

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Criminal Misc. No. M-3388 of 2011
Date of Decision: 12.10.2015**

M/s Samriti Products Pvt Ltd through its Nominee Narinder Singh

--Petitioner.

Vs.

State of Punjab and another

--Respondents.

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. M.S. Rakkar, Sr. Advocate with
Mr. K.G. Choudhary, Advocate
for the petitioner.

Mr. K.D. Sachdeva, Additional A.G. Punjab.

Mr. R.K.Garg, Advocate
for respondent No.2.

- 1. To be referred to the Reporters or not?**
- 2. Whether the judgment should be reported in the Digest?**

RAMESHWAR SINGH MALIK J. (ORAL)

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks quashing of impugned criminal complaint dated 14.5.2008 under Sections 7/16 of the Prevention of Food Adulteration Act, 1954 (' Act of 1954' for

short) alongwith consequential criminal proceedings arising therefrom and the impugned order dated 20.1.2009 (Annexure P-4) whereby petitioner was summoned as an additional accused with the aid of Section 319 Cr.P.C.

Notice of motion was issued and proceedings qua the petitioner were stayed before the learned trial court. No reply was filed on behalf of the State, but respondent No.2, who is co-accused of the petitioner, filed his reply opposing the present petition.

Learned senior counsel for the petitioner submits that since the petitioner was not made an accused in the impugned complaint, there was no scope of levelling any allegations against him. However, during the course of the trial, prosecution moved an application under Section 319 Cr.P.C., vide Annexure P-3, which itself was a cryptic one. He further submits that learned trial Magistrate misdirected himself and exceeded his jurisdiction while passing the impugned summoning order dated 20.1.2009 (Annexure P-4), thereby summoning the petitioner as an additional accused to face criminal trial. He concluded by submitting that in the process, a valuable right of the petitioner under Section 13 (2) of the Act of 1954, for getting the sample analysed from Central Laboratory, has been violated. He prays for quashing the impugned complaint Annexure P-1 and impugned summoning order Annexure P-4, by allowing the present petition.

On the other hand, learned counsel for the State as well as learned counsel for respondent No.2 would contend that since the petitioner was admittedly a manufacturer of Keshav Shudh Desi

Ghee, he was rightly summoned as an additional accused to face criminal trial. The impugned order Annexure P-4 was not suffering from any illegality and the same deserves to be upheld. They pray for dismissal of the present petition.

After hearing learned counsel for the parties at considerable length, careful perusal of record of the case and giving anxious consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, noticed hereinabove, instant one has been found to be a fit case, warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record that when the impugned complaint was filed, it was filed only against respondent No.2 namely Buta Ram. Since the petitioner was not arraigned as accused in the impugned complaint, there was no scope of levelling any allegations against him. This was the basic fallacy which lies in the case of the prosecution qua the petitioner.

When, Dr. Amarjit Lal, Government Food Inspector, was examined as PW1 vide Annexure P-2, he disclosed that petitioner was manufacturer of Keshav Shudh Desi Ghee, whose sample was taken from the possession of Buta Ram-respondent accused and the same was found substandard, as per the report of Public Analyst. Thereafter, a cryptic application Annexure P-3 was moved by the prosecution under Section 319 Cr.P.C., to examine the manufacturer

as prosecution witness.

The application Annexure P-3 reads as under:-

Applicant u/s 319 Cr.P.C. to examine Manufacturer as PW

Sir,

APP for State submits that:-

- 1. That today PW1 Dr. Amarjit Lal was examined in chief who has clearly named Manufacturer of Keshav Shudh Desi Ghee, i.e. Smriti Product Pvt. Ltd., 55 KM Stone, State Highway, Panchkula Road, Saha (Ambala) Haryana India.*
- 2. That manufacturer of desi ghee must be examined in this case.*
- 3. It is hence prayed that application may kindly be allowed and manufacturer may be summoned in interest of justice.*

The learned trial Magistrate misdirected himself and exceeded his jurisdiction, while summoning the petitioner as co-accused vide impugned order Annexure P-4 and the same reads as under:-

“Statement of Dr. Amarjit Lal, Govt. Food Inspector, Hoshiarpur recorded party, when an application u/s 319 Cr.P.C. was moved by prosecution. I have heard learned APP and learned defence counsel and have gone through record of this case and found that there are sufficient grounds

to proceed against manufacturer of Keshav Shudh Desi Ghee i.e. M/s Samriti Products Private Limited, 55 Kilometer Stone, State Highway, Panchkula Road, Saha (Ambala, India). Let person responsible for day to day working of said firm at the relevant time be summoned as co-accused for 28.5.09.”

In view of the abovesaid position, this Court feels no hesitation to conclude that the impugned order is not only a cryptic one but the same is also an order without jurisdiction, which cannot be sustained.

The learned trial court altogether ignored the mandatory provisions of Section 13 (2) of the Act of 1954, which provides a valuable right in favour of the accused, to get the sample of food article kept by the Local (Health) Authority analysed by the Central Food Laboratory. The provisions of Section 13 (2) of the Act of 1954, read as under:-

“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 the 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 section 14A, 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.”

