

(2015) 02 GUJ CK 0004

In the Gujarat High Court

Case No : Misc. Criminal Application No. 10672 of 2010

Hotel Savera and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 13-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 13(1), 13(2), 13(2)(b), 16, 7
Seeds Act, 1966 — Section 16(1), 16(2)

Citation : (2016) CriLJ 1070 : (2016) 1 Crimes 340 : (2015) 3 GLR 2055 :
(2015) 4 RCR(Criminal) 1020

Hon'ble Judges : M.R. Shah, J.

Bench : Single Bench

Advocate : P.P. Majmudar, for the Appellant; Nisha Thakore, Addl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

M.R. Shah, J.—Present application under Sec. 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") has been preferred by the applicants herein - original accused Nos. 1 to 4 to quash and set aside the impugned criminal proceedings/criminal complaint being P.F.A. Case No. 4 of 2007 pending in the Court of learned J.M.F.C. (Municipality), Surat filed by the Food Inspector, Surat Municipal Corporation for the offences punishable under Sees. 7 and 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "P.F.A. Act"). That the Food Inspector, Surat Municipal Corporation - original complainant drawn the sample of "Anuj Bread-Spread" from the premises of Hotel Savera at Surat on 2-8-2006. That the said sample was immediately and after following the due procedure was sent to the Public Health Laboratory, Surat on 2-8-2006. That as it was found that the said sample "Anuj Bread-Spread" was not as per the prescribed standard provided under the Rules framed under the P.F.A. Act, and thus, found to be adulterated, the Food Inspector, Surat Municipal Corporation had filed the impugned complaint on

20-2-2007 against the accused persons - manufacturer as well as vendor including the applicants for the offences punishable under Sees. 7 and 16 of the P.F.A. Act. That the learned Magistrate had issued the summonses/process against all the accused for the offences punishable under Sec. 7 of the P.F.A. Act on 20-2-2007. That all the applicants herein were served with the summonses and they appeared through their Advocate. That thereafter, after a period of approximately 3 years, the applicants herein - original accused Nos. 1 to 4 have preferred the present Misc. Criminal Application under Sec. 482 of the Cr.P.C. to quash and set aside the impugned criminal proceedings/complaint in exercise of powers under Sec. 482 of the Cr.P.C.

2. Shri P.P. Majmudar, learned Advocate appearing on behalf of the original applicants herein - original accused Nos. 1 to 4 has vehemently submitted that in the present case the samples of "Anuj Bread-Spread" were collected on 2-8-2006 and the same were sent to the Public Analyst on the same day and the report of the Public Analyst dated 1-9-2006 was received by the complainant and thereafter the impugned complaint has been filed on 20-2-2007. It is submitted that in fact the date of expiry of the sample "Anuj Bread-Spread" was six months. It is submitted, that therefore, the expiry date of the sample "Anuj Bread-Spread" would be 31-1-2007, whereas the impugned complaint is filed on 20-2-2007 and therefore right of the accused to get the sample examined by the Central Food Laboratory as provided under Sec. 13(2)(b) of the P.F.A. Act is violated as the said sample would not be fit for any analysis by the Central Food Laboratory. It is submitted, that therefore, the valuable right of the accused to get the sample analyzed through the Central Food Laboratory has been violated and/or taken away, and therefore, this is a fit case to exercise the powers under Sec. 482 of the Cr.P.C. and to quash and set aside the impugned criminal proceedings/complaint.

2.1. Shri Majmudar, learned Advocate appearing on behalf of the applicants has heavily relied upon the following decisions of the learned Single Judge of this Court in support of his request to quash and set aside the impugned criminal proceedings in exercise of powers under Sec. 482 of the Cr.P.C.:

"(1) Mukesh Laljibhai Thakkar v. Food Inspector C/o. Food, Drug Control, , 2014 (2) Crimes (HC) 370

(2) Ushodaya Enterprises Pvt. Ltd. (Priya Food Division) and Another Vs. State of Gujarat and Another,

(3) Nestle India Ltd. through R.K. Rajput, Manager (Sales) v. State of Gujarat, Unreported decision of the learned Single Judge in Misc. Criminal Application No. 10732 of 2010"

No other submissions have been made.

