

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 692 OF 2007

Manoj S/o. Parshwanath Durungkar,
Age 42 years, Occ. Owner of shop
M/s. Bharat Kirana Stores,
R/o. Near Old Bus Stand,
Tq. Shirur Anantpal, Dist. Latur.

... Petitioner

VERSUS

1. The State of Maharashtra,
(Food & Drugs Department,
Mantralaya, Mumbai.)

2. The Food Inspector,
Shri. Talijadas Chandidasrao Boralkar,
C/o. Asst. Commissioner Office,
The Food and Drugs Department,
Adm. Building, Latur.

...Respondents

...
Advocate for Petitioner : Mr. A.H. Kasliwal h/f Ms. Netrali Jain
APP for Respondents : Mr. A.R. Kale

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CORAM : V. K. JADHAV, J.
DATED : 26th SEPTEMBER, 2016

ORAL JUDGMENT:-

1. By this petition, the petitioner original accused is seeking quashment of R.C.C. No. 106 of 2007 pending before the learned 2nd J.M.F.C. Nilanga.

2. Brief facts giving rise to the present writ petition are as follows:-

a) Respondent No.2 Food Inspector has filed a complaint bearing R.C.C. No. 106 of 2007 before J.M.F.C. Nilanga on 10.5.2007. It has alleged that on 12.10.2006 at about 5.55 p.m. the complainant visited the shop of accused and purchased the samples of "Yentop Vanspati Ghee". The said packet was bearing batch No. 560. It was packed in September, 2006 with remark "best before 6 months". The sample so obtained was divided into 3 packets and it was sent to the public analyst at Pune on 13.10.2006. The second specimen seal was put and also sent to public analyst, Pune. On 6.12.2006 report of the public analyst was received. In the said report, it is disclosed that the same sample did not confirm to the standard of vanaspati ghee as per the provisions of Prevention of Food Adulteration Rules 1955. As such, respondent No.2 has filed criminal complaint before the Court. Hence, this criminal writ petition.

3. Learned counsel for the petitioner submits that the report of public analyst nowhere discloses adulteration nor it is stated in the report that it is unfit for human consumption or it is injurious to health. The complaint before the Court was filed 5 months after receipt of report of public analyst. The shelf life of the product expired in the month of Feb. 2007. In view of Section 13(2) and Rule 7(3) of the Prevention of Food Adulteration Act and the Rules, the petitioner

accused lost his right to request the Court to forward the said sample for analysis to Central Laboratory.

Learned counsel in order to substantiate his submissions, places reliance on the judgment of the this court in the case of **Smt. M. Sarojini Ammal and others vs. State of Maharashtra and another** (Criminal writ petition No. 499 of 2007 and other connected matter, decided on 27.4.2012), wherein this Court, relying upon the judgments of Hon'ble Supreme Court in the case of **Municipal Corporation of Delhi Vs. Ghisa Ram (AIR 1967 S.C. 970)** and further in the case of **Shivkumar @ Shiwalamal Narumal Chugwani & Ors. vs. State of Maharashtra, reported in 2010 (3) Bom.C.R. (Cri.) 103**, observed that the petitioners therein lost their valuable right of getting the food articles examined/analyzed and in that way lost the opportunity to make an attempt to prove that the article was not adulterated at all. This Court has also taken a view that in such case the continuation of prosecution wherein such a serious prejudice has been caused to the accused, would be an abuse of process.

4. I have also heard learned A.P.P. for the respondent State.

5. In the instant case, even though respondent No.2 complainant

has received report of the public analyst on 6.12.2006 i.e. prior to expiry of shelf life of the product, filed a complaint before the Court on 10.5.2007. Precisely the complaint came to be filed before the Court five months after receipt of report of public analyst. The shelf life of the said product admittedly expired in the month of February, 2007. Thus, the view taken by the Apex Court in the case of ***Municipal Corporation of Delhi (supra) and Shivkumar @ Shiwalamal Narumal Chugwani & Ors. (supra)*** and view taken by this Court in the aforesaid criminal writ petition No. 499 of 2007, squarely apply to the facts of the present case. Learned A.P.P. has fairly admits this legal position. Hence, I proceed to pass the following order:-

O R D E R

- I. Criminal writ petition is allowed in terms of prayer clause "B".
- II. Writ petition is disposed of. Rule made absolute in the above terms.

(V. K. JADHAV, J.)