

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISC. PETITION NO. 714 OF 2015

Firm Ramdeo Food Products Pvt. Ltd., Block No. 527, near G.E.V. Sub-Station, behind Pragati Hotel, Sarkhej Bhava, Highway Changdor, Ahmedabad (Gujrat), through Shri Janak Kumar Vishnu Bahi, Lab. Assistant and nominee of the Firm Ramdeo Food Products.

... Petitioner

Versus

State of Chhattisgarh, through Food and Drugs Administration, Raipur (C.G.)

... Respondent

For Petitioner : Mr. G.D. Vaswani, Advocate.
For Respondent : Mr. Bashkar Payashi, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

20/10/2016

1. The present under Section 482 of CrPC has been filed for quashment of the Criminal Case No. 1955 of 2005 pending in the Court of Chief Judicial Magistrate, Raipur, wherein the Respondent has initiated the prosecution case against the Petitioner for the offence punishable under Sections 16(1)(a), 1(ii) and (1)(c) of the Prevention of Food Adulteration Act, 1954 ('the Act', in short).

2. Facts of the case in brief are that the petitioner-establishment is engaged in manufacture of various food products including spices. On 23.11.2004, a Food Inspector Shri S.B. Mishra had collected three packets of coriander powder weighing 200gram each from the local distributor of the petitioner-establishment. It is a case of the prosecution that the said sample after it was collected on 23.11.2004 was sent to the Public Analyst for analysis and the report from the Public Analyst was received on 31.12.2004. It is also a case of the petitioner-establishment that after the receipt of the report of the Public Analyst, the respondent issued notice to the petitioner on 11.1.2005 and

again on 18.6.2005 both seeking information about the details of the Directors of the petitioner-establishment. Thereafter, the prosecution case was filed for the first time on 28.9.2005. It is this complaint case which has been registered against the petitioner for the offence under Sections 16(1)(a), 1(ii) and (1)(c) of the Act, which is under challenge in this petition.

3. Assailing the said registration of the complaint, Counsel for the Petitioner submits that the entire case of the prosecution is totally baseless as the complaint case itself has been filed much after the self-life of the product which was collected as sample and the said filing of the complaint beyond the self-life of the product is in total contravention of the provisions of Section 13 of the Act. According to the Counsel for the Petitioner, the sample which was collected had borne the packaged date of 23.4.2004 and the best life of the product was reflected to be 8 months from the date it was packaged. Thus it was best for use till 23.6.2005. Counsel for the Petitioner further assailing the criminal prosecution submits that since the self-life of the product itself was till 23.6.2005 the complaint case could not have been filed by the respondent on 28.9.2006, that is, after three months from the date the self-life of the product had expired.

4. It was further submitted by the Counsel for the Petitioner that the said action on the part of the petitioner and the registration of complaint by the Court below is *per se* contrary to the judicial pronouncement laid down by the Supreme Court as early as in the year 1967 in the case of **Municipal Corporation of Delhi Vs. Ghisa Ram [AIR 1967 SC 970]**. Referring to paragraph 7 of that judgment, he submits that the said observations and guidelines laid down by the Supreme Court clearly apply in the instant case and the prosecution deserves to be quashed.

5. Counsel for the Respondent however opposing the petition submits that the petition deserves to be rejected on the ground that the Petitioner has not brought the correct facts to the notice of the Court inasmuch as after the report

of the Public Analyst was received on 31.12.2004 the authorities of the respondent-department had issued two notices to the petitioner-establishment and on both occasions there was no response from the petitioner's side and therefore the petitioner cannot now raise a hue and cry of not getting an opportunity of proper defence after the report of the public analyst was received. According to the Counsel for the respondent in case the petitioner-establishment intends to question the report of the public analyst it ought to have immediately/promptly replied to the notice issued to it and should have ventilated its grievance and having not done so the petitioner cannot now turn around and cry foul of the action of the part of the respondent, and thus prayed for the rejection of the petition.

6. Having considered the rival contentions put forth on behalf of either side and on perusal of the record the admitted fact on the basis of the pleadings and submissions made on either side is that the petitioner-establishment is in the business of manufacturing of various food products including spices. Indisputably, the Food Inspector, S.B. Mishra had collected sample from one of the distributors of the petitioner-establishment on 23.11.2004. The said sample was sent for public analyst and report of which was received on 31.12.2004. As per the provisions of the Act immediately on receipt of the report of the Public Analyst the authorities ought to have initiated action against the petitioner-establishment after the report was found to be negative against the petitioner and should have complied with the statutory requirement as is required under Section 13 of the Act which for ready reference is reproduced as under :

“13. Report of public analyst.— [(1) 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.

(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 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.

(2A) When an application is made to the court under sub-section (2), the court shall require the Local (Health) Authority to forward the part or parts of the sample kept by the said Authority and upon such requisition being made, the said Authority shall forward the part or parts of the sample to the court within a period of five days from the date of receipt of such requisition.

(2B) On receipt of the part or parts of the sample from the Local (Health) Authority under sub-section (2A), the court shall first ascertain that the mark and seal or fastening as provided in clause (b) of sub-section (1) of section 11 are intact and the signature or thumb impression, as the case may be, is not tampered with, and despatch the part or, as the case may be, one of the parts of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon 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.