2.2. Making above submissions and relying upon above decisions, it is requested to allow the present application and quash and set aside the impugned criminal

proceedings/criminal complaint.

3. Present application is opposed by Shri Shah, learned Advocate appearing on behalf of the respondent No. 2 - Food Inspector and Ms. Nisha Thakore, learned A.P.P. appearing on behalf of the State.

It is vehemently submitted by the learned Advocates appearing on behalf of the respective respondents that in the present case, as such there is no delay at all more particularly any delay on the part of the Food Inspector. It is submitted that in the present case the sample was drawn on 2-8-2006 and immediately thereafter and after following due procedure as required, the same was sent to the Public Health Laboratory, Surat on 2-8-2006. It is submitted that as it was found that the said sample was not as per the prescribed standard provided under the Rules framed under the P.F.A. Act, and thus found to be adulterated, after obtaining necessary sanction from the appropriate authority, the Food Inspector, Surat Municipal Corporation had filed the impugned complaint on 20-2-2007 against the accused persons - manufacturer as well as vendor including the applicants.

3.1. It is further submitted that as such there is a delay on the part of the applicants in preferring the present application inasmuch as after a period of approximately 3 years from the date of filing of the complaint, the applicants herein - original accused Nos. 1 to 4 have preferred the present Misc. Criminal Application under Sec. 482 of the Cr.P.C.

3.2. It is further submitted by the learned Advocates appearing on behalf of the respective respondents that the impugned criminal complaint/proceedings which is filed for the offences under the P.F.A. Act is sought to be quashed and set aside solely on the ground that the expiry date of the sample was 31-1-2007, whereas the impugned complaint has been filed on 20-2-2007 i.e. after the expiry date of the sample and therefore, right of the accused to get the sample examined by the Central Food Laboratory as provided under Sec. 13(2)(b) of the P.F.A. Act is violated, as the said sample would not be fit for any analysis by the Central Food Laboratory. However, it is submitted that the applicants had never submitted any application before the learned Magistrate to send the sample to the Central Laboratory and/or has never made any request before the learned Magistrate to get the sample tested by the Central Food Laboratory. It is submitted that the contention and submissions on behalf of the applicants are absolutely on presumption and assumption. It is submitted that unless and until on the application made by the accused, the sample is sent to the Central Food Laboratory and unless and until after the analysis, the Central Food Laboratory opines that the sample has become deteriorated and/or decomposed and therefore, not fit for analysis, there shall not be such a presumption that the sample has become decomposed and/or deteriorated and/or not fit for analysis. It is submitted that on the basis of mere apprehension that by the passage of time, the sample must have become decomposed and/or deteriorated, the complaint may not be quashed in exercise of powers under Sec. 482 of the

Cr.P.C. It is submitted that allegation of prejudice are not only to be pleaded but they are required to be demonstrated and/or proved and actual prejudice is required to be demonstrated and proved. It is submitted that mere allegation of prejudice would not suffice at this stage to quash the impugned complaint in exercise of powers under Sec. 482 of the Cr.P.C.:

3.3. Now, so far as the submissions on behalf of the applicants to quash and set aside the impugned criminal proceedings/complaint on the ground that the expiry date of the sample had gone and thereafter the impugned complaint has been filed, and therefore, right of the accused to get the sample analyse/ examined by the Central Food Laboratory as provided under Sec. 13(2)(b) of the P.F.A. Act has been violated, as the said sample would not be fit for analysis by the Central Food Laboratory is concerned, it is vehemently submitted by the learned Advocates appearing for the respective respondents that as such on the aforesaid ground the impugned criminal proceedings/complaint may not be quashed at this stage and that too in exercise of powers under Sec. 482 of the Cr.P.C. It is submitted that at this stage the Courts cannot presume that expiry of the "best before" date or expiry of the shelf-life of the product would, by itself, and without anything more, result in rendering the sample unfit for analysis. It is submitted that the shelf-life of the products may vary from one to the other.

