

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 771 OF 2014

Pepsi Co. India Holdings Pvt.Ltd.
Having its registered office at
Global Business Park, Tower-A,
2nd Floor, Mehrauli - Gurgaon
Road, Gurgaon – 122 002
through its authorized representative
Mr. Anirudha Kund,
authorized Signatory and Quality
Control Manager, Pepsi Co.
India Holdings Pvt.Ltd., Paithan,
Aurangabad.

.... PETITIONER

V E R S U S

1. The State of Maharashtra
2. Shri. S.V.Khairnar
Food Inspector, Food & Drugs
Administration, Jalgaon.

.... RESPONDENTS

.....
Mr. Talshikar h/f Mr. S.G.Chapalgaonkar,
Advocate for Petitioner.
Mrs. Pratibha Bharad, A.P.P.
.....

CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 30th JULY, 2015

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JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally by the consent of the learned counsel for the parties.

2. Heard Mr. Talshikar holding for Mr. S.G.Chapalgaonkar, learned Counsel for the petitioner and Mrs. Pratibha Bharad, learned A.P.P.

3. Present Criminal Writ Petition is filed under Article 227 of the Constitution of India for quashing R.C.C. No. 710/2005 pending on the file of the learned Chief Judicial Magistrate, Jalgaon and also prayed for quashing of the Order passed by the learned Chief Judicial Magistrate on 08/11/2005 for issuance of process against the petitioner for the offence punishable u/s 7 (i) read with section 2 (ia) (a), 2(ia) (m) punishable u/s 16 and 17 of the Prevention of Food Adulteration Act, 1954 and Rules thereunder.

4. Shri. S.V.Khairnar was the Food Inspector at the

relevant time. He visited the shop of accused No. 1 M/s Shrijee Enterprises and Fast Food, Jalgaon, which is situated at Shop No. 7 & 8, Unity Chambers, Ganesh Colony, Jalgaon on 14/07/2003. That day, after disclosing his identity to said M/s Shrijee Enterprises and Fast Food, Jalgaon, who is accused No. 1 in the criminal complaint, complainant expressed his desire to take sample of food article for analysis. He then demanded and purchased 1500 ml. Sweetened Carbonated Water (Pepsi) for the purpose of analysis from him, paid the price of ₹ 37.50 and obtained receipt from him. Needless to mention, complaint asserts that at the time of obtaining the sample, Food Inspector issued notice u/s 14-A of the said Act to accused No. 1. Sample was sent to the Public Analyst on 15/07/2003. Public Analyst sent his report to the complainant which is dated 07/08/2003, received on 14/08/2003. Thereafter, complainant obtained necessary sanction from the competent authority on 27/10/2005.

With these basic facts, Food Inspector filed Complaint on 08/11/2005 against the petitioner and others in the Court of learned Chief Judicial Magistrate, Jalgaon bearing R.C.C. No. 710/2005.

5. According to the learned counsel for the petitioner, indefeasible right of the petitioner as envisaged u/s 13 (2) of the Prevention of Food Adulteration Act [for short 'Act'] is denied. According to him, complaint/prosecution itself is filed after inordinate delay of more than 25 months from the date of the Public Analyst's report dated 07/08/2003. Thus, the valuable right is completely denied as the sample given by the local authority is rendered unfit for analysis. He submitted that there is no plausible explanation available in the entire complaint and for such unexplained delay, according to him, resulted into denial of fair trial.

6. Learned counsel for the petitioner invited my attention to the report of the Public Analyst, which shows that the sample in question was having batch No. 58 and its date of manufacturing was 30/05/2003. From the said report itself, he invited my attention to the fact that the sample was best before three months from the date of manufacturing. Thus, according to him, indefeasible right of the petitioner to send the sample to the Central Laboratory is defeated and resulted into denial. He invited my attention to

various Judgments right from the decision in **Municipal Corporation of Delhi Vs. Ghisa Ram, (1967) 2 SCR 116.**

He also invited my attention to the decision of this Court in **Criminal Application No. 238 of 2002 [V.M.DESHPANDE,J.]**, in which the entire scheme of Section 17 is considered.

