

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19752 of 2014

Arising Out of P.S.Case No. -10 Year- 2011 Thana -GOVERNMENT OFFICIAL COMP. District-
PURNIA

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

.... Petitioner

Versus

The State Of Bihar

.... Opposite Party

with

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Criminal Miscellaneous No. 19787 of 2014

Arising Out of P.S.Case No. -9 Year- 2011 Thana -PURNIA COMPLAINT CASE District-
PURNIA

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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

Versus

The State of Bihar

.... Opposite Party

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Appearance :

(In Cr.Misc. No.19752 of 2014)

For the Petitioner : Mr. Prakash Chandra Agrawal, Advocate

For the Opposite Party : Mr. Rajendra Singh Shastri Ji, APP

(In Cr.Misc. No.19787 of 2014)

For the Petitioner : Mr. Prakash Chandra Agrawal, Advocate

For the Opposite Party : Mr. Rajendra Singh Shastri Ji, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

CAV ORDERS

Date: 25 -08-2017

These two applications under Section 482 of the Cr.P.C. have been filed for quashing the orders dated 03.01.2011 passed in Case No.B-III-10/2011 and case no.B-III-09/2011 by CJM, Purnea whereunder the learned court below finding prima-facie case for the offence under Section 16(1)A of Prevention of Food Adulteration Act,



1955 took cognizance and summoned the petitioner.

2. All together eleven samples of edible oils were collected from the business premises of the petitioner for examination by Public Analyst about the purity in the edible oil. In all the 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 maybe, 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.”

3. It has been submitted that the public analyst collected eleven samples of edible oil and sent for analysis and after result of report, eleven cases were lodged against the petitioner. It has been submitted 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 eleven cases the edible



oil' 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 ten days 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.

4. The case of the petitioners is that despite the request of the petitioner in terms of Section 13 (2) of the Act, 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 petitioners is an abuse of the process of law. The petitioner has asserted that the life of the sample (edible oil) which was 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 these quashing application, (i.e., till 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. The learned counsel has placed reliance on ruling reported in 1997 (1) PLJR 453 wherein a Bench of this Court relying upon the Judgment of the Apex Court reported in AIR 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. The learned counsel referred a judgment passed in Cr.Misc.No.18986 of 2008 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. The petitioner has challenged the cognizance order passed in all the eleven cases. Out of them prosecution of the petitioners in three cases has been quashed by one of the coordinate Bench of this Court as per order passed in Cr.Misc.No.20424, 20426 and 20639 all of the year 2014. The case of the petitioner is covered by the judgment of the Apex Court as 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 of the aggrieved person, then no prosecution can be lodged in absence of taking recourse of 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 to obtain report of analysis by the Central Food Laboratory to justify the same till the date of filing of the case.

5. In similar cases the Apex Court has quashed the prosecution considering the mandate of the law in the case of Girish Bhai Dangra Bhai Sah vs. Cr. Misc. No. C.Jani & Anr. reported in (2009) 15 SCC 64.

6. I find substance in the submission of learned counsel for the petitioners. The order taking cognizance is not sustainable and as such the order dated 03.01.2011 passed in Complaint Case No.BIII-10/2011 and B-III-9/2011 are quashed and both the criminal miscellaneous applications are allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
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