
(2018) 05 MP CK 0188

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 28080 Of 2017

M/s. Pepsico India Holdings Pvt. Ltd

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 31-05-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Prevention of Food Adulteration Act, 1954 — Section 7, 7(i), 7(2)(i), 16(1)(a)(i),
13(2), 16

Citation : (2018) 05 MP CK 0188

Hon'ble Judges : SUNIL KUMAR AWASTHI, J

Bench : Single Bench

Advocate : S.C. Bagadiya, Pankaj Bagadiya, H.Y. Mehta

Final Decision : Allowed

Judgement

The applicant has invoked the extraordinary jurisdiction under Section 482 of the Criminal Procedure Code, 1973 (for brevity the

Cr.P.C.) for quashing the proceedings of Criminal Case No. 770/2012 pending before the Court of Judicial Magistrate First Class, Nagda,

District-Ujjain for the offence punishable under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954 (for short the Act).

2. The facts which are relevant for deciding the present petition are that on 24/11/2008, at about 14:50 p.m. Food Inspector Shri Omprakash Rathore

alongwith his assistant Laxman boarded the train No. 2904 Swarn Mandir Mail, from Kota Junction. In discharge of his duties he carried out an

inspection of pantry car no. 968064 and taken samples of "Mirinda Orange Flavour sweetned Carbonated Water" he purchased 3 bottles of said

product. Later on the samples were sealed and sent for testing by Public Analyst, Bhopala. According to the report of the Public Analyst, the samples

were found to be adulterated.

3. Upon receiving the report of the Public Analyst, the Food Inspector after taking proper sanction of prosecution filed a complaint against Amitabh

Agrawal, Pantry Car Manager of Train No. 2094, vendor of the sample food article of M/s. R.K. Associates, Rakesh Kumar Mishra, Nominee of

M.S. R.K. Associates and Mr. Prasoon Joshi Nominee of applicant's Company, i.e. Pepsico India Holdings Pvt. Ltd., Mumbai, who is the

manufacturer of the sample food articles. The Court below after examining the record and upon finding substance in the complaint made by the Food

Inspector proceeded to take cognizance against the present applicant for commission of adulteration.

4. Learned counsel for the applicant submits that the respondent prior to filing of the present petition before Judicial Magistrate First Class, Nagda

District-Ujjain, had filed complaint before the Special Railway Magistrate (First Class) at Ratlam on 17/03/2010, which vide an order dated 28/03/2012

was returned to the respondent for lack of jurisdiction and filed before the competent Court of jurisdiction. As per prosecution sample is found to be

adulterated, however, reading of the report of analyst makes it clear that the Public Analyst has merely seen extraneous matter and no chemical

analysis of the product was done by the Public Analyst, in absence of which the report of Public Analyst has no value in the eyes of law. The packing

date of the sample is 13/11/2008 and the sample of the product was taken by the respondent on 24/11/2008, the sample was analyzed by the Public

Analyst between 06/12/2008 to 15/12/2008; whereas the complaint was filed earlier on 17/03/2010 before Special Railway Magistrate (First Class)

Ratlam, wherein the notice under Section 13(2) of PFA was allegedly given to the petitioner/accused company on 18/03/2010. However, the product

in question went outside its shelf life of three months in 13/02/2009 and thus on 17/03/2010, when complaint was filed the sample was 13 months over

its best before date, therefore the right of the petitioner company to get the sample of the product re-analyzed was vitiated. Thus, the delay in filing of

the complaint by the respondent in the present case as result in complete denial of the right available to the applicant under Section 13(2) of the Act,

1954 to request for re-examination of the sample from the Central Food Laboratory, which causes irreparable damage and prejudice to the defence of

the applicant/ company. Under these circumstances he prayed for quashment of the proceedings and process issued against the applicant in Criminal

Case No. 770/2012, pending before the Court of Judicial Magistrate First Class, Nagda, District-Ujjain.

5 Per contra learned counsel for the respondent opposed the application by contending that the allegation made in the petition against the applicant can

only be decided after appreciation of material available on record before the trial Court. There is no ground is made out in favour of the applicant for

quashing the proceedings pending before the Court of Judicial Magistrate First Class, Nagda, District-Ujjain. Hence, he prayed for rejection of the

petition.

6. Having considered the arguments advanced by the learned counsel for the Parties and perused the record.

7. It has borne out from the record that the present applicant is the manufacturer of the sample food articles and it is alleged to have committed

adulteration under the provision of the Act, 1954. I find force in the arguments advanced by the Senior Counsel for the applicant that shelf life of the

â??Mirinda Orange Flavour sweetned Carbonated Waterâ? had lapsed prior to filing of the complaint before the competent Court, therefore, this

Court has no hesitation in observing that the defence of the present applicant would be severely prejudiced if the right available under Section 13(2) of

the Act of 1954 is taken away.

8. In the case of M/s. R. Jagdish Tea Company Vs.State of M.P. (M.Cr.C. No. 2414/2011) decided on 04/02/2015, Udaibhan Singh and others

Vs.State of M.P.(M.Cr.C. No. 4296/2012) decided on 05/02/2015, ITC Limited Vs. State of M.P., (2013) 1 FAC 96 and Mohd. Batiulla Vs. State of

M.P., 2012 (I) MPJR 362, it has been held by this Court that infringement of the valuable right under Section 13 (2) of the Act 1954 by filing the

complaint long after out of expiry of samples thereby frustrated the right of the applicant to go for a second testing, complaint liable to be quashed

under Section 482 of the Cr.P.C.

9. In the present case, the panchname prepared by the Food Inspector shows that on the packing of product of which sample has been taken it has

been mentioned that it is best before 3 months from the date of packing, thus, it is clear that after almost 3 Â½ years from the date of sampling

complaint has been filed on 09/08/2012 and the applicant has been deprived of his right of second testing, as the products were expired much before

the date of filing of this complaint, therefore, considering the judgments cited above, the proceedings pending against the applicant before the trial

Court are liable to be quashed.

10. Resultantly, the present petition is allowed and impugned order dated 09/08/2012 passed by learned Judicial Magistrate First Class, Nagda,

District-Ujjain is hereby set aside and the proceedings and process issued against the petitioner alone in Criminal Case No. 770/2012, pending before

the Court of Judicial Magistrate First Class, Nagda District-Ujjain and the cognizance taken under Sections 7(i), 7(2)(i) and 16(1)(a)(i) of the

Prevention of Food Adulteration Act, 1954 is hereby quashed.

11. Let a copy of this order be sent to the trial Court for necessary compliance and information.