

(2014) 03 BOM CK 0035

In the Bombay High Court

Case No : Criminal Application No. 4075 of 2013

Manish

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 12-03-2014

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 13(2), 14, 14A, 19, 19(2)

Citation : (2014) ALLMR(Cri) 4257

Hon'ble Judges : A.I.S. Cheema, J

Bench : Single Bench

Advocate : Pawan K. Lakhotiya, Advocate for the Appellant; S.G. Chincholkar, A.P.P, Advocate for the Respondent

Final Decision : Allowed

Judgement

A.I.S. Cheema, J.—Heard learned counsel for the Applicant and learned A.P.P. for Respondent No. 1. Respondent No. 2 is reported to be dead. Rule. Rule made returnable forthwith and heard finally.

2. The case in brief is that on 15th January, 2010, Food Inspector of Respondent No. 1 went to the shop of the Applicant and took three samples of "Sangam Pure Ghee" which was in sealed Plastic Jars each of 904 gms. As per Section 14A of the Prevention of Food Adulteration Act, 1954 (for short "Act of 1954"), the name of manufacturer along with invoice was given to Respondent No. 1. In July, 2010, Applicant received notice u/s 13(2) of the Act of 1954, after complaint No. 3803 (should be 3804) of 2010 (later on S.C.C. No. 200 of 2010) was filed before Chief Judicial Magistrate, Aurangabad. The matter is now pending before the Court of Judicial Magistrate, First Class (Corporation Court) Aurangabad. This Application was filed seeking quashment of the process issued in the matter as regards the present Applicant.

3. Learned counsel for the Applicant submitted that the Applicant is admittedly a retailer, as can be seen from the complaint itself, copy of which is filed at Exhibit

B. Learned counsel referred to Para 6 of the complaint to say that three packets of Ghee having the name "Sangam Pure Ghee" in sealed jars were seized from the Applicant. Learned counsel argued that as per Section 19(2) of the Act of 1954, the Applicant is protected as invoice vide which the Applicant purchased the articles is also an admitted fact looking to Para 16 of the complaint. Learned counsel filed copy of the Panchnama and invoice also on record to show that Ghee in sealed jars was purchased from Respondent No. 2, and the same was seized. Learned counsel referred to the Proviso to Section 14 of the Act of 1954 to submit that the invoice admittedly shown by the Applicant to the Food Inspector, protected him as it gives warranty of the goods and the offence, if any, could be attributed only to Respondent No. 2.

4. Another ground raised by the learned counsel for the Applicant was that the sample was collected on 15th January, 2010 and the compliant itself shows that sample was sent to the Public Analyst by the complainant on 16th January, 2010 and report dated 9th February, 2010 of the Public Analyst was received on 4th March, 2010. Still the complaint was filed only on 23rd June, 2010 although shelf life of the article concerned (Ghee) was only of six months. Learned counsel argued that the notice dated 5th July, 2010 was sent to the Applicant only on 13th July, 2010, as can be seen from the postal endorsement on copy of envelope filed by him along with Exhibit A. Thus, according to the learned counsel, the defence which accused could have taken in view of 13(2) of the Act of 1954 was defeated due to delay caused by the complainant Respondent No. 1. The submissions of the learned counsel for the Applicant were that the Application deserves to be allowed and the prosecution as far as regards the Applicant, deserves to be quashed.

5. Learned A.P.P. submitted that the report of the Public Analyst shows that article concerned was adulterated. According to the learned A.P.P. u/s 19(2) of the Act of 1954, the defence is matter of evidence and it will have to be shown by the Applicant that the jars containing Ghee were not tampered by him and that they had been properly stored.

6. Learned counsel for Applicant, in reply, relied on the case of Ghanshyam Mulchand Keshwani and Gurumukh Mulchand Keshwani Vs. State of Maharashtra and Girish Joshi, Proprietor of Kusum Products, to submit that in that matter inter alia argument was that the complaint nowhere shows that the seal of any of the packets of chilly powder had been tampered with and for reasons recorded the accused who were retailers, were protected. Learned counsel submitted that in the present matter also, there is nothing in the complaint to show that the sealed jars containing Ghee, which were seized, had been in any manner, tampered with.

7. Relevant Part of Section 19(2) of the Act of 1954 reads as under:

"19. Defence which may or may not be allowed in prosecutions under this Act.-

(1).....

(2) A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves-

(a) that he purchased the article of food-

(i) in a case where a license is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer,

(ii) in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.

