
(2018) 12 RAJ CK 0334

In the Rajasthan High Court

Case No : Criminal Miscellaneous (Petition) No. 5729 Of 2018

M/s Devyani Food Industries Pvt. Ltd And Ors

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 19-12-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

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

Constitution Of India, 1950 — Article 21

Citation : (2018) 12 RAJ CK 0334

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Advocate : Anuroop Singhi, O.P. Pareek, NS Dhakad

Judgement

The present petition has been filed under Section 482 Cr.P.C. praying that the criminal complaint and entire proceedings arising out of Cr. Complaint No.389/2010 titled State vs. Manish Kumar and Others, pending in the court of Chief Judicial Magistrate, Sikar be quashed.

This Court on 18.9.2018 had passed the following order:-

"The learned counsel appearing for the petitioners contends that on 19.04.2010 sample of the Ice-cream was drawn, the report of Chief Public Health Analyst, Jaipur was received on 27.05.2010 and on 31.08.2010 the complaint was filed by the Food Inspector. Counsel further contends that on the same date, cognizance of offence was taken and in pursuance of notice received by the petitioners under Section 13 (2) of the Prevention of Food Adulteration Act, 1954 the petitioners presented an application on 25.09.2010 and on the said application on 14.03.2011 the Court passed an order that the second sample be sent to Central Laboratory for testing. Counsel submits that inspite of the order dated 14.03.2011 passed by the trial Court, till today second sample has not been sent to Central Laboratory.

Issue notice to the respondent, for 06.12.2018.

On the said date, Food Inspector, along with the Assistant Prosecution Officer shall remain present in person before this Court.

Let a copy of this order, under the seal and signature of the Court Master, be handed over to Id. Public Prosecutor appearing for the State, for onward transmission and necessary compliance. "

There was some dispute with regard to filing of application under Section 13(2) of Prevention of Food Adulteration Act (hereinafter called as 'the Act') by the petitioner. Consequently, this Court on 6.12.2018 requisitioned the records from the trial court by passing the following order:-

"Registrar(Judicial) is directed to requisition the record from the trial court through special messenger on the expenses to be deposited by the petitioners.

List the present petition on 18.12.2018. On the said date, Ms. Maya Khadoliya, PO, CJM Court, Sikar and Mr. Phool Singh Bajiyam Food Safety Officer, Sikar, shall remain present in court. "

In pursuance of the aforesaid order, records have been received in this Court and Ms. Maya Khadoliya, PO, CJM Court, Sikar and Mr. Phool Singh Bajiyam, Food Safety Officer, Sikar are present in the court.

In the present case, sample of ice cream was drawn on 19.4.2010 and same was sent to Public Analyst at the State Food Laboratory on 20.4.2010. The report of Public Analyst was received on 27.5.2010. On 31.8.2010, complaint was filed by the Food Inspector in court of Chief Judicial Magistrate, Sikar. On 1.9.2010, Food Inspector sent a notice under Section 13(2) of the Act. The said notice on 18.9.2010 was received by the accused petitioner.

A perusal of the record reveals that on 25.9.2010, the petitioner through counsel had filed an application under Section 13(2) of the Act for sending the sample to the Central Food Laboratory. A perusal of the said application reveals that on 25.9.2010, court of Chief Judicial Magistrate, Sikar had sought report from the office.

Ms. Maya Khadoliya, the Prosecution Officer, CJM Court, Sikar has submitted that for four months, the application of the petitioner remained with the office of CJM and no orders were passed thereupon for sending the sample to the Central Food Laboratory. The Prosecution Officer has submitted that there was fault on the part of the petitioner because he had not deposited the amount for sending the sample to the Central Food Laboratory nor he had produced the packaging material.

Mr. Anuroop Singhi, learned counsel for the petitioner has submitted that on the application, no order was passed by the court below that the petitioner should deposit the amount and second sample be sent to Central Food Laboratory.

The Prosecution Officer has submitted that thereafter, the petitioner presented second application under Section 13(2) of the Act on 14.3.2011. A perusal of the purported second application reveals that in the said application, petitioner stated that the petitioner is presenting Demand Draft alongwith packaging material for sending the second sample to Central Food Laboratory. On the said second application, the court ordered that the second sample be produced on next date. The Prosecution Officer has further submitted that the order passed by the trial court that Food Inspector should produce the second sample was never communicated and hence, the second sample was not produced. It is stated that meanwhile, Demand Draft presented by the petitioner by efflux of time was rendered invalid and again another Demand Draft was submitted by the petitioner. It is further submitted that since sample was not produced, the said second Demand Draft also became invalid, as Demand Draft remained valid only for three months.

The Prosecution Officer has submitted that for the first time on 18.7.2013, orders were received from the trial court that second sample be produced and the Food Inspector on 18.7.2013 produced the second sample. It is submitted that meanwhile Demand Draft became invalid, therefore, order was passed that the petitioner accused should produce another Demand Draft or get the same re-validate from the bank. It is submitted that till 27.11.2014, the Demand Draft after renewal was not presented and on 27.11.2014 Food Inspector produced the sample.

To cut the long story short, it is apparent that on the application filed by the petitioner, orders were not passed by the court of Magistrate for production of second sample even though petitioner had presented two demand drafts.

It is undeniable fact that shelf life of the sample is one year. Therefore, till one year, there was no fault on the part of the petitioner and his application filed on 25.9.2010 was not decided within period of one year even though the petitioner had presented Demand Draft, the sample was not produced and in case Demand Draft had become invalid, no fault can be attributed to the petitioner.

At this stage, the Prosecution Officer has submitted that when the order was passed for presenting the Demand Draft on 14.3.2011, twenty seven days were left for sending the sample to Central Food Laboratory as shelf life was to expire thereafter.

Offence under Section 13 of the Act is to be tried in a summary manner until court pass an order otherwise. Even if the court pass order to this effect, than also the matter is to be tried as summons case. The maximum sentence prescribed for summons case is two years.

The sample was drawn in the year 2010. A period of eight years has elapsed. Article 21 of the Constitution of India vests right of speedy trial in the petitioner. It was incumbent for the court to pass order on 25.9.2010 itself when the application under Section 13(2) of the Act was filed by directing the Food

Inspector to produce the second sample and asking the petitioner to present Demand Draft alongwith packaging material. The court below failed to pass requisite orders on 25.9.2010. A perusal of the record reveals that for the first time order was passed on 14.3.2011.

Taking totality of circumstances, considering that right of speedy trial vests in the petitioner and shelf life of second sample has expired, the present petition is accepted and the impugned Complaint alongwith all subsequent proceedings is quashed.

Record be returned to the trial court forthwith.