nsc.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1174 OF 2015

1. Marico Limited, having its erstwhile name as Marico Industries Limited situated at Lunawat Warehousing, Gat No.1093, Shiroli, Tahsil Rajgurunagar, District Pune, through its authorized representative and Manager – Legal, Ms.Renu Shetty.

2. Shri Harsh Charandas Mariwala

3. Shri Kishor Vallabhdas Mariwala

4. Shri Ajay Jaising Mariwala
Applicant Nos.2 to 5 Directors of applicant No.1 Marico Limited having their office at 7th Floor, Grande Palladium, 175 CST Road, Kalina (East), Mumbai – 400 098.

5. D.R.Joshi – Nominee of Marico Limited situated at Khalad, Tal Purandar, Dist Pune.

6. Shri Rajendra Dhanpal Zele,
Prop. of M/s.Zele Associates,

Situated at Zele Chitramandir,
Jaisinghpur, Tal.Shirol,
Dist. Kolhapur. ...Applicants/Accused

Versus

1. State of Maharashtra
Through Additional Government
Pleader, Writ Cell (Appellate Side).

2. State, at the instance of Shri J.B.Deokar,
age 52 years, Food Inspector,
Food & Drug Administration (MS),
852/8, B Ward, Subhash Road,
Kolhapur. ...Respondents

Mr.S.Manohar, Senior Counsel, i/b Mr.Rajeev Talasikar, for the Applicants.

Mr.V.B.Konde-Deshmukh, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.

DATE : 28th SEPTEMBER, 2016

P.C. :

1. Heard learned Senior Counsel for the applicants and the learned A.P.P.

2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned APP waives service on behalf of Respondent - State.

3. By this application, preferred under Section 482 of the Code of Criminal Procedure, the applicants seek quashing of the impugned order of issue process dated 21st March, 2006, passed by the learned Judicial Magistrate First Class, Peth Vadgaon, District – Kolhapur, in Regular Criminal Case No.204 of 2006, (now renumbered as Regular Criminal Case No.60 of 2008) and consequently quashing of the said case, instituted on a complaint filed by the Respondent No.2.

4. A criminal complaint was filed by the Respondent No.2, Mr.J.B.Deokar, Food Inspector as against the applicants and others, in the Court of the Judicial Magistrate, First Class, Peth Vadgaon, District – Kolhapur, alleging offences punishable, under Section 7 (i) r/w Section 2 (ia) (a) and Section 2 (ia)(m) and Section 7 (v) r/w rule 55 and punishable under Sections 16 and 17 of the Prevention of Food Adulteration Act, 1954 and the rules thereunder. Applicant No.5-D.R.Joshi is stated to be the

nominee of Applicant No.1-Company and Applicant No.6- Rajendra Dhanpal Zele, proprietor of M/s.Zele Associates is stated to be the distributor of the Applicant No.1-Company. According to the prosecution, the Applicant No.6-Rajendra Zele sold 'Mixed Fruit Jam' manufactured by the Applicant No.1-Company to M/s.Dige Agencies, Peth Vadgaon. The Respondent No.2, has stated that, Shital Sanmati Dige is the Vendor and Sanmati Balasaheb Dige, is the Proprietor of M/s.Dige Agencies and that the Applicant Nos.2 to 4 are the partners of Applicant No.1-Company. It is the Respondent No.2's case, that the Applicant No.1-Marico Industries sold 'Mixed Fruit Jam' to Applicant No.6-Rajendra Dhanpal Zele, proprietor of M/s.Zele Associates, who in turn sold the same to M/s.Dige Agencies, Bajar Peth, Peth Vadgaon. According to the Respondent No.2, on 30th July, 2004 at about 3.00 p.m., he alongwith one independent witness – Ravindra Jaykar Patil visited M/s.Dige Agencies, at Bajar Peth, Peth Vadgaon, Tal.Hatkanangale, District – Kolhapur. It is alleged that Shital Dige (original accused no.1) was present in the said premises and that he was looking after the business of stocking and was selling 'Mixed Fruit Jam' in the said premises. The Respondent No.2-complainant disclosed his identity and the intention of his visit i.e. of drawing samples of food articles including 'Mixed Fruit Jam' for testing and analysis. Thereafter, the Respondent No.2 - complainant purchased 3 packed, sealed and printed glass bottles of 'Mixed Fruit Jam', each containing 270 gms and other articles, from Shital Dige (original accused No.1) for test and analysis, after making necessary payments for the same. After the samples were collected by following due procedure, one sealed sample was sent to the Public Analyst on 31st July, 2004. The report of the Public Analyst, Kolhapur, dated 7th September, 2004, reported that the sample did not conform to the PFA Rules, as it contained sulphur-di-oxide more than 40 PPM. Pursuant thereto, sanction was obtained from the Competent Authority and the aforesaid criminal complaint was filed as against the applicants and others, in the Court of the learned Judicial Magistrate First Class, Peth Vadgaon, District – Kolhapur, alleging offences as set out in para 4.