3.4. It is further submitted that "best before" date under Rule 32 of the Rules, merely requires the manufacturer to indicate the period during which the product would remain fully marketable and retain its specific qualities. It is submitted that Explanation VIII(i) provides that beyond the "Best Before Date", the food may still be perfectly satisfactory. It is submitted that expiry of the "best before date" for the shelf-life of the product would only enable the manufacturer to disclaim liability regarding the marketability and the specific qualities of the product. It is submitted that expiry of the shelf-life would not automatically render the sample unfit for analysis.

3.5. It is further submitted that under the P.F.A. Act and the Rules made thereunder, a duty is cast on the Central Food Laboratory to examine/opine whether or not the sample is fit for analysis. It is submitted that whether the sample is fit for analysis or has decomposed to such an extent as to render it incapable of analysis are all matters to be examined by the Central Food Laboratory. It is submitted that denial of the right of the accused, under Sec. 13(2) of the P.F.A. Act would rise only when the accused have applied to the Court to have the sample sent for analysis to the Central Food Laboratory. It is submitted that failure to exercise this option or to make an application to the Court, requesting that the sample be sent for analysis to the Central Food Laboratory, would disentitle the accused from contending that they have been denied the right under Sec. 13(2) of the P.F.A. Act.

3.6. It is submitted that if the sample has not been sent for analysis to the Central Food Laboratory and the Central Food Laboratory has not certified that the sample has decomposed, rendering it unfit for analysis, mere delay in

furnishing the report of the Public Analyst to the accused cannot, by itself, be said to have caused prejudice to the accused. It is submitted that it is only if the Central Food Laboratory certifies that the sample is unfit for analysis and this has resulted due to the delay on the part of the prosecution to furnish a copy of the report of the Public Analyst to the accused, can the accused be said to have suffered prejudice.

3.7. It is submitted that as per catena of decisions of Hon''ble Supreme Court as well as this Court, powers under Sec. 482 of the Cr.P.C. is to be exercised sparingly, with circumspection, and in the rarest of rare cases. It is submitted that in the present application under Sec. 482 of the Cr.P.C. the High Court does not take upon itself the task of appreciating the evidence on record or to record the independent finding that the delay in furnishing the copy of the report of the Public Analyst has resulted in prejudice to the accused.

3.8. Relying upon recent decision of the learned Single Judge of this Court in the case of Pepsi Co. India Holdings Ltd. through its Officer Vinay Mathur v. State of Gujarat, dated 11-12-2014 in Misc. Criminal Application Nos. 1821 of 2002 with Misc. Criminal Application No. 1822 of 2002 and the decision of the learned Single Judge of the Andhra Pradesh High Court in the case of Hyderabad Beverages Private Limited Vs. State of A.P., , and the decision of the Hon''ble Supreme Court in the case of Ajit Prasad Ramkishan Singh Vs. The State of Maharashtra, , it is requested to dismiss the present application and not to quash and set aside the impugned criminal proceedings in exercise of powers under Sec. 482 of the Cr.P.C. Making above submissions and relying upon above decisions, it is requested to dismiss the present application.

4. Heard learned Advocates appearing for respective parties at length. At the outset, it is required to be noted that the present application has been preferred by the applicants herein - original accused Nos. 1 to 4 to quash and set aside the impugned criminal proceedings/complaint for the offences under the P.F.A. Act, in exercise of powers under Sec. 482 of the Cr.P.C. The impugned criminal proceedings/complaint is sought to be quashed and set aside mainly on the ground that the impugned criminal complaint has been filed and the report of the Public Analyst, Surat has been given to the accused after the expiry date of the sample, and therefore, the valuable right of the accused to get the sample tested by the Central Food Laboratory conferred under Sec. 13(2) of the P.F.A. Act has been taken away and/or violated, as the expiry date of the sample has gone, the sample would be unfit for analysis by the Central Food Laboratory and therefore, grave prejudice shall be caused to the applicants.

