
(2012) 03 MP CK 0140
In the Madhya Pradesh High Court
Case No : M.Cr.C. No. 12665 of 2011

Prahlad Gattani and Others	Vs	APPELLANT
State of M.P.		RESPONDENT

Date of Decision : 22-03-2012

Acts Referred:

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

Citation : (2012) ILR (MP) 1454 : (2012) 4 MPLJ 617

Hon'ble Judges : R.C. Mishra, J

Bench : Single Bench

Advocate : Surendra Singh with Shivam Singh, for the Appellant; Rahul Jain, G.A. for the non-applicant/State, for the Respondent

Final Decision : Allowed

Judgement

R.C. Mishra, J.—This petition, u/s 482 of the Code of Criminal Procedure (for short "the Code"), has been moved for having the proceedings, pending as Criminal Case No. 7619/11 before Shri Sanjay Singh, JMFC, Jabalpur, quashed. In that case, cognizance of the offences punishable u/s 7(i) & (v), Rule 32(b)(2) (v) of the Prevention of Food Adulteration Rules, 1955 read with Section 16(1)(a) (i) and (ii) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the "Act"), has been taken upon a complaint filed by Amrish Dubey, Food Inspector, on behalf of respondent-State to the effect that the sample of Crosse and Blackwell (Snack Dressing) Tomato Ketchup (for brevity "Ketchup") manufactured by respondent no. 5 M/s Nestle India Limited and stored for sale by petitioner no. 1, the proprietor of M/s Ratan Sales in its shop located at 12, Gujarati Colony, Jabalpur, was found to be adulterated.

2. Amongst the other petitioners, petitioner no. 2, being Manager (Sales) and In-charge of the Depot at Mangliya, Indore, is nominated by the Manufacturing Company under sub-Section (2) of Section 17 of the Act whereas petitioner no. 3 and 4 are respectively the Chairman and Managing Director and Vice President/

Company Secretary of the Company.

3. Following facts are not in dispute -

One of the samples of Ketchup drawn by Amrish Dubey was forwarded for analysis to Public Analyst, State Food Laboratory, Bhopal and the corresponding report dated 23.2.2010 indicated that sample does not conform to the standard prescribed despite declaration made on label that Ketchup was "best before 6 months" from January, 2010, the month of its manufacture.

4. Learned Senior Counsel has strenuously contended that the prosecution of the petitioners is an abuse of process of the Court in view of the fact that they have been deprived of their right to get the sample re-analyzed by Central Food Laboratory as contemplated under sub-section (2) Section 13 of the Act. For this, attention has been invited to the fact that the notice, u/s 13(2) of the Act, was sent to the petitioners only after filing of the complaint before the Court on 29.7.2011 whereas the report of the Public Analyst was received in the month of February 2010. According to him, this indifferent and lethargic attitude of the authorities concerned in not taking appropriate action to ensure that valuable right conferred by Section 13(2) is exercised by the petitioners before the expiry of shelf life of the sample, has not only caused a serious prejudice to them but has also resulted in a failure of justice. To buttress the contention, reference has been made to decisions of the Supreme Court in-

(i) Municipal Corporation of Delhi Vs. Ghisa Ram,

(ii) State of Maharashtra v. Shivkumar 2011 (1) FAC 41 (wherein the view taken by Division Bench of the Bombay High Court in Shivkumar v. State of Maharashtra (2010 (2) FAC 239 that the prosecution based on the complaint instituted after more than a reasonable period counted from the date of taking of a sample and much after the expiry of the shelf life of the article of food had become worthless due to loss of right u/s 13(2) of the Act was affirmed.

5. While opposing the prayer for quashing the prosecution, learned Govt. Advocate has submitted that no interference under the inherent powers is called for to stifle or scuttle a legitimate prosecution.

6. It is well settled that forwarding the report of public analyst to the accused is not a ritual but a statutory requirement to be mandatorily observed. Way back in 1967, in Ghisa Ram's case (supra), the Apex Court (speaking through V. Bhargava, J) had explained significance of the right u/s 13(2) in the following terms-

It appears to us that when a valuable right is conferred by S. 13(2) of the Act on the vendor to have the sample given to him analysed by the Director of the Central Food Laboratory, it is to be expected that the prosecution will proceed in such a manner that right will not be denied to him. The right is a valuable one, because the certificate of the Director supersedes the report of the Public Analyst and is treated as conclusive evidence of its contents. Obviously, the right has

been given to the vendor in order that, for his satisfaction and proper defence, he should be able to have the sample kept in his charge analysed by a greater expert whose certificate is to be accepted by the Court as conclusive evidence. In a case where there is denial of this right on account of the deliberate conduct of the prosecution, we think that the vendor, in his trial, is so seriously prejudiced that it would not be proper to uphold his conviction on the basis of the report of the Public Analyst, even though that report continues to be evidence in the case of the facts contained therein.

We are not to be understood as laying down that in every case where the right of the vendor to have his sample tested by the Director of the Central Food Laboratory is frustrated, the vendor cannot be convicted on the basis of the report of the Public Analyst. We consider that the principle must, however, be applied to cases where the conduct of the prosecution has resulted in the denial to the vendor of any opportunity to exercise this right. Different considerations may arise if the right gets frustrated for reasons for which the prosecution is not responsible.

