

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.20424 of 2014

Arising Out of PS.Case No. -11 Year- 2011 Thana -PURNIA COMPLAINT CASE District- PURNIA

Mukesh Kumar Agrawal S/o Sri Raghubir Prasad Agrawal Prop. - M/s Shri Shyam Agro Oil Mills, Marketing Chowk, N.H. - 31, P.S. -Gulab Bagh, Dist. - Purnea.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

with

Criminal Miscellaneous No. 20426 of 2014

Arising Out of PS.Case No. -7 Year- 2011 Thana -PURNIA COMPLAINT CASE District- PURNIA

Mukesh Kumar Agrawal S/o Sri Raghubir Prasad Agrawal Prop. - M/s Shri Shyam Agro Oil Mills, Marketing Chowk, N.H. - 31, P.S. -Gulab Bagh, Dist. - Purnea.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

with

Criminal Miscellaneous No. 20639 of 2014

Arising Out of PS.Case No. -8 Year- 2011 Thana -PURNIA COMPLAINT CASE District- PURNIA

Mukesh Kumar Agrawal S/o Sri Raghubir Prasad Agrawal Prop. M/s Shri Shyam Agro Oil Mills, Marketing Chowk, N.H. 31, P.S. Gulab Bagh, District Purnea.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

Appearance :

(In Cr.Misc. No. 20424 of 2014)

For the Petitioner/s : Mr. Aditya Prakash Sahay

For the Opposite Party/s : Mr. R.N.Jha, A.P.P.

(In Cr.Misc. No. 20426 of 2014)

For the Petitioner/s : Mr. Aditya Prakash Sahay

For the Opposite Party/s : Mr. P.K.Jha.

(In Cr.Misc. No. 20639 of 2014)

For the Petitioner/s : Mr. A.P. Sahay

For the Opposite Party/s : Mr. P.K.Jha



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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
Date: 19-07-2017

Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the State.

2. In all the three applications the petitioner has challenged the order taking cognizance dated 03.01.2011 in identical fact situation on the complaint lodged at the instance of Food Inspector, Purnea. Hence, all the three applications are heard together as common question of facts and laws are involved in all three cases.

3. In all the three cases samples of edible oils were collected for examination of the Public Analyst about the purity in the edible oil. In all the three cases the petitioner has raised the issue of violation of mandatory provisions as contained in Section 13(2) of the Prevention of Food Adulteration Act (hereinafter to be referred to as 'the Act') which reads as follows:-

“13. **Report of Public Analyst-**

(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 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.”

4. Submission of the counsel for the petitioner is that the life of edible oil is one year and after one year sending the second sample for analysis



in terms of Clause (2) of Section 13 of the Act by the Central Food Laboratory is useless and amounts to denial of fair procedure prescribed under Clause(2) of Section 13 of the Act, as stated above in all the three cases the edible oils' sample was collected from business premises of the petitioner on 04.12.2010. The report of the analysis was received on 08.01.2011. In terms of Section 13 (2) of the Act the authorities under the Act was required to send the second sample of the edible oils for the analysis to the Central Food Laboratory if the person from whose premise the sample was collected and adverse analysis report was received and communicated expresses desire and makes an application to the court within 10 from the date of receipt report for getting the 2nd sample of the article of Food kept by the Local (Health) authority analysed by the Central Food Laboratory. The avowed object of the Scheme under Section 13 (2) of the Act was to ensure that the sample of the alleged adulterated food on analysis or reanalysis established food adulteration. The mandatory requirement of Section 13 (2) of the Act was to provide one more opportunity to the person against whom there is adverse report in the first analysis to prove that the food item is not adulterated. If the second sample of food item is not sent within the reasonable time it may render the second analysis useless and frustrate the object of Section 13 (2) of the Act.

5. The case of the petitioner is that despite the request of the petitioner in terms of Section 13 (2) the second sample was not sent for analysis by the authorities prescribed under the Act and, as such, the entire prosecution based on the basis of prosecution report not supported by the analysis of second sample is unsustainable and as such, the proceeding against the petitioner is clear abuse of the process of law. The petitioner specifically has pleaded that the life of the sample (edible oil) sent for analysis by the public analyst is one year and the sample was collected on 04.12.2010 and till the date of filing of the case on



28.04.2014 the second sample could not be analysed and, as such, the prosecution against the petitioner is liable to be quashed on account of the non-compliance of the mandatory provision of Section 13 (2) of the Act.

6. Counsel for the petitioner has placed reliance of the Judgment of this court in the case of Sharwan Kumar Vs. The State of Bihar and reported in 1997 (1) PLJR 453 wherein a Bench of this Court relying upon the Judgment of the apex Court reported in A.I.R. 1991 suppl. (2) SCC 569 has held out that the order taking cognizance is bad and in the absence of second analysis report from the Central Food Laboratory in terms of Section 13 (2) the prosecution is unsustainable.

7. Counsel for the petitioner has also placed reliance on unreported Judgment in cr.Misc. No.18986 of 2008 and analogous cases dated 19.09.2014 and Cr.Misc. No.10951 of 2001 and analogous cases dated 10.01.2012 to substantiate his argument that the order taking cognizance in the absence of report of the Central Food Laboratory in terms of Section 13 of the Act is unsustainable.

8. Counsel for the petitioner submits that the case of the petitioner is covered by the Judgment of the Apex Court mentioned above. If Section 13 (2) of the Act mandates sending of second sample for the analysis of the Central Food Laboratory on the protest by the person against whom the first analysis report is received, then no prosecution can be lodged in absence of taking recourse to sending the second sample collected by the Food Inspector by the analysis of the Central Food Laboratory. In the instant case the second sample was not sent within the time prescribed and no sample was sent to obtain report of analysis by the Central Food Laboratory to justify the same till the date of filing of the case.

9. In identical facts situation the apex court has quashed the



prosecution considering the mandate of the law in the case of Girish Bhai Dangra Bhai Sah vs. C.C.Jani & anr. reported in (2009)15 SCC 64.

10. I find substance in the submission of the counsel for the petitioner and considering the binding precedent on this issue as discussed above, I am left with no option but to quash the order taking cognizance dated 03.01.2011 passed in all the three cases Complaint Case viz Complaint Case No.B-III-11/2011, Complaint Case No.B-III-07/2011 and Complaint Case No.B-III-08/ 2011 are quashed. Accordingly, all the three cases are allowed.

(Anil Kumar Upadhyay, J)

AnilKrSinha/-
N.A.F.R./19.07.2017

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