

(2010) 11 GUJ CK 0018
In the Gujarat High Court

Case No : Criminal Revision Application No. 709 of 2004

Netharsh Base Company and Others

APPELLANT

Vs

(The) State of Gujarat and Another

RESPONDENT

Date of Decision : 15-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Prevention of Food Adulteration Act, 1954 — Section 13, 13(1), 13(2B), 13(3), 16(1)
Prevention of Food Adulteration Rules, 1955 — Rule 32, 49(17)

Citation : (2011) 1 GLH 651

Hon'ble Judges : Harsha Devani, J

Bench : Single Bench

Advocate : C.L. Soni for Mr. Yogesh S. Lakhani s - 5, for the Appellant; Maulik G. Nanavati, Additional Public Prosecutor for Respondent : 1, for the Respondent

Final Decision : Allowed

Judgement

Ms. Harsha Devani, J.—By this application u/s 397 read with Section 401 of the Code of Criminal Procedure, 1973 (the Code), the applicants - original accused No. 3, 4, 5, 6 and 7 have challenged order dated 09th September, 2004 passed by the learned Sessions Judge, Navsari, in Criminal Revision Application No. 6 of 2001 whereby the learned Sessions Judge has allowed the application filed by the respondent and set aside the order dated 11th April, 2000 passed by the learned Judicial Magistrate First Class, Gandevi, in Criminal Case No. 157 of 1999 whereby the applicants had been discharged.

2. The facts of the case stated briefly are that on 8th October, 1997, the respondent No. 2 - Food Inspector took samples of sugar boiled confectionery namely, Kesar Pista Toffee (Looti) from M/s. Shree Ram Bakery and General Stores at Rahej, Taluka Gandevi, and the sample was sent to the laboratory for examination. On receipt of the report of the Public Analyst, Rajkot, dated 10th November, 1997, the Food Inspector submitted the report, documents and evidence alongwith a letter dated 20th November, 1998 to the local authority,

Valsad and requested for grant of sanction to launch prosecution against the accused. In the report of the Public Analyst, Rajkot dated 10th November, 1997, it is mentioned that the test as regards Saffron (kesar) is found to be positive, that is, Saffron is present in the sample but the same is not shown on the label of the toffee and, therefore, the sample is misbranded as per the provisions of Rule 32(b) of the Prevention of Food Adulteration Rules, 1955 (the Rules) and Section 2(ix)(k) of the Prevention of Food Adulteration Act, 1954 (the Act). Upon obtaining sanction, the Food Inspector filed a complaint being Criminal Case No. 157 of 1999 in the Court of the learned Judicial Magistrate First Class, Gandevi. Subsequently, another sample came to be sent to the Central Food Laboratory, Calcutta by the learned Judicial Magistrate First Class, Gandevi on 29th April, 1999. The Central Food Laboratory submitted its report dated 9th June, 1999 which indicated that the sample was adulterated as the presence of mineral oil was found in the sample, but the percentage or weight of mineral oil was not mentioned in the report neither was there any mention of presence of Saffron in the said report. The applicants No. 4 and 5 therefore, approached this Court by way of Criminal Miscellaneous Application No. 6593 of 1999 for quashing the complaint on the ground that there was a contradiction in report received from the Public Analyst, Rajkot and the Central Food Laboratory, Calcutta. Vide order dated 24th November, 1999, the petition was disposed of by giving liberty to the petitioners to approach the learned Judicial Magistrate First Class, Gandevi by filing a discharge application in Criminal Case No. 157 of 1999 which came to be allowed vide order dated 11th April, 2000 whereby the learned Judicial Magistrate First Class discharged the applicants from the offences mentioned in the complaint stating that no prima facie case had been made out against the applicants. Being aggrieved, the State of Gujarat approached the Sessions Court, Navsari, by way of a criminal revision application being Criminal Revision Application No. 6 of 2001. The learned Sessions Judge, vide order dated 9th September, 2004, quashed and set aside the order passed by the learned Judicial Magistrate First Class and remanded the matter to the Trial Court for framing charge under Rule 32(b) of the Rules. Being aggrieved, the applicants have moved the present revision application challenging the order dated 9th September, 2004 passed by the learned Sessions Judge.