7. It is true that Section 13(2) of the Act has been substituted by Act 34 of 1976 but, under the new Section, the right conferred on the accused to make an application to the court for sending the second part of the sample to the Central Food Laboratory, remained unaffected (See. State of Gujarat and Another Vs. Shaileshbhai Mansukhlal Shah and Another,

8. Significance of the declaration "Best Before" in relation to the right u/s 13(2) of the Act has been explained by a learned Single Judge of the Bombay High Court in Shri Rohit Mull v. State of Goa 2006 (1) FAC 58 and the decision was quoted with approval by a Division Bench in Shivkumar v. State of Maharashtra (supra). The relevant observations made in Rohit Mull's case may be reproduced as under-

6...."Best Before Date" shown on the label is in terms of Rule 32(i) of the Prevention of Food Adulteration Rules, 1955 and in terms of Explanation VII below the said Rule it means the date which signifies the end of the period under any stated storage conditions during which the product will remain fully marketable and will retain any specific qualities for which tacit or express claims have been made. The explanation also states that however, provided that beyond the date the food may still be perfectly satisfactorily.

...

15. By now there is unanimity of judicial opinion that when a valuable right is lost to the accused to get the sample reanalysed from the Director, Central Food Laboratory, he can very well claim that prejudice has been caused to him and this is because the report of the Director, Central Food Laboratory, supersedes that of the Public Analyst. Section 13(2) of the Act confers a valuable right on the seller of the article of food to get the sample analysed by the Central Food Laboratory, and while it is in a condition fit for such analysis and in our case that

would be on or before the "Best Before Date"...

...

21.....As already noted in the case of the two of the purchases the notice given to the petitioners/accused was given much after the "Best Before Date" and in cases of the third purchase, the notice was given just before two days of the said "Best Before Date" thereby making it impossible for the Petitioners, even if they were stationed in this State, to exercise the said right of making an application to the Court concerned to get the sample of the article of food kept by the Local Health Authority analysed by the Central Food Laboratory. Even if the petitioners had made such an application immediately after receiving the said report of the Public Analyst, it would have been impossible for the petitioners to have exercised the said right given to them in such a short period. In other words, the Complainants made it impossible for the accused to exercise the right under Subsection 2 of Section 13 of the Act. In such a situation no conviction against the accused would be possible and therefore no useful purpose would be served by continuing with the prosecutions under Sections 7/16 of the Act.

9. this Court is not oblivious of the decision of the Apex Court in State of Haryana Vs. Brij Lal Mittal and Others, laying down that delay in filing complaint till expiry of shelf life of drugs can not be treated as a ground to quash the prosecution. However, the case is not only distinguishable on facts but also on law. In that case, manufacturers' right, under sub-Section (4) of Section 25 of the Drugs and Cosmetics Act, 1940, to get the sample tested by the Central Drugs Laboratory, had expired four months before the expiry of the shelf life upon their failure to notify intention, in accordance with sub-section (3), to adduce evidence in controversion of report of Government Analyst within the prescribed period of twenty eight days from the receipt of the copy thereof. Further, in a subsequent decision rendered in Northern Mineral Ltd. Vs. Union of India (UOI) and Another, the Supreme Court, while dealing with Section 24(3) of the Insecticides Act, 1968, which is in pari materia with S.25(3) of the Drugs and Cosmetics Act, proceeded to discharge the appellant on the premise that no step could be taken for analysis of the sample by Central Insecticides Laboratory due to sheer inaction on the part of the authorities concerned resulting in expiry of its shelf life despite the fact that the accused had notified its intention to adduce evidence in controversion of the report of Insecticide Analyst.

10. Adverting to the facts of the case, it may be observed that the notice u/s 13(2) of the Act along with the copy of the report of the Public Analyst was forwarded to the petitioner no. 1 on 29.7.2011 i.e. nearly a year after the expiry of the shelf life of the sample. In such a situation, where no order of conviction can be recorded on the basis of the report, the proceedings are liable to be interfered with. Moreover, the alleged violation of Rule 32(b)(2)(v) [ibid] also would not assume any significance. It is relevant to note that the Ketchup was not declared as misbranded as defined in Clause (ix) of Section 2 of the Act.

11. To sum up, even if the allegations made against the petitioners in the complaint, are taken at their face value and accepted in their entirety, no offence under the Act would be made out. As such, the case against the petitioners fall under category (1) and (6) of the cases, as enumerated in State of Haryana and others Vs. Ch. Bhajan Lal and others, attracting interference under the inherent powers.

12. Although, adulteration of food is a menace to public health and the Act has been enacted with an aim of eradicating that antisocial evil and ensuring purity in the articles of food yet, the authority concerned are duty bound to ensure that the valuable right conferred by Section 13(2) of the Act is not defeated due to inefficiency and ineptitude. For these reasons, the petition is allowed and the proceedings in Criminal Case No. 7619/11 (above) are hereby quashed. However, the District Magistrate, Jabalpur is directed to identify the officials responsible for not launching the prosecution immediately after receipt of the report of Public Analyst and for allowing the shelf life of the sample to expire, and take appropriate action against them after affording opportunity of being heard.