

(2024) 12 BOM CK 0035

In the Bombay High Court

Case No : Criminal Application No. 2315 Of 2010 With Criminal Application No. 4688 Of 2024

M/s Hindustan Coca Cola Beverages Pvt.Ltd

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 11-12-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 397, 482
Prevention of Food Adulteration Act, 1954 — Section 2(ia)(a), 2(ia)(h), 2(V), 7(i),
10(4), 11(4), 13(2), 16, 17, 20(1)

Citation : (2024) 12 BOM CK 0035

Hon'ble Judges : Y. G. Khobragade, J

Bench : Single Bench

Advocate : D. S. Bagul, V. M. Chate

Final Decision : Dismissed

Judgement

Y. G. Khobragade, J

1. Heard at length Mr. D. S. Bagul, the learned counsel for the Applicant and Mr. V. M. Chate, the learned APP for the Respondent State.

2. By the present application under Section 482 of the Code of Criminal Procedure, 1973, the Applicant/manufacturing Company of "Sweetened Carbonated Beverages, Canada Dry" food product takes exception to the Order dated 24.03.2010 passed by the learned Chief Judicial Magistrate, Jalna, in Regular Criminal Case No. 654 of 2006, thereby issued process u/s 204 of Cri. P. C., for contravention of provisions of Sec. 7 (i) r/w Sec. 2(ia), (a), (h) and Sec. 16 r/w Sec. 17 of the Prevention of Food Adulteration Act, 1954 (for brevity "PFA, Act",). The applicant manufacturing Company further prayed for quashment of complaint instituted by the complainant/present respondent bearing STC No. 950/2003 which is re-registered as RCC No. 654/2006.

3. The present applicant company is original accused No. 4 in RCC No. 654 of

2006 who manufactures "Sweetened Carbonated Beverages, Canada Dry" food product.

4. The present respondent/original complainant is the Food Inspector, Shri. M.D. Shah has instituted a complaint bearing RCC No. 654 of 2006 alleging that, on 26.07.2001, he along with independent panch witnesses had visited the premises of M/s. Brooton Marketing where accused No.1 was present and was looking after affairs of said establishment. The Complainant introduced himself as Food Inspector by disclosing his identity and further introduced the Panchas to the accused No. 1. He disclosed his intention to draw the sample for the purpose of testing and analysis. Thereafter, he inspected the said establishment. While inspecting the same, he saw food articles "Sweetened Carbonated Beverages, Canada Dry" that manufactured on 13.06.2001 and 22.06.2001, were stocked and kept for sale with said establishment. Further, on minute inspection of establishment of accused No. 1, he saw some suspended fibrous matter by naked eye in packed sealed glass bottles. None of the sealed bottles were having leakage. Total stock of "Sweetened Carbonated Beverages, Canada Dry" manufactured on 13.06.2001, 327 company packed, sealed glass bottles and "Sweetened Carbonated Beverages, Canada Dry" manufactured on 22.06.2001, 8995 company packed sealed glass bottles.

5. Thereafter, the complainant demanded and purchased 6 x 300 M.L., company packed sealed glass bottles of "Sweetened Carbonated Beverages, Canada Dry" manufactured on 13.06.2001 for the purpose of testing and analysis. He has paid cost of Rs. 100/-in cash for said food product of "Sweetened Carbonated Beverages, Canada Dry" and obtained a cash memo from accused No. 1 under his signature and the signatures of Panchas.

6. Thereafter, for the purpose of test and analysis, the complainant gave intimation to accused No. 1 in writing on Form No. VI, for drawing sample of "Sweetened Carbonated Beverages, Canada Dry", manufactured on 13.06.2001 and obtained acknowledgment. According to the complainant without breaking packed seal of the glass bottles, he tied with thread and prepared samples under his signature and obtained signatures of accused No.1 as well of panchas. Thereafter, he sealed said sample by putting wax and drawn spot panchnama. The contents of panchnama were read over to accused No.1 and Panchas, and obtained their signatures.

