

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1062 of 2016**

1. Narayan Das Gandhi S/o Gopilal Gandhi Aged About 52 Years Proprietor- Narayan Kirana Store, R/o Indira Complex, Police Station Saja, District Bemetara, Chhattisgarh.
2. Rajesh Motlani S/o Mansaram Motlani Aged About 50 Years From Rajesh Traders, Hamalpara, Police Station Rajnandgaon, District Rajnandgaon, Chhattisgarh.
3. Rajesh Traders Hamalpara, Police Station Rajnandgaon, District Rajnandgaon, C.G. Through Its Proprietor.
4. Marico Industries Limited Now Marico Limited Registered Under The Companies Act 1956, Registered Office At 7th Floor Grande Palladium, 175 Cst Road, Kalina, Santa Cruz, East Mumbai, 400098. Through Its Authorized Attorney.

---- Petitioners**Versus**

- State Of Chhattisgarh Through Food Inspector, L.H.A. District Durg, Chhattisgarh.

---- Respondent

For Petitioners:

Mr. Surendra Singh, Sr. Advocate along
with Mr. Ashish Sinha, Advocate

For State:

Mr. Bhaskar Pyasi, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****01.02.2017**

1. The Present Cr.M.P. under Section 482 Cr.P.C has been filed seeking for quashment of the entire criminal proceeding initiated

against the Petitioners for the offence punishable under Sections 7(1), 14/16(i)(A)(i)(ii)(G) of the Prevention of Food Adulteration Act, 1954 (Hereinafter 'the Act') in Criminal Case No. 44/2009 pending before the Judicial Magistrate, First Class, Saja, District- Bemetara, Chhattisgarh.

2. The brief fact of the case is that the food inspector Durg on 12.06.2005 picked up three samples 200 ml each of Coconut oil manufactured by Petitioner No.4. The said oil was taken from Petitioner No.3 of which the Petitioner No. 2 was the proprietor. The coconut oil was sent for chemical analysis to the public analyst based at Raipur. The public analyst gave its report on 21.07.2005. The opinion of the public analyst was that the product was adulterated. Based on the report of the public analyst a complaint was filed before the Court of JMFC, Saja on 22.6.2006 i.e. after a period of almost 11 months from the date of the report of the public analyst. The Court upon registration of the complaint issued notice to the Petitioners for their appearance before the Court below on 07.07.2006. On the first date of hearing itself i.e. 07.07.2006 the Petitioners entered appearance and moved an application under Section 13(2) of the Act for reanalysis of the sample by the 'Central Food Laboratory'. For ready reference provision of Section 13(2) is reproduced below:

“13. Report of public analyst.

(1)...

(2)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. “

3. The application filed by the Petitioner under Section 13(2) of the Act was taken into consideration on the same day and the Court below allowed the same asking the food inspector to produce the second sample collected so that same can be sent to the Central Laboratory for testing i.e. Central Food Laboratory at Calcutta. It is relevant to refer order dated 07.07.2006. The order was as explicit as it can be with specific direction to the food inspector, Durg Shri Verma to produce second sample collected so that the same can be sent for testing to the Central Food Laboratory in view of the aforementioned provision.
4. Unfortunately till date the said order dated 07.07.2006 has not been complied with by the prosecution more particularly by Shri Verma to whom specific direction was issued. Therefore, the present Petition has been filed seeking for quashment of the entire criminal prosecution.
5. According to learned Senior Counsel, the reasons for filing the present Petition is seeking for quashment at this juncture is the fact that as till date the prosecution or for that matter the food inspector has failed to produce the second sample before the Court below.

The fact is that the product has already lost its shelf life and will be of no use now sending to Central Food Laboratory for analysis. It would not be worth testing any further after 2 years of shelf life that the product otherwise had. It has been further contended by the Senior Counsel for the Petitioner that the fact that the sample has not been produced before the Court below means there is a clear denial of the statutory right to the Petitioner seeking a second opinion from the Central Laboratory against the report of the public analyst which was made on 21.07.2005.

6. Learned Senior Counsel relied upon the decision of the **Madhya Pradesh High Court** in case of **S. Pathak vs State of M.P. in M.Cr.C. No. 5359/11** decided on 01.03.2016 wherein somewhat similar situation arose and the High Court of Madhya Pradesh has allowed the Petition invoking the powers of the High Court under Section 482 of the Cr.P.C. and has quashed the proceeding.
7. Learned State Counsel though opposes the Petition however fairly admits the fact that from the record it clearly reflects that the product which was sent for testing before the public analyst was manufactured on February, 2005 and that the shelf life of the said product was for about 24 months from the date of production as such the shelf life of the oil expired on February, 2007. He further admits that till date the second sample has not been produced before the Court below.
8. In view of the aforesaid submissions made by the Counsel on either side and also taking into consideration the admission, this

Court is of the opinion that the further continuation of the criminal proceeding against the Petitioner as per Section 13(2)D of the Act would be an empty formality. Even if the samples are now produced before the Court it would be of no use for the reason that the product has already lost its shelf life and would not be of any worth seeking for chemical analysis. In addition it is also for the fact that provision under section 13(2) clearly requires the food inspector to immediately produce second sample so that the same can be sent for and having not done so the Petitioners undoubtedly lost their right of getting the product reanalyzed from the Central Laboratory and thus there is clear violation of the provisions of aforesaid provisions so far as the petitioners are concerned. The Madhya Pradesh judgment in the case of S. Pathak (supra) in paragraph 5 in somewhat similar situation held as under:

“5..... In the present case, in absence of second part of sample it would be apparent that the respondent neither took the sample according to the provisions of P.F. Act and Rules nor second part of the sample was available. However, in both the cases the right of the applicant under Section 13(2) of the P.F. Act was violated and therefore, he cannot be convicted of offence of adulteration.”

9. Hon'ble Supreme Court also in case of **Girishbhai Dahyabhai Shah v. C.C. Jani and Another** reported in **(2009) 15 SCC 64** dealing with the provisions of Section 13(2) of the Food Adulteration Act deciding the entitlement of the accused for getting second sample examined has held in paragraph 8 and 9 as under:

“8. It will be apparent from the above, that only on

receipt of the report of the Public Analyst under sub-Section(1) to 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 10 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 17th July, 1989, by which time the second sample of curd had deteriorated and was not capable of being analysed as was found in the case of Ghisa Ram (supra) referred to above."

10. Taking note of that ground Hon'ble Supreme Court set aside the order passed by the High Court and had quashed the prosecution case pending before the Magistrate.

11. Similar view has also been taken by this Court in case of **ITC Limited and Another vs. State of Chhattisgarh** in **Cr.M.P. No. 761/2010** and also in the case of **Vinay Hegde v. State of Chhattisgarh and Others** in **Cr.M.P. No. 681/2011** and in case of **Hindustan Lever Limited and Others v. The State of Chhattisgarh** in **Cr.M.P. No. 181/2007**.

12. In view of the aforesaid given facts and circumstances of the case also relying on the decisions referred above, this Court is of the opinion that further continuation of the Criminal Case against the Petitioners is of no consequence and would be an action of empty formality, once when it has been clearly established that the

prosecution would not in any manner lead to the conviction of the Petitioners.

13. Accordingly, the Criminal case No. 44/2009 pending before the Court of learned JMFC Saja, Bemetara stands quashed.

14. With the aforesaid observation the present Cr.M.P. is allowed.

15. No order as to costs.

Sd/-
(P. Sam Koshy)
JUDGE