

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32896 of 2014

Arising out of case No. -81 Year- 2008 Thana -GOVERNMENT OFFICIAL COMP. District-
AURANGABAD

- =====
1. Manmohan Kejriwal, son of Late Gangasagar Kejriwal, resident of Mohalla - Kund, P.S. Daltanganj, District - Daltanganj
 2. Anup Kumar Kedia, son of Bajrang Lal Kediya, resident of Mohalla - Jail Hata, P.S. Daltanganj, District - Daltanganj

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. N.K.Agrawal, Sr. Advocate.
Mr. Vijay Anand, Advocate.
For the State : Mr. Ajay Kumar No. 1, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 27-07-2017

Heard learned counsel for the parties.

2. This application has been filed by the petitioners, under Section 482 of the Cr.P.C., challenging order dated 06.06.2008 passed by the learned Chief Judicial Magistrate, Aurangabad in G.O. Case No. 81 of 2008 (T.R. No. 2082 of 2008), whereby he has taken cognizance of the offence under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the 'Act').

3. Brief facts of this case, as per the prosecution report, is that some hard boiled sweets were seized from Shahganj Aurangabad in the District of Aurangabad, Bihar by the Food Inspector alleging therein that hard boiled sweets were not labelled in accordance with



requirements of Rule 32 of the Prevention of Food Adulteration Rules, 1955, so product was misbranded in view of Section 2(ix)(k) of the Act as per Report No. 106 dated 28.04.2008 of the Public Analyst, Mineral Area Development Authority (MADA), Dhanbad, Jharkhand.

4. Learned counsel for the petitioners submits that Public Analyst, Dhanbad at Jharkhand had no jurisdiction to examine the seized samples, therefore, its report is *non est* in the eye of law and the same is not admissible evidence at all in this case, so cannot be relied upon by the Court. He refers to Section 8 and 10(b) of the Act. Section 8 envisages that the Central Government or the State Government, by notification in the Official Gazette, appoints a person as Public Analyst having prescribed qualification to be Public Analyst in a particular local area and that is assigned to him by the notification and in view of Section 10(b) Food Inspectors are required to send samples for analyzing to the Public Analyst in the local area within which such sample has been taken.

5. He submits that in the present case, samples were collected from District of Aurangabad in Bihar but it was sent for analysis to Public Analyst at MADA Dhanbad in Jharkhand whereas for the State of Bihar, there is Public Analyst, Patna having jurisdiction over all the State of Bihar. He also relied to a decision of



this Court i.e., the case of *Deep Chand Jain vs. State of Bihar* reported in *1998(2) PLJR 234*. In the said case, suspected adulterated salt was seized from Kishanganj, which was sent to public Analyst at Bhagalpur so the report of the Chemical Analyst of the sample of salt could not be looked into as it was not sent to the public Analyst of the local area of Kishanganj.

6. Learned A.P.P. does not controvert this submission.

7. Having considered rival submissions and on perusal of record, the admitted fact of the case is that hard boiled sweets were recovered from Shahganj Aurangabad situated in the district of Aurangabad, Bihar by the Food Inspector at Aurangabad. The prosecution report was filed by the said concerned officer in this case but it was sent to the Public Analyst at MADA, Dhanbad in Jharkhand. In view of Section 10(1)(b) of the Act, the Food Inspector has power to take sample of any article of food from any person selling such article or if any person is taking article to any destination or for delivery purposes to a purchaser or consignee or consignee itself, but thereafter seizure of the samples it is required to send such samples for analysis purpose to a Public Analyst of the local area within whose jurisdiction such sample has been collected. However, in the present case, the samples were taken from Aurangabad District but it was sent for analysis to the Public Analyst situated at Dhanbad



in the State of Jharkhand, which had no authority as well as jurisdiction for examining the seized sample for the reason he was not appointed as a Public Analyst for the local area of the District of Aurangabad. As per Section 8 of the Act, the report of the Public Analyst, having no authority, will not be admissible as a evidence in this case, therefore, the report of the public analyst of MADA, Dhanbad cannot be looked into so in absence of such material evidence, continuance of criminal proceeding would be an abuse of the process of court. Hence cognizance order dated 06.06.2008 passed by the Chief Judicial Magistrate, Aurangabad in G.O. Case No. 81 of 2008, T.R. No. 2082 of 2008 and the subsequent criminal proceeding is set aside. The application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
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