4.1. Now, so far as the first ground on which the impugned complaint is requested to be quashed and set aside i.e. delay in filing the complaint and the prejudice that may be caused to the accused and/or taking away the right of the accused to get the sample tested through Central Laboratory as conferred under Sec. 13(2) of the P.F.A. Act is concerned, the submission seems to be attractive, but has no substance. At the outset, it is required to be noted that as such no

application has been submitted by the accused and/or any request is made by the accused before the learned Magistrate to send the sample to the Central Laboratory. Therefore, as such the accused has not exercised the option which is conferred under Sec. 13(2) of the P.F.A. Act of getting the sample examined through the Central Food Laboratory. Therefore, the contention on behalf of the applicants that a valuable right of the applicants to get the sample tested through Central Food Laboratory has been taken away cannot be accepted.

4.2. Now, so far as the contention on behalf of the applicants that because of the delay in filing the complaint, the valuable right of the applicants to get the sample tested through Central Food Laboratory as conferred under Sec. 13(2) of the P.F.A. Act, has been taken away and/or has been violated and/or a great prejudice would be caused to the applicants as because of such delay the sample might have become decomposed and/or deteriorated. However, the aforesaid allegations are only on presumption and assumption. Unless and until any request is made to send the sample to the Central Laboratory, by exercising the option as conferred under Sec. 13(2) of the P.F.A. Act and unless and until the sample is sent to the Central Food Laboratory, and thereafter, after analysis it is opined by the Central Food Laboratory that as such the sample has deteriorated and/or decomposed, on such presumption and assumption that it must have been deteriorated and/or decomposed, the criminal proceedings cannot be quashed in exercise of powers under Sec. 482 of the Cr.P.C. and that too, for the offences under the P.F.A. Act. In the case of Ajit Prasad Ramakishan Singh (supra), the Hon'ble Supreme Court after its earlier judgment in the case of Charanji Lal Vs. State of Punjab, , has specifically observed and held that it was wrong for Courts to decide, without any data, that the sample would decompose and become incapable of analysis and that no useful purpose would be served in sending the sample for analysis to the Director, when there was no evidence that the sample had so deteriorated at the time of service of summons as to be incapable of being analysed. It is further observed that in absence of evidence, that the sample has so deteriorated as to be incapable of analysis, such a presumption would not be justified.

4.3. The main contention on behalf of the applicants in support of their prayer to quash and set aside the impugned criminal complaint is that expiry date of the sample was 31-1-2007, whereas the impugned complaint has been filed on 20-2-2007 i.e. after expiry date of the sample and therefore, right of the accused to get the sample examined by the Central Food Laboratory as provided under Sec. 13(2)(b) of the P.F.A. Act has been violated and/or great prejudice would be caused to the applicants - accused as the said sample would not be fit for analysis by the Central Food Laboratory. However, it is required to be noted that the present Misc. Criminal Application has been preferred by the accused after a period of three months of service of the summons of the criminal complaint. Nothing is on record that immediately after service of the summons and the accused have appeared before the learned trial Court, they had made an application to send the sample to the Central Food Laboratory for further

analysis. The option given for analysis to the Central Food Laboratory, is to enable the accused to ascertain the correctness and/or finding of the Public Analyst. The said valuable right, under Sec. 13(2) of the P.F.A. Act would cause prejudice to the accused only, if denied. Denial of right of the accused, under Sec. 13(2) of the P.F.A. Act, would arise only when the accused have applied to the Court to have the sample sent for analysis to the Central Food Laboratory. Failure to exercise this option or to make an application to the Court, requesting that the sample be sent for analysis to the Central Food Laboratory, would disentitle the accused from contending that they have been denied the right under Sec. 13(2) of the P.F.A. Act.

