

(2012) 05 GUJ CK 0008
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 15652 of 2011

Hindustan Unilever Limited

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 02-05-2012

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 13(2), 20

Citation : (2013) 2 Crimes 139

Hon'ble Judges : Harsha Devani, J

Bench : Single Bench

Advocate : Megha Jani and Mr. Salil M. Thakore, for the Appellant; K.P. Raval, Additional Public Prosecutor for the Respondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

Harsha Devani, J.—By this application, the applicant seeks quashing of Criminal Case No. 5830/2007 pending in the Court of the learned Chief Judicial Magistrate, Ahmedabad (Rural) as well as the order dated 23rd March, 2007 whereby process has been issued to the present applicant. The respondent No. 2: Food Inspector lodged the above referred complaint in the Court of the learned Judicial Magistrate, Ahmedabad (Rural) alleging that he had visited one Alpha hotel on the National Highway, Aslali on 16th June, 2005 and had collected samples of Kissan Juicy Fresh Tomato Ketchup Sachets Net quantity 48 + 4. It is further stated that samples of the aforesaid food article came to be sent to the Public Analyst for analysis thereof on 17th June, 2005 after following due procedure in accordance with the provisions of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act"). It is further stated in the complaint that the report of the Public Analyst was received on 8th August, 2005 and that a perusal of the said report showed that yeast and spores and bacterial count was more than the permitted limit and as such, the sample was found to be adulterated. Subsequently, vide letter dated 5th August, 2006, the Food Inspector had submitted a proposal seeking sanction to prosecute the

accused persons and vide communication dated 22nd February, 2007 sanction to prosecute came to be granted u/s 20 of the Act, whereafter, the complaint came to be lodged on 23rd March, 2007.

2. Ms. Megha Jani, learned advocate for the applicant invited the attention of the court to the report of the Public Analyst to point out that the date and month of manufacture of the sample of food article was 5th May, 2005 and that the best before date was six months from the date of manufacturing. It was submitted that under the circumstances, the shelf life of the sample of food article was six months from 5th May, 2005, that is, up to 5th November, 2005. It was submitted that in the facts of the present case, the report of the Public Analyst was received by the Food Inspector on 8th August, 2005 however, the complaint was not lodged immediately thereafter, and came to be lodged after a considerable delay on 23rd March, 2007. Inviting attention to the provisions of Section 13(2) of the Act, it was submitted that a valuable right had been conferred on the accused by the said provision to have the sample analysed by the Central Food Laboratory because the certificate of the Director of Central Food Laboratory supersedes the report of the Public Analyst and is treated as a conclusive evidence of its contents. It was submitted that if an aggrieved party receives the report of the Public Analyst after several months of drawing of sample, then he cannot effectively exercise his right u/s 13(2) of the Act as the product deteriorates with the passage of time. Hence the accused is prejudiced in his defence and in such a situation, the trial would stand vitiated. It was submitted that it is settled law that when a person is deprived of his right of getting the sample analysed by the Central Food Laboratory, such a person cannot be convicted for adulteration of the food article. It was urged that the applicant herein has been deprived of the valuable right guaranteed u/s 13(2) of the Act and continuance of the proceedings would amount to an abuse of the process of law and as such, the criminal case is liable to be quashed by this court by invoking powers u/s 482 of the Code. It was further submitted that the shelf life of the sample having expired on account of undue delay in filing the complaint, no useful purpose would be served if the sample is subjected to re-analysis by the Central Food Laboratory. In support of her submission, the learned advocate placed reliance upon an unreported decision of this court in the petitioner's own case, viz., Hindustan Unilever Ltd. v. State of Gujarat rendered on 22nd March, 2012 in Criminal Miscellaneous Application No. 436/2011 wherein this court after placing reliance upon various decisions of the Supreme Court as well as this court and other High Courts, had allowed the petition on the ground that the shelf life of the food article in question having expired, the applicant therein was deprived of the valuable right under sub-section (2) of Section 13 of the Act. It was submitted that the said decision would be squarely applicable to the facts of the present case and as such, the complaint in question is required to be quashed and set aside.

3. On the other hand, Mr. K.P. Raval, learned Additional Public Prosecutor opposed the application submitting that at this stage, there is no warrant for

intervention by this court and that all these contentions can be taken before the trial court.

4. The facts are not in dispute. The sample of the food article in question came to be obtained on 16th June, 2005 and the same was sent for analysis to the Public Analyst who submitted his report vide letter dated 8th August, 2005. The complaint in question came to be lodged on 23rd March, 2007 after a considerable delay of almost two years from the date of taking of the sample. The report of the Public Analyst clearly shows that the date and month of manufacture of the sample of food item was 5th May, 2005 and the best before date was six months from the date of manufacturing. Under the circumstances, it is apparent that on the date when the complaint came to be lodged, the shelf life of the sample of the food article in question had expired. In the case of Hindustan Unilever Ltd. (supra) on which reliance had been placed by the learned advocate for the applicant, an identical controversy was in issue, wherein the sample of Kissan brand tomato sauce was collected on 5th October, 2005 and the shelf life thereof had expired much before the date of filing the complaint. This court after referring to various decisions of the Supreme Court as well as this court and other High Courts had quashed and set aside the complaint on the ground that the same having been lodged after the expiry of the shelf life of the food article in question, and the report of the Public Analyst having been made available to the accused only thereafter, the applicant was deprived of a valuable right under sub-section (2) of Section 13 of the Act to get the sample of food article analysed by the Director, Central Food Laboratory. The facts of the present case are more or less similar to the facts of the said case, hence, the present case would be squarely covered by the above referred decision. Under the circumstances, the applicant having been deprived of a valuable right under sub-section (2) of Section 13 of the Act of getting the sample of the food article in question tested by the Central Food Laboratory, the trial itself would stand vitiated, warranting invocation of the inherent powers of this court u/s 482 of the Code. For the foregoing reasons as well as for the reasons stated in the judgment and order dated 22nd March, 2012 passed by this court in Criminal Miscellaneous Application No. 436/2011, this application is allowed. Criminal Case No. 5830/2007 pending in the Court of the learned Chief Judicial Magistrate, Ahmedabad (Rural) as well as the order dated 23rd March, 2007 passed therein, are hereby quashed and set aside. Rule is made absolute accordingly.