3. Mr. C.L. Soni, learned Advocate appearing on behalf of Mr. Y.S. Lakhani, learned Advocate for the applicants invited attention to the report dated 10th November, 1997 of the Public Analyst to point out that the test for saffron was positive in the said report and that as per the opinion of the Public Analyst, in contravention of the provisions of Rule 32(b) of the Rules, the sample of Kesar Pista toffee was misbranded u/s 2(ix)(k) of the Act. Referring to the report of the Central Food Laboratory, Calcutta, it was pointed out that as per the said report, there was no mention of saffron in the entire report and that as per the opinion of the Central Food Laboratory, the sample of sugar boiled confectionery - Kesar Pista toffee was adulterated. It was pointed out that as per the said report, as per the provisions of Rule 49(17), mineral oil (food grade) for use in

confectionery was required to be under Indian Standards Institution Certification Mark, but there was no license for the same. It was pointed out that in the said report mineral oil was shown to be present. However, the quantity or percentage thereof had not been mentioned. Referring to Rule 49(17) of the Rules, it was pointed out that the said Rule would be applicable only where mineral oil is sought to be sold for use in confectionery and as such, would not be applicable to the facts of the present case. Inviting attention to the order dated 11th April, 2000 made by the learned Judicial Magistrate, it was pointed out that the learned Judicial Magistrate has rightly observed that once there is a report of the Central Food Laboratory, the report of the Public Analyst cannot be looked into and that as per the report of the Central Food Laboratory, there was no misbranding. Inviting attention to the impugned order dated 9th September, 2004, it was pointed out that the learned Sessions Judge has accepted the position that when there was a conflict between the report of the Public Analyst and the Central Food Laboratory, the report of the Central Laboratory would prevail. However, the learned Judge has proceeded on a misconception that to the extent there was no contradiction in the two reports, the report of the Public Analyst could be accepted. Referring to the decision of the Supreme Court in the case of Calcutta Municipal Corporation Vs. Pawan Kumar Saraf and Another, it was pointed out that the Court has held that Section 13(3) of the Act which says that the certificate of Director, Central Food Laboratory shall supersede the report, means that the report would stand annulled or obliterated. The word "supersede" in law means "obliterate, set aside, annul, replace, make void or inefficacious or useless, repeal". Once the certificate of the Director of the Central Food Laboratory reaches the Court, the report of the Public Analyst stands displaced and what may remain is only a fossil of it. Thus, the legal impact of a certificate of the Director of Central Food Laboratory is threefold. It annuls or replaces the report of the Public Analyst. It gains finality regarding the quality and standard of the food article involved in the case and it becomes irrefutable so far as the facts stated therein are concerned. It was submitted that in light of the law laid down by the Apex Court in the said decision, once the certificate of the Director of the Central Food Laboratory reaches the Court, the report of the Public Analyst stands displaced and can no longer be looked into. It was accordingly urged that the learned Sessions Judge was not justified in placing reliance on the report of the Public Analyst once the certificate of the Central Food Laboratory had been received by the Court.

4. Reliance was also placed on the decision of the Supreme Court in the case of Dayal Singh Vs. State of Rajasthan, for the proposition that the presence of mineral oil even after the amendment would amount to adulteration if it is not of food grade and is not used as a lubricant and it is more than 0.2% by weight. It was submitted that as per the certificate of the Central Food Laboratory, mineral oil was only stated to be present and that the percentage thereof was not mentioned. Merely because mineral oil was found to be present in the sample, it has been stated that the sample is adulterated without indicating that the

percentage thereof was more than the permissible amount. It was accordingly submitted that no case has been made out for prosecuting the applicants for breach of Section 2(ix)(k) of the Act and Rule 32(b) of the Rules for the offences punishable u/s 16(1)(a)(i) of the Act.

5. The application is opposed by Mr. Maulik Nanavati, learned Additional Public Prosecutor, who has submitted that had the learned Judge permitted the case to go for trial, the prosecution could have examined the Director of the Central Food Laboratory and proved that the quantity of mineral oil was more than 2% and that the sample in question was adulterated. It was submitted that having regard to the reasoning adopted by the learned Sessions Judge, the learned Judge was justified in holding that the sample was misbranded and that no case has been made out for discharging the applicants.

6. From the facts noted hereinabove, it is apparent that as per the report of the Public Analyst, the sample had tested positive for saffron and that the name of kesar (saffron) was not mentioned in the list of ingredients on the label of the sample which was in contravention of provision of Rule 32(b) of the Rules and secondly, the sample of Kesar Pista toffee was misbranded u/s 2(ix)(k) of the Act. However, after the complaint came to be registered, the learned Judicial Magistrate First Class had forwarded a sample to the Central Food Laboratory and as per the certificate of analysis given by the Director, Central Food Laboratory, the sample of sugar boiled confectionery - Kesar Pista toffee was adulterated. However, the said report does not mention presence of saffron. The physical examination indicates that as per the provision in Rule 49(17), mineral oil (food grade) for use in confectionery should be under Indian Standards Institution Certification Mark but there was no license for the same. However, though the said report indicates presence of mineral oil, it does not state the percentage thereof. It appears that the sample has been stated to be adulterated in view of the presence of mineral oil.