(2C) Where two parts of the sample have been sent to the court and only one part of the sample has been sent by the court to the Director of the Central Food Laboratory under sub-section (2B), the court shall, as soon as practicable, return the remaining part to the Local (Health) Authority and that Authority shall destroy that part after the certificate from the Director of the Central Food Laboratory has been received by the court:

Provided that where the part of the sample sent by the court to the Director of the Central Food Laboratory is lost or damaged, the court shall require the Local (Health) Authority to forward the part of the sample, if any, retained by it to the court and on receipt thereof, the court shall proceed in the manner provided in sub-section (2B).

(2D) Until the receipt of the certificate of the result of the analysis from the Director of the Central Food Laboratory, the court shall not continue with the proceedings pending before it in relation to the prosecution.

(2E) If, after considering the report, if any, of the food inspector or otherwise, the Local (Health) Authority is of the opinion that the report delivered by the public analyst under sub-section (1) is erroneous, the said Authority shall forward one of the parts of the sample kept by it to any other public analyst for analysis and if the report of the result of the analysis of that part of the sample by that other public analyst is to the effect that the article of food is adulterated, the provisions of sub-sections (2) to (2D) shall, so far as may be, apply.]

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

(4) Where a certificate obtained from the Director of the Central Food Laboratory [under sub-section (2B)] is produced in any proceeding under this Act, or under sections 272 to 276 of the Indian Penal Code (45 of 1860), it shall not be necessary in such proceeding to produce any part of the sample of food taken for analysis.

(5) Any document purporting to be a report signed by a public analyst, unless it has been superseded under sub-section (3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under sections 272 to 276 of the Indian Penal Code (45 of 1860):

[Provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory [not being a certificate with respect to the analysis of the part of the sample of any article of food referred to in the proviso to sub-section (1A) of section 16] shall be final and conclusive evidence of the facts stated therein.]

[Explanation.—In this section, and in clause (f) of sub-section (l) of section 16, “Director of the Central Food Laboratory” shall include the officer for the time being in charge of any Food Laboratory (by whatever designation he is known) recognised by the Central Government for the purposes of this section.]”

7. Taking note of the provisions of Section 13 of the Act, if we look into the conduct of the respondent authorities what clearly reflects is that though the authorities had received the report from the Public Analyst on 31.12.2004 the prosecution case was lodged for the first time on 28.9.2005, that is, after a span of more than nine months from the date of receipt of the Public Analyst. Further, from the submissions made on either side what is reflected is that the alleged two notices referred to by the respondent of having been issued to the petitioner on 11.11.2005 and again on 18.6.2005 are not in fact notices issued as is required under Section 13 of the Act but are notices which were issued to the petitioner-establishment seeking for certain information in respect of the Directors of the company. On the contrary, the prosecution case as per the stand of the respondent was filed on 28.9.2005. It is also not in dispute rather has not

been disputed by the Counsel for the respondent that the life of the product stood expired on 23.6.2005 and that the prosecution case has been lodged after more than three months from the date the life of the product had expired.

8. In the given factual position apparently upon the respondent initiating prosecution case against the petitioner they could not have availed the remedies which was otherwise available to them under the provisions of Section 13 of the Act. The denial of the said remedies would definitely be detrimental to the case of the petitioner. It is relevant at this juncture to refer to the judgment of **Municipal Corporation of Delhi** (*supra*) wherein in para 7 it has been held 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 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."

9. It would also be trite at this juncture to also refer to a judgment of the coordinate Bench of this Court in Criminal Misc. Petition No. 181 of 2007 decided on 27.8.2009 wherein also on some what similar factual background of the case, this Court relying upon the case of the **Municipal Corporation of Delhi** (*supra*) and other judgments in this regard, had allowed the petition of the petitioners therein quashing the criminal prosecution initiated under the Act. Since in the instant case also the admitted factual position clearly reflect that the prosecution case itself was lodged much beyond the expiry of the life of the product the petitioner could not have availed the remedies which were otherwise available to

it under the provisions of Section 13 of the Act. Moreover, there appears to be a genuine lapse on the part of the respondent-department in not taking prompt action on the basis of the report of the Public Analyst. The dates which have been referred in the preceding paragraphs clearly reflect that in spite of the fact that the sample being collected on 23.11.2004 and the report of the Public Analyst was received on 31.12.2004 the respondent did not take any prompt action to initiate the prosecution case against the petitioner rather for reasons best known to the respondent-department sat over the file with only issuance of two letters to the petitioner-establishment seeking for information in respect of the Directors of the said establishment. In fact, the respondent ought to have immediately proceeded in accordance with the provisions of the Act so that the petitioner if at all intended to assail the report of the public analyst could have got an opportunity to avail the same and denial of the same would definitely amount to violation of the provisions of law. For the aforesaid reasons, this Court is of the opinion that the prosecution lodged against the petitioner is in contravention to the provisions of the Act and is in direct conflict with the provisions of Section 13 (2) of the Act.

10. The petition thus deserves to be and is accordingly allowed. The criminal prosecution against the petitioner in Complaint Case No. 1955 of 2005 pending before the Chief Judicial Magistrate, Raipur stands quashed.

Sd/-
(P. Sam Koshy)
Judge