4.4. Even otherwise, whether the sample is fit for analysis or has decomposed to such an extent as to render it incapable for analysis are all matters to be examined by the Central Food Laboratory. It is only if the Central Food Laboratory certifies that the sample is unfit for analysis, the accused can be said to have suffered the prejudice. If the sample is sent for analysis to the Central Food Laboratory and the Central Food Laboratory has not certified that the sample decomposed, rendering it unfit for analysis, merely because the expiry date of the sample has gone, by itself, it cannot be said that it has caused prejudice to the accused.

4.5. The contention on behalf of the applicants that the expiry date of the sample has gone and thereafter the complaint has been filed and therefore, the valuable right of the accused to get the sample further analyzed by the Central Food Laboratory has been taken away and/or grave prejudice shall be caused to the accused is concerned, at this stage, Rule 32 of the Rules is required to be referred to. "Best Before Date" under Rule 32 of the Rules, merely requires the manufacturer to indicate the period during which the product would remain fully marketable and retain its specific qualities. Explanation VIII(i) thereunder provides that beyond the "Best Before Date", the food may still be perfectly satisfactory. Expiry of the "Best Before Date" or the shelf-life of the product would only enable the manufacturer to disclaim liability regarding the marketability and the specific qualities of the product. Expiry of the shelf-life would not automatically render the sample unfit for analysis. Therefore, unless and until the sample is sent to the Central Food Laboratory that too on the application made by the accused and the Central Food Laboratory certifies that the sample is unfit for analysis because of the delay, the contention on behalf of the accused would be merely on assumption and presumption. That on mere apprehension and/or assumption and presumption, the criminal complaint is not required to be quashed and set aside and that too in exercise of powers under Sec. 482 of the Cr.P.C.

4.6. In the case of M/s. Hyderabad Beverages Pvt. Ltd. (supra), in Paras 70 to 78 and 103, it is observed and held as under:

"70. In Ajit Prasad Ramkishan Singh Vs. The State of Maharashtra, , the Supreme Court, following its earlier judgment in Charanji Lal Vs. State of

Punjab, held that it was wrong for Courts to decide, without any data, that the sample would decompose and become incapable of analysis and that no useful purpose would be served in sending the sample for analysis to the Director, when there was no evidence that the sample had so deteriorated at the time of service of summons as to be incapable of being analysed. In the absence of evidence, that the sample has so deteriorated as to be incapable of analysis, such a presumption would not be justified.

71. An enquiry, as to whether the sample has decomposed, whether it is fit or unfit for analysis etc., is a statutory function required to be discharged by the Central Food laboratory and not for this Court, in proceedings under Sec. 482 , Cr.P.C. to presume that every case of delay in furnishing a copy of the Public Analyst's report, beyond the shelf-life of the product, would either result in the sample becoming decomposed or cause prejudice to the accused.

72. As held by the Apex Court in *Ajit Prasad Ramkishan Singh Vs. The State of Maharashtra*, *Charanji Lal Vs. State of Punjab*, and *T.V. Usman Vs. Food Inspector, Tellicherry Municipality, Tellicherry*, and this Court in *G.S. Prasad*, 2003 Cri.LJ (NOC) 231 and *Gangaiahnaidu Rama Krishna* unless it is shown that the sample has been rendered unfit for analysis and the reasons therefor are on account of the delay in sending the sample for analysis and thereby prejudice has been caused to the accused entitling them to acquittal, mere delay in furnishing the report of the public analyst to the accused would not, by itself, be fatal to the case of the prosecution.