7. On 27.07.2001, the complainant referred one sealed part of "Sweetened Carbonated Beverages, Canada Dry" manufactured on 13.06.2001 for chemical examination to the Regional Public Health Laboratory, Aurangabad. He also referred sealed parts of samples to local (Health) Authority and Assistant Commissioner, Food and Drug Administration (M.S.) Jalna along-with covering letter. The said samples were duly delivered and obtained the acknowledgment.

8. Thereafter, on 31.08.2001, the complainant received report of "Sweetened Carbonated Beverages, Canada Dry" from Local (Health) Authority and Assistant

Commissioner, Food and Drug (M.S.) Jalna under letter dated 28.08.2001, declaring that the sample of "Sweetened Carbonated Beverages, Canada Dry" contains extraneous Fibrous and particulate suspended matter. On physical observations some what cobweb like particulate matter was observed. Therefore, said food product was not in confirmation with the requirements of Carbonated water as per Prevention of Food Adulteration Act and Rules, which is in contravention of Section 2(V) of PFA, Act.

9. According to the Respondent/complainant, after due enquiry, he submitted all relevant case papers to the Local (Health) Authority and Assistant Commissioner, Food and Drug Administration, Jalna and sought sanction to prosecute the accused persons under section 20(1) of the PFA Act. On 15.03.2003, the Joint Commissioner, Food and Drug Administration, Aurangabad, accorded sanction for launching the prosecution against the accused persons.

10. According to the complainant, the seized food items were stocked by accused Nos. 1 and 2 for sale and sold adulterated food articles "Sweetened Carbonated Beverages, Canada Dry" manufactured by the present applicant company on 13.06.2001 and 26.07.2001. Since the seized food product was found in contravention for the provisions of Sections 7(i), 2(ia)(a), 2(ia)(h) punishable under section 16 of the PFA Act and rules framed thereunder, hence, prayed for action against the accused persons.

11. Mr. Bagul, the learned counsel for the applicant canvass that, the alleged food product was manufactured on 13.06.2001. The complainant took sample of the same on 26.07.2001. Form No. VI shows that, Best Before date is six months from the date of manufacture which expires on 12-12-2001 as per Public Analyst report bearing No. 337 dated 28.08.2001. On 13.05.2003, the complainant filed the complaint as STC No. 950 of 2003, which has been re-registered as RCC No. 654 of 2006 vide order dated 19.12.2006.

12. The learned counsel for the applicant canvassed that, the complainant filed the complaint after expiry of 16 months from the date of best before date which was already expired on 12.12.2001. Therefore, prosecution has been lodged belatedly after lapse of 'Best Before date'. Therefore, the applicant manufacturing company was not in a position to exercise the statutory right conferred under section 13(2) of the PFA Act. Since it was incumbent for the Respondent/complainant to launch the prosecution promptly and in any event, before the expiry of the shelf life of the food product, as such, the complaint has been filed after expiry of best before date, hence, entire complaint needs to be quashed.

13. To buttress these submission, the learned counsel for the applicant has relied on the following case laws:

I. 1992 Prevention of Food Adulteration Cases 318, State of Maharashtra through Food Inspector Vs. Rehman.

- II. 2006 Cri. L.J. 3988, Hyderabad Beverage Pvt. Ltd. Vs. state of A.P.
- III. 2016 SCC Online Bom 12606, Marico Ltd. Vs. State of Maharashtra,
- IV. (4) 2015 SCC Online Del 7162, Marico Ltd. & another Vs. State of delhi and others
- V. Adhiraj Amar Kannhaiyalal Sarin Vs. State of Maharashtra, 2010 SCC Online Bom 1039
- VI. Girishbhai Dahyabhai Shah Vs. C.C. Jani, (2009) 15 SCC 64,
- VII. Order dated 29th October, 2021 in Criminal Appeal No.1312 of 2021, Narayana Prasad Sahu Vs. the State of Madhya Pradesh (SC)
- VIII. Alkem Laboratories Ltd. Vs. State of Madhya Pradesh, 2019 SCC Online SC 1536,
- IX. Shivkumar Alias Shiwalamal Narumal Chugwani Vs. State of Maharashtra, 2010 SCC Online Bom 844.

