

(2011) 09 GUJ CK 0146
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 10982 of 2010

Nestle India Ltd. and Another

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 20-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 13, 13(2), 24(3), 24(4)

Citation : (2011) 09 GUJ CK 0146

Hon'ble Judges : M.D. Shah, J

Bench : Single Bench

Advocate : Salil Thakore, for Megha Jani, s 1 and 2, for the Appellant; L.R. Pujari, APP. for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

M.D. Shah, J.—This Application u/s 482 of the Code of Criminal Procedure has been filed by the applicants to quash and set aside the complaint being Criminal Case No. 3250 of 2009 pending in the Court of learned Chief Judicial Magistrate, Bhuj, Kutch and the proceedings therein.

2. Facts in short are that a complaint was filed by the Respondent No. 2 in the Court of learned Chief Judicial Magistrate, Bhuj, Kutch, on 8-7-2009 against the present applicants-original accused Nos. 3 and 4 and two others for the offences punishable under the Prevention of Food Adulteration Act, 1954 ("the Act" for short) alleging inter alia that the sample of Company packed Maggie Tomato Sauce bottle weighing 200 gm. collected at Shri Sahjanand Ghee Centre, Vokala Faliya, Garbi Chowk, Bhuj (Kutch) when sent to Public Analyst was reported to be adulterated. Said complaint was registered as Criminal Case No. 3250 of 2009 and a process was issued by the learned Magistrate in the said complaint. Hence, the present application for quashing of the said complaint.

3. Heard learned advocate, Mr. Salil M. Thakore for Ms. Megha Jani for the applicants, learned APP, Mr.L.R. Pujari for the Respondent No.1.

4. Learned advocate, Mr. Salil Thakore, for the applicants has submitted that no case is made out against the applicants as the complaint has been filed after expiry period of sample which has been taken by the Food Inspector. He has further submitted that as per Section 13 of the Act, accused is conferred with a right to get the sample of article re-analysed by the Central Food Laboratory and the report of Central Food Laboratory shall supersede the report of Public Analyst. He has further submitted that sample was taken on 23-2-2006, report of Public Analyst is received on 15-4-2006 and complaint was filed on 8-7-2009 by which time, sample, which is fit for consumption for 12 months from the date of manufacture i.e. December, 2005, had become unfit for analysis as the expiry date of the sample was already over. According to him, as the complaint was filed after the expiry date of the collected sample is over, the sample has become unfit for analysis. He has further submitted that even if the applicants seek to re-analyse the sample before the Central Food Laboratory, it would be an exercise in futility as the expiry date of sample is already over. Apart from that, there is a delay of 41 months in filing the prosecution and hence, it is submitted that statutory right conferred u/s 13(2) of the Act on the accused is denied and, therefore, criminal proceedings cannot be allowed to continue. He has relied on a decision of the Hon''ble Apex Court reported in Northern Mineral Ltd. Vs. Union of India (UOI) and Another, wherein it has been held in paras 26 and 27 as under:

26. We are distressed to note the casual manner in which the whole exercise has been done. Insecticide Inspector had collected the sample on 10th September, 1993 and sent it to the Insecticide Analyst for analysis and report. Insecticide Analyst submitted its report dated 13th October, 1993. Notice of the report was sent to the Appellant on 1st November, 1993, in reply whereof by letter dated 17th November, 1993 it intimated its intention to adduce evidence in controversion of the report. The shelf-life of the pesticide had not expired by that time but expired in February 1994. However, permission to file complaint was given on 23rd February, 1994 and the complaint was actually filed on 16th March, 1994. Had the authority competent to grant consent, given consent and complaint lodged immediately after the receipt of intimation of the accused, sample could have very well sent for analysis and report, before the expiry of shelf-life.

27. It is interesting to note that Section 24(3) and (4) of the Act obliges the Insecticide Analyst and Central Insecticides Laboratory to make the test and analysis and report within thirty days. When 30 days is good enough for report, there does not seem any justification not to lodge complaint within 30 days from the receipt of the intimation from the accused and getting order for sending the sample for test and analysis to the Central Insecticides Laboratory. All who are entrusted with the implementation of the provisions of the Act, would be well advised to act with promptitude and adhere to the time-schedule, so that innocent persons are not prosecuted and real culprits not left out.

26. He has also relied on a decision of this Court rendered in the case of Nestle

India Limited, Thro" R.K. Rajkot, Manager (Sales) v. State of Gujarat in Cri. Misc. Appln. No. 10732 of 2010 wherein in a similar fact situation, complaint has been quashed by this Court.

5. Learned APP, Mr. L.R. Pujari, on the other hand, has submitted that process has been issued by the learned Magistrate after perusing the documentary evidence more particularly report of Public Analyst and hence, it is prayed that this application may not be entertained.

6. This Court has gone through the averments made in the complaint as well as the report of the Public Analyst together with the decisions cited by the learned advocate for the applicants. In the opinion of this Court, the issue involved in this application is squarely covered by the decisions of Hon"ble Apex Court reported in Northern Mineral Ltd. Vs. Union of India (UOI) and Another, as well as this Court rendered in Nestle India Limited, Thro" R.K. Rajkot, Manager (Sales) v. State of Gujarat in Cri. Misc. Appln. No. 10732 of 2010.

7. In this case, as stated above, sample was taken by the Food Inspector on 23-2-2006, report of Public Analyst was given on 15-4-2006 and complaint was filed on 8-7-2009 i.e. more than after three years and four months of taking the sample. It is pertinent to note that even if the applicants want to re-analyse the sample before the Central Food Laboratory, it would be of no use as the expiry date of sample collected has already been already over. Hence, valuable right conferred on the accused is lost. Apart from that, there is a delay of 41 months in lodging the prosecution. Therefore, in view of the ratio laid down by the Hon"ble Apex Court as well as by this Court in the aforesaid decisions, the impugned complaint requires to be quashed qua the applicants.

8. Thus, the present application is allowed. Complaint being Criminal Case No. 3250 of 2009 pending in the Court of learned Chief Judicial Magistrate, Bhuj, Kutch and the proceedings there under are quashed and set aside qua the present applicants. Rule is made absolute.