

(2015) 01 DEL CK 0086

In the Delhi High Court

Case No : Criminal M.C. No. 1218/2011

Marico Ltd. and Others

APPELLANT

Vs

State of Delhi and Others

RESPONDENT

Date of Decision : 27-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Insecticides Act, 1968 — Section 24(3)

Prevention of Food Adulteration Act, 1954 — Section 13, 13 (2), 13(2), 14A, 16

Citation : (2015) 3 Crimes 220 : (2015) 149 DRJ 695 : (2015) 1 JCC 733

Hon'ble Judges : Manmohan Singh, J.

Bench : Single Bench

Advocate : Abhinav Vashisth, Senior Advocate, Rajesh Batra, Sonia Kukreja, Jitendra and Satish Solanki, for the Appellant; M.P. Singh, APP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Manmohan Singh, J.—The petitioner company is aggrieved by the impugned order of issuing process passed by the Addl. Chief Metropolitan Magistrate dated 15th March, 2011 and consequent proceedings arising out of the complaint filed by the respondent No. 2 under Section 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act) for violation of Section 7 of the Act.

2. It is the case of the petitioner that the petitioner's product Blended Edible Vegetable Oil was packed on 27th November, 2009 by M/s. Sachin Enterprises and it was mentioned on the product that "Best Before Nine Months from Packaging" as per the requirements of PFA Rules. The product in question was manufactured by the petitioner company.

3. The sample of Blended Edible Vegetable Oil was taken on 31st March, 2010 during the inspection conducted on the premises of M/s H.M. Morning Store Pvt. Ltd. the other co-accused in the present case.

4. Public analyst opined vide its report No. PFA/Enf./731/2010 dated 4th May, 2010 that the sampled product does not confirm to standard because acid value exceeds the prescribed maximum limit. As per the PA report the acid value was found 0.68 percent against the maximum limit of 0.50 percent. The sample went outside its shelf life of 9 months in August, 2010.

5. Complaint was filed by the respondent No. 2 on 15th March, 2011 after 10 months on the receipt of the report dated 4th May, 2010 of the Public Analyst by the LHA and on the same day the summons were issued against the petitioner company along with other accused.

6. Notice under Section 13(2) of the PFA was issued on 17th March, 2011 to the petitioner company to get the sample reanalyzed by the Central Food Laboratory where the sampled product with 9 months shelf-life became 7 months beyond the best before date.

7. The present petition under Section 482 of the Code of Criminal Procedure for quashing of the complaint and impugned order dated 15th March, 2011 issuing process passed against the petitioners in Criminal Complaint No. 56/11 titled "Food Inspector vs. Adarsh Kumar Etc.". in complaint under Section 7 and 16 of the Act pending before Addl. Chief Metropolitan Magistrate II, Patiala House Courts, New Delhi.

8. The petitioner's challenge to the prosecution is mainly on the grounds that the right of the petitioner company under Section 13(2) of the Act to get the sample of the product "Saffola Blended Edible Vegetable Oil" reanalyzed by the Apex Laboratory i.e. Director Central Food Laboratory stands vitiated which is solely attributable to the conduct of the prosecution/respondent No. 2 and the delay on its part in filing the complaint.

The packaging date of the sample is 27th November, 2009, the sample of the product was taken by the respondent No. 2 on 31st March, 2010, the sample was analyzed by the public analyst on 4th May, 2010, the complaint was filed on 15th March, 2011 and notice under Section 13(2) of the Act was given to the accused company on 17th March, 2011. The "Best Before" date of sample is 9 months from the date of packing. The product in question went outside its shelf life of 9 months in August 2010 and thus on 17th March, 2011 when Notice under Section 13(2) of the Act was given, the sample became seven months beyond its best before date and the right of the petitioner company to get the sample of the product re-analyzed was vitiated. The alleged violation is that the "acid value" of Saffola Blended Edible Vegetable Oil being found 0.68% as against 0.5%. The Public Analyst before the Central Food Laboratory (CFL) would have been a futile exercise after seven months of the product crossing its shelf life. Thus the delay in filing of the complaint by respondent No. 2 in the present case has resulted in complete denial of the right to reanalysis causing irreparable damage and prejudice to the defense of the petitioners. Therefore, the initiating of prosecution, issuance of process and consequent proceedings are uncalled for

being time barred and futile exercise by the department under the circumstances explained above.