14. Per contra, the learned APP strongly opposed the application mainly ground of maintainability of the application under section 482 of Cr.P.C, challenging the order of issuance of process as well as quashment of the proceedings initiated by the Food Inspector for contravention of provisions of Sections 7(i), 2(ia) (a), 2(ia) (h) punishable under section 16 read with Section 17 of the PFA Act and rules framed thereunder.

15. The APP canvassed that, since, the applicant/ manufacturing company prayed for quashment of proceeding bearing RCC No. 654 of 2006 as well as order of issuance of process, therefore, the applicant could have approached before the learned Sessions Court by invoking Sec. 397 of Cri. P. C., and remedy under Sec. 482 of Cri. P. C., is not available, hence, prayed for dismissal of the application.

16. Needless to say that, the order of issuance of process is not interlocutory, therefore, revision u/s 397 of Cri. P. C., is maintainable. However, the revisional Court having no power to quash the entire proceeding. Since, the applicant manufacturing Company of the Food item, which is subject matter of the present case, prayed for quashment of order of issuance of process as well as proceeding, therefore, to my view, remedy under Section 397 of the Cr.P.C is not available to the applicant/accused No.4. Therefore, objection raised by the Learned APP is not acceptable.

17. It is further canvassed that after obtaining necessary sanction, the complainant filed a prosecution against the accused including the present applicant/accused No.4. Thereafter, on 03.09.2001, the Food Inspector filed Misc. Application No. 394 of 2001, before the Ld. CJM and sought permission for destruction of samples. Accordingly, the Learned CJM passed an order and permitted for destruction of contents of seized stock of 321 company packed,

sealed bottles of "Sweetened Carbonated Beverages, Canada Dry" manufactured on 13.06.2001 and empty glass bottles are returned to the accused No. 1 in presence of the Assistant Superintendent of the Court. Therefore, due procedure has been complied, so also, necessary permission from the Joint Commissioner, FDA, Aurangabad was obtained to prosecute the accused persons on 15.03.2003 and then filed a complaint on 13.05.2003 against the applicant as well as other accused persons. Thereafter, on 24.03.2010, the learned CJM passed an order in RCC No. 654 of 2006 and issued summons against the accused persons including the present applicant company. Therefore, there is no illegality, hence, prayed for dismissal of the application.

18. The learned APP further canvassed that, the applicant company is the manufacturer of the seized food. The said items were manufactured on 13.06.2001 and expiry date was best before six months i.e. 12.12.2001. The sample was taken by the Food Inspector on 26.07.2001 and was sent to the Public Analyst on 27.07.2001. The analysis report received on 28.08.2001. On 15.03.2003, the Joint Commissioner, FDA, Aurangabad accorded sanction to prosecute the accused persons. Thereafter, the complainant/Food Inspector lodged the complaint on 13.05.2003. The seized food items examined through Public Health Laboratory prior to Best Before date of the product.

19. It is further canvassed that, Section 13 (2) provides for grant of second opportunity to the accused persons against whom prosecution is initiated under the provisions of PFA, Act, based on the public analyst's report, to get the relevant food sample tested again by the Central Laboratory because its report will have precedence over the public analysis. However, the present applicant/original accused No. 4 never prayed for examination of the said sample through the Central Laboratory prior to the best before date of the product. So also, the present applicant/accused No. 4 has not made any application under Section 13 (2-A) of the PFA Act before the Best Before date to the Court of Ld. CJM for re-examination of the sample. Therefore, the applicant has no right to challenge the order of issuance of process as passed by the learned CJM on 24.03.2010.

20. The learned APP further canvassed that, on 03.09.2001, the complainant filed Misc. Application No. 394 of 2001 seeking permission for destruction of seized food items alongwith all necessary documents i.e. (i) purchase Bill, (ii) Form No. VI, (iii) Form No. 14A, (iv) Panchanama, (v) Form No.V and (vi) Report received from the public analyst. Thereafter, the Ld. CJM, had called written say of the accused No.1. Accordingly, the accused No. 1 filed his say. Thereafter, the Ld. CJM passed an order and pursuant to the said order, the contents of seized glass bottles are destroyed and empty bottles were returned to accused No.1 in presence of the Assistant Superintendent of the court on 27.06.2002. Therefore, all the necessary procedure has been complied with. Since the applicant/accused No. 4 has not applied for re-analysis of the contents of the sealed bottles and never exercised the powers under section 13(2) of the PFA Act, therefore, no interference is called at the hands of this Court.