73. As held in *T.V. Usman Vs. Food Inspector, Tellicherry Municipality, Tellicherry*, there is no time-limit prescribed for launching prosecution. It is relevant to note that a time-limit is prescribed, under Sec. 9A of the P.F.A. Act, for sending the second sample for analysis to the Public Analyst, a time-limit of 10 days was prescribed under Rule 9(j), prior to its omission with effect from 4-1-1977, for supplying a copy of the report of the public analyst, Rule 22 provides that the quantity of food to be sent for analysis must be as prescribed in the table to the rule and Rule 7(3) requires the Public Analyst to submit his report within 45 days. All these statutory provisions were held in *Tulsiram Vs. State of Madhya Pradesh*, *Dalchand Vs. Municipal Corporation, Bhopal* and *Another*, *State of Kerala and Others Vs. Alasserry Mohammed and Others*, and *Arvind Mohan Sinha Vs. Amulya Kumar Biswas and Others*, to be directory and not mandatory. When no time-limit is prescribed under the Act for launching prosecution and certain statutory provisions and rules, wherein time-limit is prescribed, were held to be directory and not mandatory, it cannot be said that mere delay in furnishing a copy of the report of the public analyst to the accused, by itself and without any thing more, is fatal to the prosecution.

75. Negligence of officials in discharging their functions, and in not promptly furnishing a copy of the report of the public analyst to the accused, must not result in offenders involved in adulteration of the food/seed being permitted to go scot-free, unless prejudice is established. Legitimate prosecution should not

be scuttled on mere technicalities, in the absence of any proof of prejudice to the accused.

76. In *Dalchand Vs. Municipal Corporation, Bhopal and Another*, , the Supreme Court held thus:

"...It is well to remember that quite often many rules, though couched in language which appears to be imperative, are no more than mere instructions to those entrusted with the task of discharging statutory duties for public benefit. The negligence of those to whom public duties are entrusted cannot by statutory interpretation be allowed to promote public mischief and cause public inconvenience and defeat the main object of the statute...."

(Emphasis supplied)

77. Since, the eventual test is one of prejudice, which is to be established, on the facts and circumstances of each case, by way of evidence adduced before the learned Magistrate, it is not for this Court, under Sec. 482 , Cr.P.C. to infer or presume that even in case of delay, say of a few days, beyond the shelf-life of the product, and in the absence of reasonable explanation for the delay in furnishing a copy of the report of the Public Analyst, the accused is prejudiced and his right, under Sec. 13(2) of the P.F.A. Act and Sec. 16(2) of the Seeds Act, is violated. 78. In exercise of its jurisdiction under Sec. 482 , Cr.P.C. this Court does not take upon itself the task of examining the evidence or to record an independent finding that the delay in furnishing a copy of the Public analyst's report has resulted in prejudice to the accused. Whether the delay is insignificant or inordinate, whether the delay is attributable to lapses of the prosecution in making available a copy of the Public analyst's report, whether on account of the delay in making the report available, the right of the accused under Sec. 13(2) of the P.F.A. Act or Sec. 16(2) of the Seeds Act has been rendered illusory as the sample sent to the Central Laboratory is found unfit for analysis due to decomposition by passage of time or for any other reason attributed to lapses on the part of the prosecution, whether inordinate delay in sending the sample for analysis has, by passage of time, rendered the sample "adulterated" are all matters to be examined by the learned Magistrate, in the facts and circumstances of each case, on the basis of the evidence adduced. Delay, by itself and without anything more, cannot form the basis for the High Court, in exercise of its jurisdiction under Sec. 482 , Cr.P.C. to quash the criminal proceedings."

"103.1. Since, the object and purpose of the P.F.A. Act is to eliminate danger to human life and health from the sale of unwholesome articles of food, strict adherence to the P.F.A. Act and the rules made thereunder is essential. In offences relating to food articles, strict liability is the Rule.

2. The report of the public analyst, under Sec. 13(1) of the P.F.A. Act and Sec. 16(1) of the Seeds Act, forms the basis for institution of prosecution for adulteration offences. This report, prima facie, indicates that the accused have

sold adulterated food/seed.