9. It was alleged in the complaint that the accused persons have violated the provisions of Section 7 of the Act read with Section 2(ia) (a) and (m) of the Act which is punishable under Section 16(1)(a) of the Act.

10. Section 2(ia) that defines the term "adulterated" is being reproduced here as under :

"an article of food shall be deemed to be adulterated -

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be; (m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health."

11. It is the case of the petitioner on merit that the present prosecution is filed against the petitioners and other accused persons based on the report of PA opining the product i.e. Saffola Blended Edible Vegetable Oil is adulterated as the sample did not conform to standard because acid value exceeded the prescribed maximum limit of 0.5%. Thus in such cases where alleged violation is of acid value being found 0.18% more than prescribed value of 0.5%, the filing of the complaint 7 months beyond the best before date of sampled product that had shelf life of merely 9 months, the chemical changes in oils beyond the prescribed or suggested shelf life results in increase in acid value among other changes.

12. Issuance of notice under Section 13(2) of the Act is no doubt is requirement which provides strict compliance. Notice was issued under Section 13(2) of the Act for reanalysis where the sampled product with 9 months self life is 7 months beyond the best before date, the grant of opportunity for re-analysis is denial of the right of the petitioner in the present case. Secondly, under the Act the provisions under Section 13 (2) mandatorily require that 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 under Section 14A, 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 analysed by the Central Food Laboratory.

13. In the present case, the copy of the report of the result of the analysis is to

be forwarded for the purpose of giving opportunity to re- analysis after the initiation of the prosecution. There is a delay of 10 months in launching of the prosecution by the respondent No. 2 after the receipt of the report of the Public Analyst by the LHA, the inordinate delay is fatal to the case of the prosecution. Therefore, the right of the petitioner company to get the sample of the product reanalyzed is vitiated. It is argued by the petitioners that it is solely attributable to the conduct of the prosecution/respondent No. 2 and the delay on the part of the prosecution that by the time the complaint has been filed in the present case i.e. on 15th March, 2011 the product in question that was manufactured on 27th November, 2009 and had a shelf life of 9 months had already expired on August 2010 and therefore, the right of re-analysis has been nullified by the conduct of the respondent No. 2.

14. It is also argued by the petitioner that in addition to the petitioner company, respondent No. 2 has erroneously filed complaint against two nominees of the petitioner company with one nominee being that of the manufacturing plant of the petitioner company and the other nominee of the Delhi depot of the petitioner company. As the alleged offence is that of adulteration wherein the complaint is filed against the petitioner company as manufacturer, it is only the nominee of the petitioner company that can be prosecuted for the alleged violations as per the provisions of Section 17(1) of the Act and thus the nominee for Delhi depot of the petitioner company, the petitioner No. 3 have been wrongly arrayed since the nominee of the manufacturing plant has already been made an accused. Thus the present case against the petitioner No. 3/accused No. 6 is liable to be quashed on this ground alone.

15. Having heard the learned counsel for the petitioners, there is no representation on behalf of respondent/complainant, it appears to the Court after considering the decisions of various Courts on the issue involved in the present case. Let those decisions be referred :

i) In the case of Food Inspector vs. Banarsi Das and Ors., 2014 (2) FAC 177, the court held as under :

"5. This is a petition seeking leave to appeal against the impugned judgment dated 25th June, 2011 passed by the learned Additional Chief Metropolitan Magistrate-II ("ACMM") , New Delhi in CC No. 133 of 2011, acquitting the Respondents of the offence under Sections 7 and 16(1)(a) of the Prevention of Food Adulteration Act, 1954 ("PFA Act") .