21. To buttress this submission, the learned APP placed reliance on the case of State of Maharashtra Vs. Rehman, cited supra, wherein, it has been held that, the accused never applied for the second opinion inspite of supply of copy of the report of the Public analyst. Hence, no error has been committed by the prosecution in not producing the sample before the Court under Section 11(4) read with section 10(4) of the Act which makes obligatory on the Food Inspector to produce the articles which were seized before the Court.

22. The learned APP further placed reliance on the case of Hyderabad Beverages Pvt. Ltd. Vs. State of A.P., 2006 Cr.L.J. 3988, wherein, it has been held that, the accused have not exercised their option under section 13(2) of the PFA, Act and Section 16(2) of the said Act and they have not requested or made application to the Court to send the sample for analysis to the Central Laboratory. The delay in furnishing copy of the report of the public analyst, therefore, cannot be said to have caused prejudice to them. It is only if the petitioner therein had made a request and if on the sample being sent thereafter to the central laboratory and central laboratory had certified that the sample had so decomposed as to render it unfit for analysis, the Petitioner therein cannot be said to have suffered prejudice. In any event, these are all matters for the learned Magistrate to examine on the basis of evidence, in the facts, and circumstance of each case, and not for this Court to interfere under Section 482 of the Criminal Procedure Code.

23. Having regard to the submissions canvassed on behalf of both sides, I have gone through the paper book. The Present applicant/accused No. 4 has not disputed about manufacturing, distributing, storing and selling of food articles including "Sweetened Carbonated Beverage", which is involved in this application. The present applicant/accused No. 4 has not denied that accused No. 1 is the vendor and accused No. 2 is proprietor of M/s. Brooton Marketing. The accused No. 3 is the nominee of the firm of Respondent No. 4/M/s. Hindustan Coca-Cola Beverages Pvt.Ltd. and accused Nos. 5 and 6 are the nominees and responsible for the business of M/s. Nayar Electronics Pvt. Ltd.

24. It is a matter of record that, on 26.07.2001, the complainant had visited the premises of accused No. 1/Brooton Marketing, B-12, Old MIDC, Jalna. By following the due procedure contemplated under the PFA Act and Rules, the complainant/Food Inspector purchased food item in sealed bottles. He has also drawn seizure panchanama as well as spot panchanama. The said seized food items were sent to Public Analyst, Regional Health Laboratory, Aurangabad. One sealed packet was sent to the Local Health Authority and Assistant Commissioner, FDA, Jalna. On 31.08.2001, the Food Inspector received a report from the Laboratory in respect of examination of "Sweetened Carbonated Beverages, Canada Dry" manufactured on 13.06.2001 under cover letter dated 28.08.2001. The Regional Health Laboratory, Aurangabad opined that the sample of "Sweetened Carbonated Beverages, Canada Dry" manufactured on 13.06.2001 contains extraneous fibrous and particulate suspended matter and also in the

physical observation some what cobweb like particulate matter was observed. Further it does not confirm the requirements of Carbonated water as per PFA Rules, 1955.

25. Necessary details of manufacturer, expiry date (best before period), receipt of reports, filing of complaints etc. events, are as under:

Sr. No.

Event

Date

1

Date of manufacturing "Sweetened Carbonated Beverages, Canada Dry".

13.06.2001

2.

Date of expiry of the of product

Best before 6x months

i.e. 12.12.2001

3.

Sample drawn by the Food Inspector

26.06.2001

4.

Samples sent for to public analyst

27.08.2001

5.

Report of public analyst received on ((after 1 month and 14 days)

Report dated 28.08.2001, received

on 31.08.2001.

Misc. Application No. 394 of 2001 filed before CJM, Jalna in respect of seized stock

03.09.2001

CJM Jalna passed order to destroy the stock

27.06.2002.

6.

Joint Commissioner FDA granted consent for prosecution

15.03.2003

7.

Complaint filed by the Food Inspector

13.05.2003

8.