3. The option given for analysis to the Central Laboratory, is to enable them to ascertain the correctness or otherwise of the findings of the public analyst. This valuable right, under Sec. 13(2) of the P.F.A. Act and Sec. 16(2) of Seeds Act, if denied, would cause prejudice to the accused.

4. Denial of the right of the accused, under Sec. 13(2) of the P.F.A. Act and Sec. 16(2) of the Seeds Act, would arise only when the accused have applied to the Court to have the sample sent for analysis to the Central Laboratory. Failure to exercise this option or to make an application to the Court, requesting that the sample be sent for analysis to the Central Laboratory, would disentitle the accused from contending that they have been denied their right under Sec. 13(2) of the P.F.A. Act and Sec. 16(2) of the Seeds Act. Babu Lal Hargovindas Vs. The State of Gujarat, , Jagdish Prasad alias Jagdish Prasad Gupta Vs. State of West Bengal, , Ajit Prasad Ramkishan Singh Vs. The State of Maharashtra, , Prabhu Vs. State of Rajasthan, , Tulsiram Vs. State of Madhya Pradesh, , G.S. Prasad, 2003 Cri.LJ NOC 231, and Gangaiahnaidu Rama Krishna.

5. "Best Before Date", under Rule 32 of the P.F.A. Rules, merely requires the manufacturer to indicate the period during which the product would remain fully marketable and retain its specific qualities. Explanation VIII(i) thereunder provides that beyond the "Best Before Date", the food may still be perfectly satisfactory.

6. Expiry of the "Best Before Date" or the shelf-life of the product would only enable a manufacturer to disclaim liability regarding the marketability and the specific qualities of the product. Expiry of the shelf-life would not automatically render the sample unfit for analysis.

7. The "Best Before Date" would vary from one article to another. Similarly the extent of delay in furnishing a copy of the report of the public analyst to the accused would vary from one case to another.

8. Rule 4(5) of the Prevention of Food Adulteration Rules, read with Form II of Appendix-A thereof, requires the Central Laboratory to certify as to whether the sample sent to it for analysis is fit for analysis or not, and in case it is found unfit for analysis to certify the reasons therefor.

9. The P.F.A. Act and the Rules made thereunder cast a duty on the Central Laboratory to certify whether or not the sample is fit for analysis.

10. Whether the sample is fit for analysis or has decomposed to such an extent as to render it incapable of analysis are all matters to be examined by the Central Laboratory.

11. It is only if the Central Laboratory certifies that the sample is unfit for analysis and this has resulted due to the delay on the part of the prosecution to furnish a copy of the report of the public analyst to the accused, can the accused

be said to have suffered prejudice. Ajit Prasad Ramkishan Singh Vs. The State of Maharashtra, , Charanji Lal Vs. State of Punjab, , T.V. Usman Vs. Food Inspector, Tellicherry Municipality, Tellicherry, , G.S. Prasad, 2003 Cri.LJ N.O.C. 231 and Gangaiahnaidu Ramakrishna).

12. If the sample has not been sent for analysis to the Central Laboratory and the Central Laboratory has not certified that the sample has decomposed, rendering it unfit for analysis, mere delay in furnishing the report of the public analyst to the accused, cannot by itself, be said to have caused prejudice to the accused.

13. Power under Sec. 482 , Cr.P.C. is to be exercised sparingly, with circumspection, and in the rarest of rare cases. This power is not to be used to stifle legitimate prosecution. Inherent powers under Sec. 482 , Cr.P.C. do not confer arbitrary jurisdiction on the High Court to act according to whim or caprice.

14. In proceedings under Sec. 482 , Cr.P.C. the High Court does not take upon itself the task of appreciating the evidence on record or to record an independent finding that the delay in furnishing a copy of the report of the public analyst has resulted in prejudice to the accused.