6. This is yet another case of lapses by the Department resulting in frustrating the very object of the PFA Act. Here the complaint was filed on 24th June, 2011 nearly one and half years after the purchase of the sample of the food article, "Corn Flakes" by the Food Inspector from the Respondent on 19th January, 2010. The Public Analyst gave a report dated 18th February, 2010. The expiry date of the food item was 3rd September, 2010. The expiry date of the food item was 3rd September, 2010. Yet, the complaint was filed only on 24th June, 2011,

nearly nine months after the expiry date of the food article.

7. As rightly noted by the trial court, the inordinate delay in filing the complaint was unexplained. The trial court was justified in declining to take cognizance."

ii) In the case of Girishbhai Dahyabhai Shah Vs. C.C. Jani and Another, , the Supreme Court held as under :

"9. In other words, in the instant case, the appellant was prevented from applying for analysis of the second sample before 17-7-1989, by which time the second sample of curd had deteriorated and was not capable of being analysed as was found in Ghisa Ram referred to above."

iii) In the case of Girishbhai Dahyabhai Shah vs. C.C. Jani Food Inspector or his successor and Another, 2008 (2) FAC 344, the Gujarat High Court held as under :

"5. Learned counsel for the applicant further relied on a decision of this Court in the case of State of Gujarat Vs. Kishorkumar Laxmidas, and submitted that mandatory provisions should be complied with meticulously and non-compliance of mandatory provisions is sufficient to even presume the prejudice and in this case according to learned counsel for the applicant mandatory provisions are not complied with, therefore, the complaint deserves to be quashed and set aside."

iv) In the case of Ravindra Chopade vs. State of Madhya Pradesh, 2013 (1) FAC 227, the Madhya Pradesh High Court (Gwalior Bench) held as under :

"6. Learned counsel for the petitioner has raised several grounds in the petition but learned counsel for the petitioner has confined his arguments towards the effect of non-compliance of Section 13(2) of the Prevention of Food Adulteration Act mentioning that the petitioner has been deprived of exercising his valuable, right as the period of product is expired before filing of the complaint. Learned counsel for the petitioner has cited judgment of this court in the matter of Prahlad Gattani and Others Vs. State of M.P., , in which it has been held that "sample of Tomato Ketchup" was found adulterated vide Public Analyst Report dated 23/3/2010. The declaration made on label of ketchup disclosed that the Ketchup was "best before 6 months" from January, 2010, the month of manufacture. Notice under Section 13(2) was sent to the petitioner only after filing of complaint before the court on 29.7.2011 i.e. after a year from the date of expiry of shelf life of the sample. In such a situation, no order of conviction can be recorded on the basis of the report and proceedings are liable to be interfered with. Petition allowed."

7. Learned counsel for the petitioner has also cited judgment of this court in the matter of ITC Ltd. and others v. The State of Madhya Pradesh 2012(2) FAC 441 in which it has been infringement of valuable right under Section 13(2) of the Prevention of Food Adulteration Act by filing a complaint long after the date of expiry of samples thereby frustrating the right of the petitioner to go for a second testing, complaint liable to be quashed under Section 482 of Cr.P.C.

8. On the same point, other judgments of this court in the matter of Mohd. Baitulla Vs. State of M.P., ; and M/s. Marico Ltd. v. State and V.N. Gangrade and another 2012 (2) FAC 504, have also been cited.