Food Inspector made an application for withdrawal of complaint registered as STC No.950/2003 and registering criminal case(which then registered as RCC No.654 of 2006)

13.12.2006

9.

Order of issue process passed on

24.03.2010

26. From the aforesaid chart, it is apparent that the sample was drawn on 26.07.2007 and it was sent to the Public analyst on next day i.e. 27.07.2001. Thereafter, the report was received from the Public Analyst on 28.08.2001, within a period of one month. On 03.09.2001, the complainant/Food Inspector filed Misc. Application No. 394 of 2001 and sought permission to destroy the contents of seized stock. Accordingly, on 27.06.2002, the learned CJM, passed the order to destroy the contents of seized stock and empty bottles returned to accused No. 1.

27. On face of record, it appears that the samples were seized through accused No. 1. The Accused No. 1 was also having well knowledge about filing of Misc. Application No. 394/2001 before the Ld. Chief Judicial Magistrate, Jalna (for brevity "Ld. CJM") for destruction of seized food samples. After say/reply is given by the Accused no. 1, the Ld. CJM passed the order on 27.06.2002 and allowed destruction of contents of seized stock of 321 company packed sealed glass bottles of "Sweetened Carbonated Beverages, Canada Dry" manufactured on 13.06.2001. The empty glass bottles are returned to the Accused no. 1. Therefore, it prima facie appears that, the Accused no. 1 was having every chance to apply under Section 13(2) of the PFA, Act for getting the said samples tested through Central Laboratory. However, neither the applicant nor the accused No. 1 exercised powers u/s 13 (2) of the Act prior to destroying of the samples.

28. Section 13(2), (2-A), (2-B), and (2-C) of the Prevention Of Food Adulteration Act, 1954 read thus :-

"(2)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 14-A, 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 analyzed by the Central Food Laboratory.

(2-A) When an application is made to the Court under sub-section (2), the Court shall require the Local (Health) Authority to forward the part or parts of the sample kept by the said Authority and upon such requisition being made, the said Authority shall forward the part or parts of the sample to the Court within a period of five days from the date of receipt of such requisition.

(2-B) On receipt of the part or parts of the sample from the Local (Health) Authority under sub-section (2-A), the Court shall first ascertain that the mark and seal or fastening as provided in clause (b) of sub-section (1) of section 11 are intact and the signature or thumb-impression, as the case may be, is not tampered with, and dispatch the part or, as the case may be, one of the parts of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the Court in the prescribed form within one month from the date of receipt of the part of the sample specifying the result of the analysis.

(2-C) Where two parts of the sample have been sent to the Court and only one part of the sample has been sent by the Court to the Director of the Central Food Laboratory under sub-section (2-B), the Court shall, as soon as practicable, return the remaining part to the Local (Health) Authority and that Authority shall destroy that part after the certificate from the Director of the Central Food Laboratory has been received by the Court:

Provided that where the part of the sample sent by the Court to the Director of the Central Food Laboratory is lost or damaged, the Court shall require the Local (Health) Authority to forward the part of the sample, if any, retained by it to the Court and on receipt thereof, the Court shall proceed in the manner provided in sub-section (2-B)."

29. Section 11 of the PFA Act provides for procedure to be followed by Food Inspectors. Sub section 4 of Section 11 provides that article of food seized under sub section (4) of Section 10, unless destroyed under sub-section 4-A of that section, and any adulterant seized under sub-section (6) of that section shall be produced before a Magistrate as soon as possible and in any case not later than seven days after the receipt of report of the Public analyst.

30. In the case in hand, the complainant/Food Inspector received the report of

public analyst on 28.08.2001. Thereafter he produced seized article before the Ld. CJM by making Misc. Application No. 394 of 2001 on 03.09.2001 thereby sought permission for destruction of contents of seized article. Thereafter, on service of notice to accused No. 1 on 27.06.2002, said seized bottles were destroyed with permission of the Magistrate in presence of Assistant Superintendent of the Court.