(3)....."

8. Learned counsel for Applicant submits that this defence is open to the Applicant even at present stage. The counsel referred to the case of M.Y. Jagadesh and others vs. State of A.P. and another, reported in 2006 ALL M.R. (Cri) JOURNAL 256. In that matter, partners of Super Bazar were prosecuted for selling ghee packets found to be adulterated. During the course of taking of samples by Food Inspector, accused had informed the Food Inspector that Mathura Ghee 200 grams packets were purchased from M/s. Anuradha Enterprises, Hindupur and also produced xerox copy of bill. Accused had sold Ghee in same form without manipulating packets supplied to them. It was found that accused was not liable to be prosecuted by virtue of Section 19(2) of the Act of 1954 and the prosecution came to be quashed.

9. Section 14 of the Act of 1954 reads as under:

"14.Manufacturers, distributors and dealers to give warranty. No manufacturer or distributor of, or dealer in, any article of food shall sell such article to any vendor unless he also gives a warranty in written in the prescribed form about the nature and quality of such article to the vendor :

Provided that a bill, cash memorandum or invoice in respect of the sale of any article of food given by a manufacturer or distributor of, or dealer in, such article to the vendor thereof shall be deemed to be a warranty given by such manufacturer, distributor or dealer under this section."

10. The copy of the invoice issued by Respondent No. 2, which has been filed on record and which is referred in the complaint itself, records warranty from the manufacturer Respondent No. 2 that "food/foods mentioned in this invoice is/are warranted to be of nature & Quality which in/these purport/purports to be." Thus, clearly Proviso to Section 14 of the Act of 1954 is attracted.

11. Learned counsel for the Applicant relied on the Judgment of the learned Single Judge of this Court (CORAM: U.D. SALVI, J.) in Criminal Application No. 4192 of 2009 (Premchand s/o Sajanraj Mutha vs. The State of Maharashtra and another), dated 5th March, 2012. It was observed in Para 9 as under:

"9..... In the instant case, the invoice referred to in the complaint discloses a warranty in respect of goods sold by M/s Bihani Industries, the accused No. 2 to the Accountant. Thus, the case evidently falls in the general category of transaction under a written warranty referred to in clause a(ii) of subsection (2) of Section 19 of the said Act. It would, therefore, be an abuse of process of law to continue the prosecution against the petitioner. Criminal Application No. 4192 is, therefore, allowed."

12. In the matter of Ghanshyam Mulchand Keshwani also, the Petitioners therein were retailers and disclosed to the Food Inspector that they had purchased the packets of chilly powder from Respondent No. 2 (manufacturer) therein, and produced bill containing warranty about the quality of the chilly powder. The manufacturer had been arrayed as accused and thus the prosecution as regards the Petitioner therein was quashed.

13. Learned counsel for the Applicant has pointed out copy of the Panchnama to show that sealed packets of articles (Ghee) were seized from the Applicant and also pointed out the report of the Public Analyst wherein it is mentioned that "Sample received in a sealed printed Plastic jar pasted with printed label". Complaint does not claim that the sealed jars appeared to have been tampered or not store appropriately. Learned counsel for the Applicant is right in submitting that the Applicant deserves to be protected looking to the provisions of the Act of 1954 and further proceeding in the matter would be abuse of the process.

14. There is further substance in the argument of the learned counsel for the Applicant that filing of the complaint was delayed and because of that sample expired. The reliance has been placed on report of Public Analyst filed at Exhibit A which itself shows that label mentioned that the article was "Best before within 6 months from the date of packing". In the present matter, the sample was seized on 15th January, 2010 and it appears that the notice was sent on filing of the complaint, on 13th July, 2010. Clearly the opportunity to avail of protection u/s 13(2) of the Act of 1954 was rendered nugatory. In such circumstances, continuing with criminal prosecution would be a futile exercise and would be abuse of the process.

15. For the reasons, continuing of the prosecution in the present matter, as against the Applicant, would be abuse of the process of law and thus, the Application deserves to be allowed. Hence, I pass following order:

O R D E R

(A) Criminal Application is allowed.

(B) The criminal prosecution as far as it is against the present Applicant in Complaint bearing S.C.C. No. 200 of 2010, at present pending before Judicial Magistrate, First Class (Corporation Court), Aurangabad is quashed and set aside.

(C) Rule is made absolute on the terms indicated above.