Ltd.*, this Court in somewhat similar circumstances said that the procedure laid down u/s 24 of the Act deprived the accused to have sample tested by the Central Insecticides Laboratory and adduce evidence of the report so given in his defence. This Court stressed the need to lodge the complaint with utmost dispatch so that the accused may opt to avail the statutory defence. The Court held that the accused had been deprived of a valuable right statutorily available to him. On this view of the matter, the Court did not allow the criminal complaint to proceed against the accused. We have cases under the Drugs and Cosmetics Act, 1940 and the Prevention of Food Adulteration Act, 1954 involving the same question. In this connection reference be made to decisions of this Court in *State of Haryana Vs. Brij Lal Mittal and Others*, under the Drugs and Cosmetics Act, 1940; *Municipal Corporation of Delhi Vs. Ghisa Ram*, ; *Chetumal Vs. State of Madhya Pradesh and Anr*, and *Calcutta Municipal Corporation Vs. Pawan Kumar Saraf and Another*, all under the Prevention of Food Adulteration Act, 1954.

17. In the case of *State of Haryana (supra)*, while discussing right of accused to get sample re-analysed from Central Insecticides Laboratory, the Apex Court has taken into consideration the earlier provisions contained in the Act and after discussing the authorities under the Act, the Apex Court has held that sending of sample to Central Insecticides Laboratory at late stage is of no consequence and the complaint is liable to be quashed.

18. Further, while dealing with the same question in the matter of *Suresh Narayan and Others Vs. State of M.P.*, and placing reliance in the matters of *Municipal Corporation (supra)* and *State of Haryana (supra)*, the Madhya Pradesh High Court has held that in such circumstances allowing the prosecution of accused would therefore be nothing but abuse of the process of the Court., Same view has been taken by Goa Bench of the Bombay High Court in the matter of *Shri. Rohit (supra)* in which it has been held that in case of adulteration of chocolates, notices u/s 13(2) of the Act sent to the accused after two days before date of expiry of the product, right of petitioners-accused to get samples analyzed from CFL frustrated and the proceedings are quashed.

19. Dictum of the aforesaid authorities is applicable in the present case. Launching of prosecution after more than 1/2 years has seriously caused prejudice and the accused/ petitioner No. 1 is deprived of its valuable right of analyzing the sample from the Central Food Laboratory. In accordance with Sub-section (3) of Section 13 of the Act, certificate or report of the Director of the Central Food Laboratory is final and supersedes the report given by the public analyst.

20. In the present circumstances of the case, I am of the view that the petitioners have been able to make out sufficient case for quashment of criminal

proceeding, u/s 482 of the Code without approaching the Judicial Magistrate concerned, and the instant petition is maintainable as held in the matters of G. Sagar Suri and Another Vs. State of U.P. and Others, .

21. In the light of the dictums of the Apex Court in the matters of Municipal Corporation of Delhi Vs. Ghisa Ram, , State of Haryana Vs. Unique Farmaid P. Ltd. Ors., , Shri Rohit 2006 Cri LJ (NOC) 138 and Suresh Narayan and Others Vs. State of M.P., . continuance of criminal proceeding would amount to abuse of the process of the Court relating to petitioner No. 1.

22. For the foregoing reasons, I deem it a fit case for invoking the inherent jurisdiction in terms of Section 482 of the Code. Accordingly, the petition is allowed. Criminal proceeding pending before the Judicial Magistrate First Class, Raipur in Criminal Complaint Case No. 511/2003 against the petitioners namely, M/s. Hindustan Lever Limited & K. Venkat Ramani is hereby quashed.