9. Learned counsel for the petitioner has also cited judgment of Hon''ble Bombay High Court in the matter of Shri Rohit Mull and Cadbury India Limited Vs. The State of Goa at the Instance of Smt. IVA Fernandes, Public Analyst, Directorate of Food and Drugs Administration, , in which it has been held that where samples of chocolates taken were adulterated, notices under Section 13(2) of PFA Act sent to accused after expiry date of product or 2 days before date of expiry; right of petitioners accused to get samples analysed from CFL frustrated, therefore, proceedings quashed by allowing petition. 9. In the present case, complaint and panchnama prepared by Food Inspect."

v) In the case of M/s. Marico Ltd. vs. State and V.N. Gangrade and Another, 2012 (2) FAC 504, the Madhya Pradesh High Court (Indore Bench) held as under :

"10. The issue involved in these two cases are fully covered by the decision of the Chhatisgarh High Court in the case of M/s. Hindustan Lever Ltd. and Anr. (supra) , Shivkumar @ Shiwalamal Narumal Chugwani (supra) , and decision of M.P. High Court in the case of Prahlad Gattani and Others Vs. State of M.P., decided on 22.3.2012 in M.Cr.C. No. 12665/2011. Para 7 to 14 are relevant which reads as under :

"7. It is well settled that forwarding the report of public analyst to the accused is not a ritual but a statutory requirement to be mandatorily observed. Way back in 1967, in Ghisa Ram's case (supra) , the Apex Court (speaking through V. Bhargava, J) had explained significance of the right under Section 13(2) in the following terms -

"It appears to us that when a valuable right is conferred by S. 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 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 the 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.

We are not to be understood as laying down that in every case where the right of the vendor to have his sample tested by the Director of the Central Food Laboratory is frustrated, the vendor cannot be convicted on the basis of the

report of the Public Analyst. We consider that the principle must, however, be applied to cases where the conduct of the prosecution has resulted in the denial to the vendor of any opportunity to exercise this right. Different considerations may arise if the right gets frustrated for reasons for which the prosecution is not responsible."

8. It is true that Section 13(2) of the Act has been substituted by Act 34 of 1976 but, under the new Section, the right conferred on the accused to make an application to the court for sending the second part of the sample to the Central Food Laboratory, remained unaffected (See *State of Gujarat and Another Vs. Shaileshbhai Mansukhlal Shah and Another*, .

9. Significance of the declaration "Best Before" in relation to the right under Section 13(2) of the Act has been explained by a learned Single Judge of the Bombay High Court in *Shri Rohit Mull and Cadbury India Limited Vs. The State of Goa at the Instance of Smt. IVA Fernandes, Public Analyst, Directorate of Food and Drugs Administration*, and the decision was quoted with approval by a Division Bench in *Shivkumar v. State of Maharashtra (supra)* . The relevant observations made in *Rohit Mull's* case may be reproduced as under -

"6. ..."Best Before Date" shown on the label is in terms of Rule 32(i) of the Prevention of Food Adulteration Rules, 1955 and in terms of Explanation VII below the said Rule it means the date which signifies the end of the period under any stated storage conditions during which the product will remain fully marketable and will retain any specific qualities for which tacit or express claims have been made. The explanation also states that however, provided that beyond the date the food may still be perfectly satisfactorily.

....

15. By now there is unanimity of judicial opinion that when a valuable right is lost to the accused to get the sample reanalysed from the Director, Central Food Laboratory, he can very well claim that prejudice has been caused to him and this is because the report of the Director, Central Food Laboratory, supersedes that of the Public Analyst. Section 13(2) of the Act confers a valuable right on the seller of the article of food to get the sample analysed by the Central Food Laboratory, and while it is in a condition fit for such analysis and in our case that would be on or before the "Best Before Date".

21. As already noted in the case of the two of the purchases the notice given to the petitioners/accused was given much after the "Best Before Date" and in cases of the third purchase, the notice was given just before two days of the said "Best Before Date" thereby making it impossible for the Petitioners, even if they were stationed in this State, to exercise the said right of making an application to the Court concerned to get the sample of the article of food kept by the Local Health Authority analysed by the Central Food Laboratory. Even if the petitioners had made such an application immediately after receiving the said report of the Public Analyst, it would have been impossible for the petitioners to

have exercised the said right given to them in such a short period. In other words, the Complainants made it impossible for the accused to exercise the right under Subsection 2 of Section 13 of the Act. In such a situation no conviction against the accused would be possible and therefore no useful purpose would be served by continuing with the prosecutions under Sections 7/16 of the Act.