5. Mr.Manohar, learned Senior Counsel for the Applicants sought quashing of the order issuing process and the case, essentially on two counts; (i) that the necessary averments required to prosecute the applicants was not disclosed in the complaint and (ii) that there was non-

compliance of Section 13(2) of the Prevention of Food Adulteration Act. Mr.Manohar submitted that the averments in the complaint are not sufficient to make the Applicant Nos.2 to 4 vicariously liable for the alleged offences. He submitted that except a general and bald statement that the applicant Nos.2 to 4 are the directors of the Applicant No.1-Company, there was nothing in the entire complaint to show how the said applicants were in any way concerned with the day-to-day affairs of the company as required under Section 17 of the Prevention of Food Adulteration Act. He submitted that the Applicant No.1 is a company and not a firm and that the Applicant Nos.2 to 4 are its Directors and not partners as alleged. According to Mr.Manohar, an indefeasible right accrued to the applicants under Section 13(2) of the Prevention of Food Adulteration Act, was also denied to them. He relied on several Judgments of the Apex Court and this Court in support of the said submissions.

6. Perused the papers and the judgments relied upon by the learned senior counsel of the applicants. In order to consider the 1st submission advanced by the learned senior counsel for the applicants i.e. the necessary averments as are necessary to constitute the alleged offences

are not disclosed in the complaint, it would be necessary to reproduce Section 17 of the Prevention of Food Adulteration Act, as well as the averments in the complaint.

Section 17 reads thus:-

[17. **Offences by companies.—**

(1) Where an offence under this Act has been committed by a company —

(a) (i) the person, if any, who has been nominated under sub-section (2) to be in charge of, and responsible to, the company for the conduct of the business of the company (hereafter in this section referred to as the person responsible), or

(ii) where no person has been so nominated, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company; and

(b) the company,
shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

(2) Any company may, by order in writing, authorise any of its directors or managers (such manager being employed mainly in a managerial or supervisory capacity) to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this

Act and may give notice to the Local (Health) Authority, in such form and in such manner as may be prescribed, that it has nominated such director or manager as the person responsible, along with the written consent of such director or manager for being so nominated.

Explanation.—Where a company has different establishments or branches or different units in any establishment or branch, different persons may be nominated under this sub-section in relation to different establishments or branches or units and the person nominated in relation to any establishment, branch or unit shall be deemed to be the person responsible in respect of such establishment, branch or unit.

(3) The person nominated under sub-section (2) shall, until—

(i) further notice cancelling such nomination is received from the company by the Local (Health) Authority; or

(ii) he ceases to be a director or, as the case may be, manager of the company; or

(iii) he makes a request in writing to the Local (Health) Authority, under intimation to the company, to cancel the nomination [which request shall be complied with by the Local (Health) Authority],
whichever is the earliest, continue to be the person responsible:
Provided that where such person ceases to be a director or, as the case may be, manager of the company, he shall intimate the fact of such cesser to the Local (Health) Authority:
Provided further that where such person makes a request under clause (iii), the Local (Health) Authority shall not cancel such nomination with effect from a date earlier than the date on which the request is made.

(4) Notwithstanding anything contained in the foregoing sub-sections, where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable

to, any neglect on the part of, any director, manager, secretary or other officer of the company [not being a person nominated under sub-section (2)] such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(a) "company", means any body corporate and includes a firm or other association of individuals;

(b) "director", in relation to a firm, means a partner in the firm; and

(c) "manager", in relation to a company engaged in hotel industry, includes the person in charge of the catering department of any hotel managed or run by it.]

The averment in the complaint as against Applicant Nos.2 to 4, who are alleged to be the partners of the Applicant No.1 – Company, reads thus;

> "2..... That the accused no.4 to 9 are the partners of M/s.Merico Industries Ltd., Situated at Lunawat Warehousing Gat No:1093, Shiroli, Tal.Rajgurunagar, Dist. Pune........"

