

(2012) 04 GUJ CK 0045
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 3776 of 2008

Hindustan Unilever Ltd.

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 23-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482, 482

Citation : (2013) 2 Crimes 460

Hon'ble Judges : Harsha Devani, J

Bench : Single Bench

Advocate : P.M. Thakkar, for M/s. Thakkar Associates, for the Appellant; Krina Calla, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Harsha Devani, J.—By this application u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code"), the applicant seeks quashing of Criminal Case No. 392/2008 which is pending in the Court of the learned Chief Judicial Magistrate, Junagadh. The respondent No. 2 --Food Inspector lodged the above referred complaint in the Court of the learned Chief Judicial Magistrate, Junagadh, stating that on 24th February, 2005, he had taken samples of Kissan brand Juicy Fresh Tomato Sauce 500 gms. from one Purusharth stores at Junagadh. After following due procedure as prescribed under the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act") and the rules framed thereunder, a sample of the said food article was sent to the Public Analyst, Junagadh for analysis thereof on 25th February, 2005. By his report dated 6th April, 2005, the Public Analyst declared that the sample was adulterated as the same did not comply with standards and provisions laid down under the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as "the Rules"). Thereafter, the second respondent applied for sanction from the competent authority, which came to be granted on 28th January, 2008 and on 6th February, 2008, the above referred criminal case was filed in the Court of the

learned Chief Judicial Magistrate.

2. Mr. P.M. Thakkar, Senior Advocate for the applicant invited attention to the report of the Public Analyst to point out that the date month and year of manufacturing/packing of the sample of food article are December, 2004 and the best before date is stated to be twelve months from the month of manufacturing. Referring to Section 13(2) of the Act, it was submitted that under the said provision, the applicant has a valuable right to get the sample of the food article in question tested by the Central Food Laboratory and that under sub-section (3) thereof, the certificate issued by the Director of Central Food Laboratory supersedes the report given by the Public Analyst. It was submitted that in the facts of the present case, though the sample was collected on 24th February, 2005, the complaint was lodged as late as on 6th February, 2008 and the report of the Public Analyst was made available to the applicant only after the issuance of summons by the learned Magistrate. By the time the applicant received the copy of the analysis report, the shelf life of the sample of the food article had already expired, under the circumstances the applicant was deprived of its valuable right u/s 13(2) of the Act of getting the sample tested by the Director, Central Food Laboratory, which vitiates the proceedings against the applicant herein. Reliance was placed upon the decision of the Supreme Court in the case of State of Haryana Vs. Unique Farmaid P. Ltd. Ors., wherein, when the matter reached the court, the shelf life of the sample had already expired. The court observed that no purpose would have been served in informing the court of the intention of getting the sample tested and held that a valuable right had been conferred on the accused to have the sample tested from the Central Insecticides Laboratory and that in the circumstances of the case, the accused had been deprived of that right thus, prejudicing them in their defence. It was submitted that under the circumstances, the complaint in question is required to be quashed on this ground alone.

3. It was further submitted that the applicant Company had nominated Mr. Anshul Asawa, Regional Sales Manager as the person in-charge of and responsible to the Company for the conduct of the business of the said company in the western region in terms of Section 17(2) of the Act. However, despite the fact that there was a nomination u/s 17(2) of the Act, all the Directors of the Company have been arraigned as accused in the complaint without there being any averment to the effect that they were in-charge of and responsible to the Company for the conduct of the business of the Company at the relevant time. It was submitted that it is settled legal position that without the necessary averments having been made in the complaint, the Directors cannot be arraigned as accused.

4. On the other hand, Ms. Krina Calla, learned Additional Public Prosecutor submitted that the second respondent had not received a copy of the nomination, if any, made u/s 17(2) of the Act. It was further submitted that the allegations made in the complaint bear the ingredients of the offence and as

such, there is no warrant for intervention at this stage.

5. In the backdrop of the aforesaid facts and contentions, a perusal of the report made by the Public Analyst, Junagadh shows that the label of the company contains the name of the food article in question which was Kissan Tomato Sauce, Batch No. was 049, date and month and year of mfg./pkg. was 12/2004 and that the same was best before twelve months from month of Mfg. The report of the Public Analyst is to the effect that the sample is adulterated and it does not comply with the standards and provisions laid down under the Prevention of Food Adulteration Rules, 1955. Thus, it is apparent that the shelf life of the sample of the food article was twelve months from December, 2004, that is till December, 2005 after which, the shelf life of the food article would expire.

6. Section 13(2) of the Act provides that on receipt of a report of the result of analysis under sub-section (1) thereof to the effect that the article of food is adulterated, the Local (Health) Authority shall, after 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 other particulars have been disclosed u/s 14A, forward, in such manner as may be prescribed, a copy of the report and 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. On a plain reading of sub-section (2) of Section 13 of the Act, it is apparent that the report of the Public Analyst would be made available to the accused persons only after the prosecution is instituted in the concerned court. In the facts of the present case, though the report of the Public Analyst was prepared on 6th April, 2005, the complaint was lodged almost three years thereafter on 6th February, 2008. Under the circumstances, by the time the report of the Public Analyst was received by the applicant, a period of more than three years had elapsed since the collection of the sample of the food article in question. Thus, it is apparent that the shelf life of the sample of the article of food had expired much before the report of the Public Analyst was made available to the applicant.

7. At this juncture reference may be made to the decision of the Supreme Court in State of Haryana Vs. Unique Farmaid P. Ltd. Ors., , wherein, in the context of the Insecticides Act, it had been contended that the shelf life of the sample was not relevant as the Act does not prescribe any expiry date. The court found no substance in the said contention. It was observed that if the expiry date is not relevant, there was no reason why in the form prescribed for submission of the report by the Insecticide Analyst, the dates of manufacture of the article and the expiry date are mentioned.