7. A perusal of the complaint lodged by the respondent No. 2 - complainant indicates that in the light of the report of the Public Analyst which indicates that the name of kesar (saffron) was not stated in the label and as such, the said sample was misbranded in terms of Section 2(ix)(k) of the Act and Rule 32(b) of the rules in respect of which the local Authority had, vide letter dated 14th December, 1998, granted sanction for prosecuting the applicants. Thus, the complaint in question has been lodged in relation to the offence relating to the breach of the provisions of Section 2(ix)(k) of the Act and Rule 32(b) of the rules. Section 13 of the Act makes provision for report of Public Analyst. Sub-Section (1) thereof provides that the Public Analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis. Sub-Section (2-B) of Section 13 provides for dispatching part of the sample by the Court under its own seal to the Director of Central Food Laboratory who is thereupon required to 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. Sub-Section (3) of Section 13 lies down that the certificate issued by the Director of Central Food Laboratory under sub-Section (2-B) shall supersede the report given by the Public Analyst under sub-Section (1). Thus, once a certificate is issued by the Director of the Central Food Laboratory, the same supersedes the report given by the Public Analyst and as held by the Apex Court in the case of *Calcutta Municipal Corporation v. Pawan Kumar Saraf and another* (supra), the report of the Public Analyst stands displaced and what may remain is only a fossil of it and as such, the same cannot be looked into as the same stands obliterated.

8. As can be seen from the impugned order dated 9th September, 2004 passed by the learned Sessions Judge, Navsari, the learned Sessions Judge has proceeded on the footing that to the extent there is no conflict between the report of the Public Analyst and the certificate issued by the Central Food Laboratory, the report of the Public Analyst can be looked into. It is on this basis that the learned Sessions Judge has held that the certificate issued by the Central Food Laboratory does not mention anything as regards misbranding and that there was no point on which the certificate of Central Food Laboratory was conflicting with the report of the Public Analyst. As regards there being no mention of the ingredient, viz. saffron on the label, the learned Sessions Judge has proceeded on the footing that non-mentioning of ingredients on the label does not require any analysis and that as such, insofar as misbranding is concerned, the report of the Public Analyst can still be looked into.

9. In the aforesaid background, this Court is of the view that the impugned order passed by the learned Sessions Judge proceeds on an erroneous footing that to a limited extent, the report of the Public Analyst can be looked into and secondly, the same also proceeds on an erroneous footing that non-mentioning of an ingredient on the label which amounts to misbranding would not require any analysis report in that regard. The decision of the Apex Court in the case of *Calcutta Municipal Corporation v. Pawan Kumar Saraf and another* (supra) categorically holds that the legal impact of a certificate of the Director of the Central Food Laboratory is threefold. It annuls or replaces the report of the Public Analyst, which gains finality regarding the quality and standard of the food article involved in the case and it becomes irrefutable so far as the facts stated therein are concerned. In the circumstances, once the certificate of the Director of the Central Food Laboratory is received, the report of the Public Analyst would stand annulled and cannot be looked into for any purpose. Moreover, the reasoning adopted by the learned Sessions Judge that insofar as indicating the name of an ingredient on the label, no question of analysis of the sample arises is also erroneous. The allegation against the applicants is that saffron, though being an ingredient of the product in question, is not indicated on the label. In the report of the Public Analyst, saffron is stated to be positive whereas, in the certificate of the Central Food Laboratory, the presence of saffron is not mentioned. Thus, the report of the Central Food Laboratory does not indicate the presence of saffron in the sample. In the circumstances, if saffron is not present in the sample, there

would be no question of mentioning the same as an ingredient of the product and as such, the very substratum of case of the respondent that there was misbranding due to non-mentioning of saffron on the label would fall.

10. Insofar as the sample of sugar boiled confectionery being adulterated as stated in the certificate of the Central Food Laboratory is concerned, the complaint against the applicants is for misbranding and not in respect of adulteration of the sample and as such, the sanction obtained from the Local (Health) Authority is for prosecution for the offence punishable u/s 16(1)(a)(i) of the Act and not for adulteration of the product in question. Moreover, the certificate of the Central Food Laboratory simply states that the sample is adulterated without mentioning as to how the same is adulterated. It appears that the sample is stated to be adulterated in light of the fact that mineral oil is found to be present therein. However, as held by the Apex Court in the case of *Dayal Singh v. State of Rajasthan* (supra), presence of mineral oil even after the amendment will amount to adulteration if it is not of food grade and not used as a lubricant and if it is more than 0.2% by weight. From the facts emerging on record, it is not the case of the respondents that the mineral oil is not of food grade or that the same is not used as a lubricant and that the same is more than 0.2% by weight. In the circumstances, in absence of the aforesaid factors being satisfied, presence of mineral oil in the sample would not amount to adulteration and as such, even as per the report of the Central Food Laboratory, no offence can be stated to have been made out against the applicants. In the circumstances, the learned Sessions Judge was not justified in interfering with the order made by the learned Judicial Magistrate First Class and directing framing of charge against the applicants.

11. For the foregoing reasons, the application succeeds and is accordingly allowed. The impugned order dated 9th September, 2004 made by the learned Sessions Judge, Navsari in Criminal Revision Application No. 6 of 2001 is hereby quashed and set aside. Rule is made absolute accordingly.