31. In the case of Marico Ltd. Vs. State of Maharashtra, cited supra, the coordinate bench of this Court has held in paragraph Nos. 9 to 13 as under:

"9. It is apparent from the aforesaid chart, that though the sample was drawn on 30th July, 2004, sent to the Public Analyst on the very next date i.e. on 31st July, 2004; and the Report was received within 2 months thereafter i.e. on 7th September, 2004; the Food Inspector sent the papers to the Asst. FDA Commissioner seeking his permission to prosecute, after almost 7 months. i.e. on 26th April, 2005, by which time the shelf life of the 'Mixed Fruit Jam' was over the (date of manufacturing was February, 2004 and shelf life till February, 2005). Thereafter, sanction to prosecute was granted only on 28th February, 2006 and the aforesaid complaint was lodged on 21st March, 2006.

10. Under Section 13(2) of the Prevention of Food Adulteration Act, after the prosecution is instituted, an opportunity has to be given to the accused to make an application to the Court, within a period of 10 days from the receipt of the copy of the report, to get the sample of the food article kept by the Local (Health) Authority analysed by the Central Food Laboratory. Under Sub-section 3 of Section 13, 'the Certificate issued by the Director of the Central Food Laboratory is conclusive and supersedes the report given by the Public Analyst'.

11. The law with regard to the right of an accused under Section 13(2) of the said Act, is no longer res integra. It is well settled by a catena of Judgments, both of the Apex Court and this Court, that once a valuable right is conferred upon a party, the said indefeasible right cannot be taken away, by delaying the launch of prosecution. From the aforesaid dates, it is clearly evident that the shelf life of the product i.e. the 'Mixed Fruit Jam' was over, and as such, the applicants could not have availed of the indefeasible right which had accrued to them, under Section 13(2) of the Act, as the sample given by the local authority was rendered unfit for analysis. It is also evident that the delay in launching the prosecution was solely attributable to the prosecution. There was no impediment in filing the prosecution, well in time, as the report of the public analyst was received within 2 months from the date of seizure of sample. No explanation has been offered by the prosecution, for the said inordinate delay.

12. Learned APP does not dispute the aforesaid facts and the legal position in this regard. The learned APP is unable to justify the delay in launching the prosecution.

13. Considering the aforesaid, it is evident that the applicants were deprived from exercising their indefeasible right, which had accrued to them, under

Section 13(2) of the Prevention of Food Adulteration Act. It was incumbent for the Respondent No. 2- complainant/prosecution to launch the prosecution promptly and in any event, before the expiry of the shelf life of the product.

32. In case of Marico Limited Vs. State of Delhi, cited supra, blended edible vegetable oil was packed on 27th November, 2009 and it was mentioned on the product that "Best Before Nine Months from package" as per requirement of PFA Rules. The sample of blended vegetable oil was taken on 31.03.2010. The public analyst opined vide its report dated 04.05.2010 that the sampled product does not conform to standard because, acid value exceeds the prescribed maximum limit. The sample went outside of its shelf-life of nine months in August, 2010 and complaint was filed on 15.03.2001, after 10 months 2 days of the receipt of the report dated 04.05.2010 of the public analyst. Notice under Section 13(2) of the PFA, Act was issued on 17.03.2001 to the Petitioner Company to get the sample re-analyzed by the Central Food Laboratory where the sampled product with 9 months shelf-life became 7 months beyond the best before date. Under these circumstances, the Petitioner company had challenged the prosecution on ground that the right of the Petitioner company under Section 13(2) of the PFA, Act, to get the sample of product "Suffola Blended vegetable oil" analyzed by the Apex Laboratory i.e., Central Food Laboratory stand vitiated which solely attributable to the conduct of the prosecution and the delay on its part in filing the complaint. Therefore, the learned Single Judge of the Delhi High Court considered various case laws including cases of Girishbhai Dahyabhai Shah Vs. C C Jani, (2009) 15 SCC 64, Girishbhai Dahyabhai Shah Vs. C C Jani 2008 (2) FAC 344, Ravindra Chopade Vs. State of Madhya Pradesh, 2013 (1) FAC 227, State of Haryana Vs. Brijlal Mittal, AIR 1998 SC 2327, and held that, the complaint filed by the Food Inspector in respect of sample taken on 30.03.2000 on the basis of report of the public analyst dated 04.05.2010 after expiry of the shelf period of the product is not maintainable. Once complaint was filed after expiry of shelf life, right to send the second sample become frustrated, therefore, complaint filed by the Respondent was quashed.

