

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P.No.164 of 2010**

1. M/s Nestle India Limited, having its Registered Office at M-5A, Connaught Circus, New Delhi
2. Mr.R.K. Rajput, Nominee, M/s Nestle India Limited, Having its Registered Office at M-5A, Connaught Circus, New Delhi Shakee Bihar Road, Powai, M/s Nestle India Ltd, Mumbai

---- Petitioners

Versus

1. State of Chhattisgarh, through Secretary, Department of Food and Civil Supplies D.K.S.Bhawan, Raipur (CG)
2. Sangharsh Kumar Mishra, Food Inspector, Food & Drug Administration, Kalibadi, Raipur (CG)
3. Sh Bhagwat Prasad Sahu, Aged 30 years, S/o Shri Shyam Lal Sahu c/o M/s Apollo Pharmacy Jarhabhatha, Bilaspur (CG)
4. M/s Apollo Pharmacy Basant Vihar, Bilaspur (CG)
5. Rajesh Kalwani Prop. City Combine, 18, Medical Complex, Bilaspur (CG)

---Respondents

For Petitioners	:	Mr.Abhishek Sinha, Advocate
For State	:	Mr.Bhaskar Payasi, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board**17/05/2017

1. The petitioners are standing trial for alleged violation of Section 7 (i) read with Section 16(1A) of the Prevention of Food Adulteration Act, 1954 (hereinafter called as "Act of 1954") on the basis of complaint filed by the Food Inspector in which cognizance has been taken by learned Magistrate by order dated 24.4.2009.
2. By filing this petition under Section 482 of the CrPC, the petitioners seek quashment of the aforesaid order and quashment of proceedings initiated against the petitioners.

3. Necessary Essential facts which are necessary to adjudicate the dispute are as under:-

3.1 That, on the basis of complaint filed against the petitioners, cognizance was taken by learned Magistrate on 24.4.2009 stating inter-alia that complaint was filed for violation of Section 7 (i) read with Section 16(1A) of the Act of 1954 and on the basis of that, offence has been registered against the petitioners, but mandatory notice under Section 13(2) of the Act of 1954 has been given to the petitioners on 12.5.2009, whereas that product has been manufactured in August, 2005 and was to be used before only August, 2006. It has also been pleaded that prejudice has been caused to the petitioners by inaction on the part of the respondents where the right to get second sample is indefeasible right and that has become redundant and thus, initiation of prosecution against the petitioners is fully barred resulting in abuse of process of the Court. It has also been pleaded that complaint has been filed on 24.4.2009, same is barred by the provisions contained in Section 468 of the CrPC, therefore, complaint is barred by limitation and order taking cognizance, issuance of process and consequent proceeding are without authority of law and without jurisdiction and are liable to be quashed.

4. No return has been filed on behalf of the respondents though this petition is pending since 6.3.2010 and notices were issued to the respondents on 9.3.2010.

5. Mr.Abhishek Sinha, learned counsel for the petitioners, would submit that the petitioners' right to get second sample of the product re-analyzed from the Central Food Laboratory stands defeated/vitiated on account of issuance of notice under Section 13 (2) of the Act of 1954 as late as on 12.5.2009, whereas the product has been manufactured in August, 2005. He would further submit that same is solely attributable to the delay of the prosecution/second

respondent in not sending the notice under Section 13(2) of the Act of 1954 to the petitioner company or to any other accused before the date indicated on the product and that has caused serious prejudice to the petitioner company. He would further submit that complaint has been filed even beyond the period of limitation and by that time notice is served under Section 13(2) in the present case, the product in question had already more than 2 ½ year old and thus, right of the petitioner company to get the second sample of the product re-analyzed from the Central Food Laboratory stands defeated/vitiated and they have been deprived of their statutory right to get re-analyzed the second sample from the Central Food Laboratory and inordinate and unexplainable delay that resulted in passing of 'Use before' date of the sample product much before the petitioner company entered into appearance before the trial Court, therefore, entire prosecution against the petitioners deserves to be quashed.

6. On the other hand, learned State Counsel would oppose the petition and submit that cognizance has rightly been taken by learned Magistrate and no interference is called for.
7. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
8. In order to decide the plea raised at the Bar, it would be appropriate to notice the provisions contained in Section 13 (1), 13(2) and 13(3) of the Act which states as under:-

“13. Report of public analyst.— (1) The public analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis.

(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 14A, 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.

(2A) When an application is made to the court under sub-section (2), the court shall require the Local (Health) Authority to forward the part or parts of the sample kept by the said Authority and upon such requisition being made, the said Authority shall forward the part or parts of the sample to the court within a period of five days from the date of receipt of such requisition.

(3) The certificate issued by the Director of the Central Food Laboratory 54 [under sub-section (2B)] shall supersede the report given by the public analyst under sub-section (1)."