8. In the facts of the present case, a perusal of the report of the Public Analyst reveals that there is reference to Rule 32 of the Rules, below which various

details have been specified, inter alia, referring to the batch number, date, month and year of manufacture/pkg, best before, etc. Rule 32 of the Rules provides for specifying various details on the label of every package of food, including: (a) the name, trade name and description of food contained in the package, (b) the names of the ingredients used in the product, (c) name and complete address of manufacturer, (i) the month and year in capital letters up to which the product is best for consumption, in the following manner namely,

Best before--month and year

Or

Best before--Months from Packaging

Or

Best before--Months from Manufacture

Or

Best before upto Month and Year

(for the period up to and inclusive of 1st September 2001)

Or

Best before within months from the date of packaging/manufacture (for the period up to and inclusive of 1st September 2001).

8.1 Thus, there is a statutory requirement for mentioning the best before date on the label of the package of food article. Under the circumstances, when the statute itself provides that the article of food should bear the date before which it is best for use, the same would bear some significance, namely, that the article would lose its original characteristic due to lapse of time. In *State of Haryana v. Unique Farmaid (P) Ltd.* (supra), the Supreme Court in the facts of the said case, wherein by the time the matter reached the court, the shelf life of the sample had already expired, observed that no purpose would have been served informing the court of such an intention to have the sample tested from the Central Insecticides Laboratory and held that the report of the Insecticide Analyst was, therefore, not conclusive. A valuable right had been conferred on the accused to have the sample tested from the Central Insecticides Laboratory and in the circumstances of the case, the accused had been deprived of that right, thus, prejudicing them in their defence.

9. In the case of *Municipal Corporation of Delhi Vs. Ghisa Ram*, wherein the article of food was curd and there was a delay in lodging the prosecution, when the sample was received by the Director, he reported that the sample of curd sent to him had become highly decomposed and no analysis of it was possible. The Supreme Court held that "the right u/s 13(2) 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 conclusive evidence. In a case where there is denial of this right on account of the deliberate conduct of the prosecution, 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. "

10. In the aforesaid case, the sample in question was a sample of loose curd which does not bear any label indicating the date of manufacture or best before date. However, in a case like the present one where the article of food bears a "Use before date", the same bears some significance, hence, in such a case after the said date it would not be necessary to obtain a certificate of the Central Food Laboratory as to whether or not the food article is capable of analysis. The fact that the shelf life of the food article has expired would be indicative of the fact that the same is no longer capable of analysis.

11. It may be noted that in *Girishbhai Dahyabhai Shah Vs. C.C. Jani and Another*, , the Supreme Court was dealing with a case where the appellant therein, in a petition u/s 482 of the Code, had contended that in respect of the sample of curd collected by the Food Inspector on 8th April, 1988, the report of the Public Analyst having been served on him only on 17th July, 1989, he was not in a position to apply for the examination of the second sample to which he was entitled in terms of Section 13(2) of the Act, prior to the said date. It was also the case of the said appellant that since the report had been served on him only on the aforesaid date, by which time the sample of curd had deteriorated, any further examination of such sample had become meaningless, thereby depriving him of the valuable right conferred on him by Section 13(2) of the Act. The court held that it is only on receipt of the report of the public analyst under sub-section (1) of Section 13 of the Act to the effect that the article of food is adulterated, can a prosecution be launched and a copy of the report could be supplied to the accused. Sub-section (2) of Section 13 of the Act also indicates that on receipt of the report, the accused could, if he so desired, 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 article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory. The court was of the view that in other words, the appellant therein was prevented from applying for analysis of the second sample before 17th July, 1989, by which time the sample of curd had deteriorated and was not capable of being analysed as was found in the case of *Ghisa Ram*. Thus, even in a case where the sample had not been sent for analysis to the Director, Central Food Laboratory, the Supreme Court considering the fact that by the time the report of the Public Analyst had been supplied to the accused the sample of curd had deteriorated had held that the accused had been deprived of his valuable right u/s 13(2) of the Act.

12. This court in an unreported decision in the case of Nestle India Limited v. State of Gujarat Criminal Misc. Application No. 10732 of 2010 decided on 22.10.2012. was dealing with a case wherein nearly four years from the date of collection of sample, the complaint was lodged alongwith which the report of the Laboratory was made available. The court held that even if the petitioners wish to dispute the contents thereof and seek further report from the Central Food Laboratory in terms of sub-section (2) of Section 13, the same would be a futile exercise since in a perishable item such as tomato ketchup after four years, there would be deterioration. Following the decisions of the Supreme Court in Gupta Chemicals Pvt. Ltd. and Others Vs. State of Rajasthan and Another, and Northern Mineral Ltd. Vs. Union of India (UOI) and Another, the court quashed the proceedings. This decision would be squarely applicable to the facts of the present case.

13. In the light of the aforesaid discussion, the court is of the view that the complaint having been lodged and consequently, the copy of the report of the Public Analyst having been supplied to the applicant after the "Best before" date stated in the label of the sample of the food article had elapsed, in other words, the report having been furnished after the expiry of the shelf life of the food article, the applicant has been deprived of its valuable right under sub-section (2) of Section 13 of the Act of getting the sample analysed by the Director, Central Food Laboratory and, as such, the continuance of the criminal prosecution against the applicant, will be futile and an abuse of the process of court. In the light of the aforesaid discussion, the court is of the view that this is a fit case for exercise of powers u/s 482 of the Code to prevent the abuse of the process of court. The application, therefore, succeeds and is accordingly allowed. Criminal Case No. 392/ 2008 pending in the court of the learned Chief Judicial Magistrate, Junagadh is hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs. Application allowed.