33. In the case of Adhiraj Amar Kanhaiyalal Sarin and others, cited supra, the Co ordinate Bench of this Court has held in paragraph Nos. 9 and 10 as under:

"9. The phraseology, "best before" is defined in rule 32(m) explanation-VIII of The Prevention of Food Adulteration Rules, 1955, which reads thus:

Explanation VIII. "best before" means the date which signifies the end of the period under any stated storage conditions during which the product shall remain fully marketable and shall retain any specific qualities for which tacit or express claims have been made and beyond that date the food may still be perfectly satisfactory. Whereas; phraseology 'use by date' or 'expiry date' is also defined in rule 32(m) explanation VIIC of the Rules which reads thus: Explanation VIIC. "use by date" or "recommended last consumption date" or "expiry date" means the date which signifies the end of the estimated period under any stated storage conditions, after which product probably will not have the quality attributes

normally expected by the consumers and the food shall not be marketable.

10. On bare perusal of the provisions contained in Rule 32(m) and the meaning attached to phraseology "best before" is that; the period during which the product shall remain full marketable and shall retain in specific qualities for which tacit or express claims have been made. It is further clarified that beyond the prescribed date also the food article may still be perfectly satisfactory. Whereas; the meaning attached to the "expiry date" signifies the end of estimated period under any stated storage conditions, after which product probably will not have the quality attributes normally expected by the consumers and further that the food shall not be marketable. A distinction has to be drawn in respect of phraseology "best before" and "expiry date" noted on the container of the food product. In the instant matter, the food item which is edible oil, is best for use before the specified date, however, it does not mean that the product cannot be perfectly satisfactory beyond the prescribed date where no expiry date has been shown on the label of the food article."

34. In case of *Girishbhai Dahyabhai Shah Vs. C C Jani and another*, cited supra, the Hon'ble Supreme Court has held in Paragraph Nos. 8 and 9 as under:

"8. It will be apparent from the above, that only on receipt of the report of the Public Analyst under sub-section

(1) 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) 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 the receipt of the copy of the the court the sample of article of food kept by the Local (Health) Authority analyzed by the Central Food Laboratory.

9. In other words, in the instant case, the appellant was prevented from applying for analysis of the second sample before 17-07-1989, by which time the second sample of curd had deteriorated and was not capable of being analyzed as was found in Ghisa Ram referred to above."

35. In the judgment dated 29.10.2019 passed by the Hon'ble Supreme Court in case of *Narayana Prasad Sahu*, cited supra, the Hon'ble Supreme Court, considering the provisions of Section 13(1), 13(2) of the PFA, Act held that Under sub-Section (2) of Section 13, it is mandatory for the Local (Health) Authority to forward a copy of the report of the Public Analyst to the person from whom the sample of the food has been taken in such a manner as may be prescribed. Further mandate of sub-section (2) of Section 13 is that a person to whom the report is forwarded should be informed that if it is so desired, he can 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 analysed by Central Food Laboratory. The report is required to be forwarded after institution of prosecution against the person from whom the sample of the article of food was taken. Apart from the right of the accused to contend that the report is not correct, he has right to

exercise an option of sending the sample to Central Food Laboratory for analysis by making an application to the Court within ten days from the date of receipt of the report. If a copy of the report of the Public Analyst is not delivered to the accused, his right under sub-section (2) of Section 13 of praying for sending the sample to the Central Food Laboratory will be defeated. Consequently, his right to challenge the report will be defeated. His right to defend himself will be adversely affected. This Court in the case of Vijendra (supra) held that mere dispatch of the report to the accused is not a sufficient compliance with the requirement of sub- section (2) of Section 13 and the report must be served on the accused.

36. In case of Alkem Laboratories Limited, cited supra, it is held that to give second opportunity to the accused persons against whom prosecution is initiated under the 1954 Act based on the Public Analyst's report, to get the relevant food sample tested again by the Central laboratory, which will have precedence over the report of the Public Analyst, which is a valuable opportunity for accused persons to claim exoneration from the criminal proceedings.