7. This is the only averment in the entire complaint qua the Applicant Nos.2 to 4. The averments as set out hereinabove, does not meet the requirements of Section 17(1)(a)(ii) of the Prevention of Food

Adulteration Act. The law with regard to the same is no longer *res integra*. The averments in the complaint, qua Applicant Nos.2 to 4 are insufficient to attract the provisions of Section 17(1)(a)(ii). The statement against Applicant Nos.2 to 4, is a general and bald statement and lacks in material particulars, inasmuch as, there is no averment that the said persons were in-charge and responsible for the day-to-day affairs and business of the Applicant No.1-Company, nor is there any averment with regard to the role played by the said applicants. In absence of the necessary averments in the complaint, as are necessary under Section 17 of the said Act, the Applicant Nos.2 to 4 cannot be prosecuted for the alleged offences.

8. With regard to the 2nd submission advanced by the learned senior counsel for the applicants i.e. of non-compliance of Section 13(2) of the said Act, it would be necessary to mention the relevant dates which will have a bearing on the said issue. The said dates are as under:-

Sr. No.	Event	Date			
1	Date of manufacturing/packing of the alleged sample- Mixed Fruit Jam. (Best Before Date-12 months from the date of Manufacture)	February. 2004		]]]]]]	
2	Expiry of the Best Before period of the alleged sample	February. 2005		]]]]]	]]]]]
3	Sample drawn by the Food Inspector/ Complainant	30/07/04	]]]]	]]]]	]]]]
4	Sample sent to public analyst	31/07/04	]]]]	]] 25 months]]	]]]]
5	Report of Public Analyst	07/09/04	]]]	]]]	]]]
6	Food Inspector submitted papers to the Asst. FDA, Commissioner for consent to prosecute	26/04/05	]]] 20 months]]]	]]]]]]	] 13 months]]]]]
7	Asst. FDA, Commissioner consented to lodge prosecution	28/02/06	]]]]	]]]]	]]]]
8	Complaint Filed and process issued on	21/03/06	]]		

9. It is apparent from the aforesaid chart, that though the sample was drawn on 30th July, 2004, sent to the Public Analyst on the very next date i.e. on 31st July, 2004; and the Report was received within 2 months thereafter i.e. on 7th September, 2004; the Food Inspector sent the papers to the Asst. FDA Commissioner seeking his permission to prosecute, after almost 7 months i.e. on 26th April, 2005, by which time the shelf life of the 'Mixed Fruit Jam' was over the (date of manufacturing was February, 2004 and shelf life till February, 2005). Thereafter, sanction to prosecute was granted only on 28th February, 2006 and the aforesaid complaint was lodged on 21st March, 2006.

10. Under Section 13(2) of the Prevention of Food Adulteration Act, after the prosecution is instituted, an opportunity has to be given to the accused to make an application to the Court, within a period of 10 days from the receipt of the copy of the report, to get the sample of the food article kept by the Local (Health) Authority anlaysed by the Central Food Laboratory. Under Sub-section 3 of Section 13, 'the Certificate issued by the Director of the Central Food Laboratory is conclusive and supersedes the report given by the Public Analyst'.

11. The law with regard to the right of an accused under Section 13(2) of the said Act, is no longer *res integra.* It is well settled by a catena of Judgments, both of the Apex Court and this Court, that once a valuable right is conferred upon a party, the said indefeasible right cannot be taken away, by delaying the launch of prosecution. From the aforesaid dates, it is clearly evident that the shelf life of the product i.e. the 'Mixed Fruit Jam' was over, and as such, the applicants could not have availed of the indefeasible right which had accrued to them, under Section 13(2) of the Act, as the sample given by the local authority was rendered unfit for anlaysis. It is also evident that the delay in launching the prosecution was solely attributable to the prosecution. There was no impediment in filing the prosecution, well in time, as the report of the public analyst was received within 2 months from the date of seizure of sample. No explanation has been offered by the prosecution, for the said inordinate delay.

12. Learned APP does not dispute the aforesaid facts and the legal position in this regard. The learned APP is unable to justify the delay in

launching the prosecution.

13. Considering the aforesaid, it is evident that the applicants were deprived from exercising their indefeasible right, which had accrued to them, under Section 13(2) of the Prevention of Food Adulteration Act. It was incumbent for the Respondent No.2-complainant/prosecution to launch the prosecution promptly and in any event, before the expiry of the shelf life of the product.

14. Accordingly, the Application is allowed. The impugned order of issue process dated 21st March, 2006, passed by the learned Judicial Magistrate First Class, Peth Vadgaon, District – Kolhapur, in Regular Criminal Case No.204 of 2006, (now renumbered as Regular Criminal Case No.60 of 2008), is quashed and set aside and consequently the said Regular Criminal Case No.204 of 2006, (now renumbered as Regular Criminal Case No.60 of 2008), also stands quashed, qua the applicants.

15. Rule is made absolute in above terms.

16. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.