10. This Court is not oblivious of the decision of the Apex Court in *State of Haryana Vs. Brij Lal Mittal and Others*, , laying down that delay in filing complaint till expiry of shelf life of drugs can not be treated as a ground to quash the prosecution. However, the case is not only distinguishable on facts but also on law. In that case, manufacturers' right, under sub-Section (4) of Section 25 of the Drugs and Cosmetics Act, 1940, to get the sample tested by the Central Drugs Laboratory, had expired four months before the expiry of the shelf life upon their failure to notify intention, in accordance with sub-section (3) , to adduce evidence in controversion of report of Government Analyst within the prescribed period of twenty eight days from the receipt of the copy thereof. Further, in a subsequent decision rendered in *Northern Mineral Ltd. Vs. Union of India (UOI)* and *Another*, , the Supreme Court, while dealing with Section 24(3) of the Insecticides Act, 1968, which is in pari materia with S. 25(3) of the Drugs and Cosmetics Act, proceeded to discharge the appellant on the premise that no step could be taken for analysis of the sample by Central Insecticides Laboratory due to sheer inaction on the part of the authorities concerned resulting in expiry of its shelf life despite the fact that the accused had notified its intention to adduce evidence in controversion of the report of Insecticide Analyst.

11. Adverting to the facts of the case, it may be observed that the notice under Section 13(2) of the Act along with the copy of the report of the Public Analyst was forwarded to the petitioner No. 1 on 29.7.2011 i.e. nearly a year after the expiry of the shelf life of the sample. In such a situation, where no order of conviction can be recorded on the basis of the report, the proceedings are liable to be interfered with. Moreover, the alleged violation of Rule 32(b) (2) (v) [ibid] also would not assume any significance. It is relevant to note that the Ketchup was not declared as misbranded as defined in Clause (ix) of Section 2 of the Act.

12. To sum up, even if the allegations made against the petitioners in the complaint, are taken at their face value and accepted in their entirety, no offence under the Act would be made out. As such, the case against the petitioners fall under category (1) and (6) of the cases, as enumerated in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, , attracting interference under the inherent powers.

13. Although, adulteration of food is a menace to public health and the Act has been enacted with an aim of eradicating that anti- social evil and ensuring purity in the articles of food yet, the authority concerned are duty bound to ensure that the valuable right conferred by Section 13(2) of the Act is not defeated due to inefficiency and ineptitude.

14. For these reasons, the petition is allowed and the proceedings in Criminal Case No. 7619/11 (above) are hereby quashed. However, the District Magistrate, Jabalpur is directed to identify the officials responsible for not launching the prosecution immediately after receipt of the report of Public Analyst and for allowing the shelf life of the sample to expire, and take appropriate action against them after affording opportunity of being heard."

vi) In the case of ITC Ltd. and Ors. vs. The State of Madhya Pradesh, 2012 (2) FAC 441, the Madhya Pradesh High Court held as under :

"12. Admittedly, the samples which were taken on behalf of the respondents by the Food Inspector in both the cases i.e. Soyabean Oil as well as Sunfeast Glucose Biscuits, the Food Inspector had filed the complaints against the petitioners after expiry of shelf life of the products."

16. In view of aforesaid settled law and facts in the present case, there is merit in the contention of the petitioners that the complaint filed against them by the Food Inspector with respect to samples taken on 31st March, 2010 on the basis of the report of the Public Analyst dated 4th May, 2010 after expiry of the shelf period of the product is not maintainable. Once the complaint was filed after expiry of shelf life, a right to send the second samples became frustrated. In view thereof, the complaint filed by the respondent is quashed. The prosecution of the petitioners is also quashed under Section 16 of the Act for violation of Section 7 of the Act.

17. The petition is accordingly disposed of. No costs.