9. From careful perusal of Section 13(2) of the Act of 1954, it would appear that right of reanalysis of the samples at the instance of accused as provided is an indefeasible right of the accused in the matters relating to food adulteration.

Sub-section (3) of Section 13 of the Act of 1954 clearly provides that the certificate issued by the Director of the Central Food Laboratory under sub-section (2B) shall supersede the report given by the public analyst under sub-section (1). Sub-section (2A) of Section 13 of the Act of 1954 obliges the Court to refer the second sample to the Central Food Laboratory and report is submitted under sub-section (2B) of Section 13 of the Act of 1954.

- 10.** The law on this point is very well settled. Way back, in the matter of **Municipal Corporation of Delhi Vs. Ghisa Ram**¹, the Supreme Court has held that the right of accused is a valuable one, because the certificate of the Director supersedes the report of the Public analyst and is treated as conclusive evidence of its contents. It was observed as under:-

“7. It appears to us that when a valuable right is conferred by S. 13 (2) of the Act on the vendor to have the sample given to him analysed by the Director of the Central Food Laboratory, it is to be expected that the prosecution will proceed in such a manner that that right will not be denied to him. The right is a valuable one, because the certificate of the Director supersedes the report of the Public Analyst and is treated as conclusive -evidence of its contents. Obviously, the right has been given to the vendor in order that, for his, satisfaction and proper defence, he should be able to have the sample kept in his charge analysed by a greater expert whose certificate is to be accepted by Court as conclusive evidence In a case where there is denial of this right on account of the deliberate conduct of the prosecution, we think that the vendor, in his trial, is so seriously prejudiced that it would not be proper to uphold his conviction on the basis of the report of the Public Analyst, even though that report continues to be evidence in the case of the facts contained therein.”

- 11.** Similarly, in the matter of **Girishbhai Dahyabhai Shah Vs. C.C.Jani and another**² the Supreme Court has

1 AIR 1967 SC 970

2 (2009) 15 SCC 64

held as under:-

“8. It will be apparent from the above, that only on receipt of report of the Public Analyst under sub-section (1) of the effect that the article of food is adulterated, can a prosecution be launched and a copy of the report could be supplied to the accused. Sub-section (2) also indicates that on receipt of the report the accused could, if he so desired, make an application to the court within a period of ten days from the date of the receipt of the copy of the report to get the sample of article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.

9. In other words, in the instant case, the appellant was prevented from applying for analysis of the second sample before 17-7-1989, by which time the second sample of curd had deteriorated and was not capable of being analysed as was found in Ghisa Ram referred to above.”

12. Recently, the principle of law laid-down in **Girishbhai Dahyabhai Shah** (supra) has been followed with approval by the Supreme Court in the matter of **Hindustan Unilever Limited Vs. State of Rajasthan and another**³ and it has been held as under:-

“7. The aforesaid view is also warranted by the fact that in the prevailing situation it will be a sheer waste of time and an empty formality to get the third sample also declared as deteriorated, by CFL. There may also be cases like the present one where the number of accused is more than three. In such cases there is no possibility of complying with individual prayers of all the co-accused to send different samples for reanalysis by CFL because statute requires preparation of only three samples.

8. For the aforesaid reasons we of the considered opinion that the view taken by the High Court in this case was erroneous and contrary to law. The view taken by us in this case gets support from a judgment of this Court in *Girishbhai Dahyabhai Shah v. C.C. Jain* though rendered in a different factual matrix. The impugned order is, therefore, set aside. As a sequel, the prayer of the appellant before the High Court for quashing the criminal complaint stands allowed. The criminal appeal is

3 (2016) 7 SCC 474

also, thus, allowed.”⁷

13. Applying the principle of law laid down by the Supreme Court in the aforesaid judgments (supra) with regard to right of the accused persons to get second sample analyzed by the Director of Central Food Laboratory to the facts of the present case, it would appear that product in question was manufactured in the month of August, 2005, sample was taken by the Food Inspector on 30.11.2005 and notice under Section 13(2) of the Act of 1954 was served to the petitioners on 12.5.2009, whereas sample was to be used till August, 2006 and as such, there is inordinate delay in serving the notice under Section 13(2) of the Act of 1954 by which the petitioners have been deprived of their valuable right to get second sample of the product reanalyzed from Central Food Laboratory and they suffered great prejudice in getting the second sample analyzed specially when the report of the Director of the Central Food Laboratory supersedes the report of the public analyst, as such entire prosecution against the petitioners deserves to be quashed on this ground alone. In view of this finding, I deem it unnecessary to answer the question of limitation.

14. For the foregoing reasons, proceedings initiated by the Judicial Magistrate First Class, Bilaspur by order dated 24.4.2009 and consequential proceeding against the petitioners are hereby quashed. No cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-