The sample in the present case was taken on 21.6.2007, impugned complaint was filed on 14.5.2008 and the petitioner came to be summoned as an additional accused vide order dated 20.1.2009. The self life of the sample has expired much before passing the impugned order Annexure P-4, thereby taking away a valuable accrued right of the petitioner for getting the same analysed from the Central Food Laboratory. Since the prosecution agency as well as learned trial Magistrate have glaringly violated the mandatory provisions of Section 13 (2) of the Act of 1954, thereby causing serious prejudice to the petitioner, the impugned complaint as well as impugned summoning order Annexure P-4 cannot be sustained qua the petitioner.

The abovesaid view taken by this Court also finds support from the following judgments:-

- 1) Municipal Corporation of Delhi Vs. Ghisa Ram 1967
AIR (SC) 970 (SC)
- 2) Darshan Lal Vs. State of Punjab, 1982 PLR 206
(P&H)
- 3) Narinder Singh and another Vs. State of Punjab,

1984 (2) RCR (criminal) 246 (P&H)

4) Om Parkash Vs. State of Punjab, 1987 (2) RCR (criminal) 506

5) M/s Hindustan Unilever Limited Vs. State of Punjab through Govt. Food Inspector, Gurdaspur and another, (CRM-M-18382 of 2008 decided on 1.3.2012) (P&H)

6) Sh. Bhagwan @ Sahil Vs. State of Haryana (CRM-M-38484 of 2011 decided on 8.7.2013) (P&H)

The law laid down by the Hon'ble Supreme Court in para 7 to 11 of its judgment in Ghisa Ram's case (supra), which can be gainfully followed in the present case, read as under:-

"It appears to us that when a valuable right is conferred by Section 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 120 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 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.

In the present case, the sample was taken on the 20th September, 1961. Ordinarily, it should have been possible for the prosecution to obtain the report of the Public Analyst and institute the prosecution within 17 days of the taking of the sample. It, however, appears that delay took place even in obtaining the report of the Public Analyst, because the Public Analyst actually analysed the sample on 3rd October, 1961 and sent his report on 23rd October, 1961. It may be presumed that some delay in the analysis by the Public Analyst and in his sending his report to the prosecution is bound to occur. Such delay could always be envisaged by the prosecution, and consequently, the elementary precaution of adding a preservative to the sample which- was given to the respondent should necessarily have been taken by the Food Inspector. If such a precaution had been taken, the sample with the respondent would have been available for analysis by the Director of the Central Food

Laboratory for a period of four months which would have expired about the 20th of January, 1962. The report of the Public Analyst having been sent on 23rd October, 1961 to the prosecution, the prosecution could have been launched well in time to enable -the respondent to exercise his right under Section 13 (2) of the Act without being handicapped by the deterioration of his sample. The prosecution, on the other hand, committed inordinate delay in launching the prosecution when they filed the complaint on 23rd May, 1962, and no explanation is forthcoming why the complaint in Court was filed about seven months after' the report of the Public Analyst had been issued by him

121 *This, is, therefore, clearly a case where the respondent was deprived of the opportunity of exercising his right to have his sample examined by the Director of the Central Food Laboratory by the conduct of the prosecution. In such a case, we think that the respondent is entitled to claim that his conviction is vitiated by this circumstance of denial of this valuable right guaranteed by the Act, as a result of the conduct of the prosecution.*

Learned counsel for the appellant drew our attention to a decision reported in Suckling v. Parker 1966 K.B. 527. That case was concerned with similar law in England, but, there, the provision relating to the testing of the sample kept with the vendor was quite different. In England, there was no restriction that the vendor could not have his sample tested until after the prosecution was launched, nor did the subsequent report have the effect of completely superseding the earlier report of the Analyst.

In Municipal Corporation, Gwalior, v. Kishan Swaroop, AIR 1965 Madhya Pradesh 180 it was held that, where there was delay in launching the prosecution, it deprived the accused of the valuable right to challenge the report of the Analyst in the manner prescribed by Section 13 (2) of the Act, and when this right was denied to the accused for no fault of Ms, but wholly due to the inordinate laches of the prosecution, no weight could be given to the report of the Public Analyst. That decision proceeded on the basis of the value of the report of the Public Analyst being affected by the fact that the accused had been deprived of his right to challenge that report by obtaining a certificate from the Director of the Central Food Laboratory. The report of the Public Analyst, as we have said earlier, does not cease to be good evidence merely because a certificate from the Director of the Central Food Laboratory cannot be obtained. The reason why the conviction cannot be sustained is that the accused is prejudiced in his defence and is denied a valuable right of defending himself solely due to the deliberate acts of the prosecution.

Coming to the peculiar facts and circumstances of the present case noted above and respectfully following the law laid down by the Hon'ble Supreme Court as well as this Court, in the cases referred to hereinabove, it is unhesitatingly held that since the present case is on much better footing than from Ghisa Ram's case (supra), the impugned complaint (Annexure P-1) as well as order (Annexure P-4) qua the petitioner cannot be sustained, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present petition deserves to be allowed. Consequently, the impugned complaint (Annexure P-1) as well as summoning order dated 20.1.2009 (Annexure P-4) are hereby ordered to be quashed, however, only qua the petitioner.

Resultantly, with the abovesaid observations made, present petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

12.10.2015
AK Sharma