15. Whether delay, in furnishing a copy of the report of the public analyst, has resulted in prejudice to the accused and whether the prosecution has furnished a satisfactory explanation for the delay, are all matters of evidence, to be examined by the trial Court and not for this Court to infer in proceedings under Sec. 482 , Cr.P.C."

4.7. Identical question came to be considered by the learned Single Judge in the recent decision in the case of Pepsi Co. India Holdings Ltd. through its Officer Vinay Mathur, Misc. Criminal Application Nos. 1821 & 1822 of 2002 decided on 11-12-2014, and after considering the aforesaid decision of the Andhra Pradesh High Court and after considering other decisions of the Hon"ble Supreme Court as well as other High Courts on the issue, the learned Single Judge has refused to quash and set aside the complaint for the offences punishable under the P.F.A. Act.

4.8. There cannot be any presumption that the sample must have been deteriorated and/or decomposed and/or would have become incapable of being further analyzed by the Central Food Laboratory. Whether the delay in furnishing the copy of the report of the Public Analyst and/or delay in filing the complaint and that too after the expiry date of the sample, has resulted in prejudice to the accused and whether the prosecution has furnished a satisfactory explanation for the delay, are all matters of evidence to be examined by the learned trial Court and not for this Court in exercise of powers under Sec. 482 of the Cr.P.C. As per the catena of decisions of the Hon"ble Supreme Court as well as this Court, the power under Sec. 482 of the Cr.P.C. are to be exercised sparingly with great circumspection and in the rarest of rare cases. This power is not to be used to stifle legitimate prosecution. It is required to be noted that in the present case as

such the Public Analyst, Surat had in fact found the sample adulterated. The sample was drawn on 2-8-2006 and immediately and after following the procedure as required, it was sent to the Public Health Laboratory, Surat on 2-8-2006 and it was found that the said sample was not as per the prescribed standard provided under the Rules framed under the P.F.A. Act and thus, found to be adulterated. According to the accused the expiry date of the sample was 31-1-2007 however, immediately after obtaining the sanction from the appropriate authority, the impugned complaint has been filed on 20-2-2007.

4.9. Now, so far as the reliance placed upon the decision of the learned Single Judge in the case of Nestle India Limited, through R.K. Rajput, Manager (Sales), (supra) rendered in Misc. Criminal Application No. 10732 of 2010 is concerned, on facts the said decision would not be applicable to the facts of the case on hand. In the case before the learned Single Judge considering the item which was tomato ketchup and the delay of four years and it was found to be a perishable item. The learned Single Judge exercised the powers under Sec. 482 of the Cr.P.C. However, it is required to be noted that in the said decision the learned Single Judge did refer to the decision of the Hon''ble Supreme Court in the case of Prabhu Vs. State of Rajasthan, wherein the Apex Court observed that the accused did not avail of the opportunity to make application to Court for sending the sample to the Laboratory for analysis as provided under Sec. 13(2) , and therefore, in that view, the Apex Court observed that it cannot be stated that the accused suffered any prejudice on account of delay. Even in the said decision the learned Single Judge also referred to the decision of the Hon''ble Supreme Court in the case of Babu Lal Hargovindas Vs. The State of Gujarat, and the decision of the Punjab & Haryana High Court in the case of Ramesh Ramesh Chand Vs. State of Haryana, . Even the decision of the learned Single Judge in the case of Mukesh Laljibhai Thakkar, , 2014 (2) Crimes (HC) 370 would not be applicable to the facts of the case on hand more particularly in the aforesaid case the complaint was filed after a period of 25 months from the date on which the sample came to be collected.

In view of the above and for the reasons stated above, this Court is of the firm opinion that this is not a fit case to quash and set aside the impugned criminal complaint which has been filed for the offences under the P.F.A. Act and the Rules in exercise of powers under Sec. 482 of the Cr.P.C. Under the circumstances, present application fails and the same deserves to be dismissed and is, accordingly, dismissed. Rule is discharged. Ad-interim relief granted earlier, if any, stands vacated forthwith.