7. Learned A.P.P. opposed the present petition and submitted that the learned court below after applying mind, has issued the process.

8. It would be useful to have a reference to Section 13 of the Act :-

“ Further, Section 13 of the Act deals with the report of the Public Analyst. Sub-section (2) of Section 13 of the Act reads as under :-

“ 13. Report of Public Analyst -

(1)

(2) On receipt of the report of the result of the analysis under sub-section

(1) to the effect that the article of food is adulterated the Local (Health) Authority shall, after the institution of prosecution against persons from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under Sec. 14-A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the Court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory ”.

9. It is the settled principle of law that summoning an accused in criminal case is a serious matter. Hence, criminal law can not be set in motion as a matter of course .

In this back-drop, it would be useful to mention

following dates :-

Date	Particulars
30/05/2003	Date of manufacturing.
14/07/2003	Sample was drawn by the Food Inspector/complainant.
15/07/2003	Sample was sent to the Public Analyst.
14/08/2003	Report of the Public Analyst was received.
27/10/2005	Sanction from the Assistant Commissioner of Food & Drugs Administration received by the complainant.
08/11/2005	Complaint was filed before the Chief Judicial Magistrate, Jalgaon.

10. In the present case, admittedly, the shelf life of the product was three months from the date of its manufacturing.

11. Sub-section (3) of Section 13 of the Act reads as under :-

“ 13. Report of Public Analyst :-

(1)

(2)

(3) The certificate issued by the Director of the Central Food Laboratory under sub-section (2-B) shall supersede the report given by the Public Analyst under sub-section (1).

.....”.

12. The Hon'ble Apex Court way back in the year 1967 in a case **Municipal Council, Delhi Vs. Shisa Ram** **[AIR 1967 SC 970]** in paragraph 7 has observed as under :-

“7. 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 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 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 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 ”.

13. The learned counsel, in my view, was right in making submissions that the delay in launching the prosecution has hampered the valuable right of the petitioner because he could not exercise the said right.

This Court is in full agreement with the submissions of the learned counsel that, (1) it would have

been hazardous to exercise the said right because the accused could never be sure that the sample will not undergo the change after its shelf life.

14. From the aforesaid discussion, it is clear that there is inordinate delay in launching the prosecution, which has hampered valuable right of the petitioner because the petitioner could not exercise the said right.

15. It is to be noted that no prudent person will exercise the right as envisaged u/s 13 of the Act, since it would have been hazardous exercise, because no one could be sure that the sample will not undergo the change after the shelf life.

16. It is to be noted that Section 13 (2) of the Act states that the report of the Public Analyst is to be sent to the person from whom sample was taken after the institution of the prosecution. The matter is not '*res integra*' in view of the decision of the State of Maharashtra Vs. Bhagvandas Gopaldas Bhate [1977 (1) FAC 123] that without instituting the prosecution, it is no use serving the Public

Analysst's report on the accused.

17. In order to avail the indefeasible right available in view of Section 13 (2) of the Act, complainant was under obligation to launch the prosecution as early as possible and in any case before the expiry of shelf life of the product. Allowing to lapse the said period and launching the prosecution nearly after 255 months is nothing but an act on the part of the complainant to nullify the indefeasible right of the accused persons.

Therefore, this Court is of the view that the said right is denied resulting in the denial of fair trail.

18. Upshot of the aforesaid discussion leads me to pass the following order.

ORDER

[I] Present Criminal Writ Petition is allowed.

[II] R.C.C. No. 710/2005 pending on the file of the learned Chief Judicial Magistrate, Jalgaon is quashed and set aside to the extent of the present petitioner only.

[III] Order passed by the learned Chief Judicial Magistrate, Jalgaon dated 08/11/2005 in R.C.C. No. 710/2005 is hereby quashed and set aside *qua* present petitioner only.

[IV] Rule is made absolute.

[V.M.DESHPANDE, J.]

KNP/Cr. W.P. 771.2014 - [J]