

(2013) 02 BOM CK 0202

In the Bombay High Court

Case No : Criminal Application Nos. 1250 and 1251 of 2011

Padmanabh

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Citation : (2014) FAJ 44

Hon'ble Judges : R.V. More, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ranjit More, J.—Issue involved in the above applications being one and the same, I propose to dispose of the same by common order. Applicant in the above applications is vendor of the retail food articles including the products manufactured and/or marketed by erstwhile Brooke Bond Lipton India Ltd. Applications are filed under the provisions of Section 482 of the Code of Criminal Procedure, 1973 to quash and set aside the criminal cases pending in the various Courts against the applicant for the offences punishable under Sections 7(i) read with Section 2(1a)(a), 7(v) read with Rule 55 and Section 7(v) read with Rule 50 of the Prevention of Food Adulteration Rules, 1955 read with Rule 5 of the Maharashtra Prevention of Food Adulteration Act and Rules, 1962 punishable under Sections 16 and 17 of the Prevention of Food Adulteration Act, 1954.

2. Food articles in question are mixed fruit jam and orange marmalade. Samples of these food articles were taken by the respondent in the months of January, 1997. Samples thereafter were sent for analysis to the public analyst. Reports of the public analyst were also received by 26.3.1997. Thereafter, respondent/food inspector applied for consent/sanction from the Joint Commissioner. In all the above cases, sanction/consent was accorded on 16.4.1998 after a minimum period of one year. Thereafter, prosecutions came to be filed.

3. The main argument of Mr. Manohar learned senior counsel for the applicant is

that in all these cases, respondent launched prosecution against the applicant after 16 to 17 months from the date of collecting samples. According to Mr. Manohar, this delay is fatal to the prosecution in-as-much as the applicant could not exercise statutory right under the provisions of Section 13(2), of the Prevention of Food Adulteration Act, 1954.

4. All these matters were placed for hearing on 24th April, 2012 before this Court. After hearing both sides, the learned Single Judge (Coram: R.C. Chavan, J.) of this Court passed the following order:

1. I have heard learned counsel for the applicants and learned APP for the State. In these applications, the products which were seized did not "have best" before dates. The products, however, were seized and samples were taken in the year 1997-98. Reports of the laboratories were also received in the same years. The complaints, were, however, filed after more than one year after the report of laboratory was received in most of the cases.

2. Learned Senior Counsel for the applicants submits that the judgment delivered by Nagpur Bench of this Court in Shivkumar alias Shiwalamal Narumal Chugwani Proprietor of Kanhaiya General Stores Vs. State of Maharashtra at the instance of Subhash Madhukar Choudhary lays down that if there is any unexplained delay in launching the prosecution after receipt of report of public analyst, that itself should be a ground for quashing the proceedings, since it defeats the right of the accused to have sample analyzed from the Central Laboratory. It would be better if the second part of the samples which must be in the custody of local Health Authority, are sent to the Central Laboratory for analysis to find out, apart from the fact whether the samples conform to the standards prescribed, whether there has been change in the composition from the date of seizure, till the date of analysis and whether sample to be analyzed by the laboratory now would have been in the same condition at the time when it was first taken.

3. The parties could also send to the Laboratory comparable product purchased in the market today and seek comparison by the expert. Expert could also find if the scientific evidence about the change that may occur over a period of time.

4. List the matters after vacation.

5. Considering the nature of issues involved. Admit.

6. Interim orders to continue.

However, subsequently it was revealed that the samples of food articles were destroyed on 11.2.2010 as they were rotten.

5. Fact remains that in all these cases, prosecution was filed alter a period of 16-17 months from the date of collecting samples. Statutory right is given to the applicant/accused u/s 13(2) of the Prevention of Food Adulteration Act, 1954 under which he can make request to send second sample to the Central Food Laboratory. Applicant could not have exercised the aforesaid valuable right after

expiry of period of 16-17 months from the date of collecting samples of food articles. In these cases as stated above, food articles were mixed fruit jam and orange marmalade and it is very difficult to say that composite composition of the second sample of the food article will remain same after lapse of period of six months. Similar question was for consideration before the learned Single Judge of this Court in Shivkumar Chugwani v. State of Maharashtra (supra) Food article was also same in that case as in the present case. In that case also, prosecution was filed after lapse of period of one year from the date of collecting samples. The learned Single Judge held that this resulted in violation of valuable right conferred u/s 13(2) of the Prevention of Food Adulteration Act, 1954 and consequently, quashed and set aside prosecution against the applicants therein. Decision of the learned Single Judge has confirmed by the Apex Court in Petition(s) for Special Leave to Appeal (Cri) No(s). 6332/2010. This decision of the learned Single Judge as confirmed by the Apex Court in the aforesaid SLP is aptly applicable to the facts and circumstances of the present case.

6. Since I have come to conclusion that delay in launching prosecution has resulted in violation of applicant's statutory right u/s 13(2) of the Prevention of Food Adulteration Act, 1954, prosecution against the present applicant cannot be continued. Application is accordingly made absolute in terms of prayer clause (a) Criminal.