37. In the case of Pepsico India Holdings Private Limited, cited supra, wherein the sweetened carbonated water (pepsi) containing pesticide residue, carbofuran, to the extent of 0.001 mg/litre was involved and question was whether such product was adulterated food warranting prosecution? The Hon'ble Supreme Court held that, mere presence of pesticide residue in sweetened carbonated water (pepsi) within tolerable limits (0.001 mg/litre) prescribed subsequently vide notification dated 17.06.2009 does not render it as adulterated.

38. Reverting back to the present case, the sample of "Sweetened Carbonated Beverages, Canada Dry" manufactured on 13.06.2001 having Best Before 6 months i.e. 12.12.2001 was collected by the Complainant/Food Inspector on 26.07.2001 and it was sent to the Public Analyst on 27.07.2007. The report was received on 28.08.2007 and the prosecution was launched on 15.03.2003. However, in the meantime the complainant filed Misc. Application No. 394 of 2001. on 03.09.2001 and on 27.02.2002, after service of notice to accused No. 1, the said seized stock of 321 company packed sealed Glass bottles of "Sweetened Carbonated Beverages, Canada Dry" manufactured on 13.06.2001 has been destroyed under the order of the Ld. CJM. Thereafter empty glass bottles are returned to the accused No. 1. Therefore, the accused No. 1 was having opportunity to apply for re-examination of the said article under Section 13(2) of the PFA, Act. However, neither the applicant who is manufacturer nor Accused Nos. 1 to 3 who are distributors/stockists of the said product have availed such remedy. Therefore, to my view, the applicant manufacturing company has no voice to say that, no opportunity was granted under section 13 (2) of the PFA Act.

39. Since, it is not the case of the present applicant about availment of right under Section 13(2) of the PFA, Act and merely the prosecution complaint has

been filed after expiry of Best Before Date, it does not prove that the samples were not tested prior to the expiry of Best Before Date of the production. Therefore, the grounds set out by the present applicant/accused No. 4 company that the prosecution complaint has been filed after the period of 16 months from the expiry of Best Before date cannot be said to be bonafide and substantial.

40. It is pertinent to note that, denial of right of the accused under section 13(2) of the PFA, Act would arise only when the accused could have applied for sending the samples for analysis to the Central Laboratory. Failing to exercise such option, or to make an application to Court requesting that sample be sent to the Central Laboratory for reanalysis would disentitle the accused from contending that they have been deprived from exercising their right under section 13(2) of the PFA, Act.

41. In view of the above, I do not find the applicant has made out the ground set out in the application for quashment of proceeding bearing RCC No. 654 of 2006. Consequently, the present Criminal application is rejected. Rule discharged. Cri.Applaiton No.4688/2024 is disposed off.

42. After pronouncement of the judgment, the learned counsel for the applicant prayed for extension of interim relief dated 06.07.2010 granted by this Court, for the period of eight weeks from today, whereby further proceedings of RCC No. 654 of 2006 against the present applicant original accused No.4 was stayed. The learned APP strongly opposes the prayer on the ground that the proceeding of RCC No. 654 of 2006 is stalled since last more than 14 years.

43. On 06.07.2010, this Court (Coram: A. V. Potdar, J.) has passed the following order:

"Heard learned counsel for applicant. Issue notice to respondent. Learned APP accepts notice for state and prayed for time to call for the papers of investigation.

Rule. Rule returnable early.

Within meantime, proceeding before the trial court is stayed to the extent of present applicant, who is accused no.4 in RCC No.654/2006 on the file of C.J.M. Jalna. Leave to move this Court for early hearing after 10 weeks.

Parties to act on the authenticated copy of this order."

45. The proceeding of RCC No.654 of 2006 which is pending on the file of the learned Chief Judicial Magistrate, Jalna is stayed against the present applicant/original accused No.4 only, but it is informed that the entire proceeding as against all the accused persons has already been stayed and, there is no progress in the proceeding.

46. Considering the nature of offence and the challenge to the proceeding by the applicant/manufacturing company, I do not find to extent further the interim order, as prayed. Accordingly, the prayer is hereby rejected.