

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.2019 OF 2006

- 1) Ashutosh Bhailal Rao
Director of M/s.Ruchi Soya
Industries Ltd., having office
at 408, Tulsiani Chambers,
Nariman Point, Mumbai – 400 021.
- 2) P.S.Santhanakrishnan
Director of M/s.Ruchi Soya
Industries Ltd., having office
at 408, Tulsiani Chambers,
Nariman Point, Mumbai 400 021.
- 3) Kailash Mahadeo Shahra
Director of M/s.Ruchi Soya
Industries Ltd., having office
at 408, Tulsiani Chambers,
Nariman Point, Mumbai 400 021.
- 4) Dinesh Mahadeo Shahra
Director of M/s.Ruchi Soya
Industries Ltd., having office
at 408, Tulsiani Chambers,
Nariman Point, Mumbai 400 021.
- 5) P.D.Nagar
Director of M/s.Ruchi Soya
Industries Ltd., having office
at 408, Tulsiani Chambers,
Nariman Point, Mumbai 400 021.

- 6) Shrikrishna Pralhad Joshi
Director of M/s.Ruchi Soya
Industries Ltd., having office
at 408, Tulsiani Chambers,
Nariman Point, Mumbai 400 021. ..Applicants

VERSUS

- . The State of Maharashtra
at the instance of Rajaram
Vaman Joshi, Food Inspector,
Food and Drug Administration,
M.S.Station Road, Dhule. ..Respondent

...
Advocate for Applicants : Mr.K.H.Parekh
APP for Respondent : Mr.K.S.Patil
...

CORAM : PRAKASH D.NAIK, J.

DATE : 11.12.2017

JUDGMENT:-

1) This is an application under Section 482 of the Code of Criminal Procedure seeking quashing and setting aside the prosecution initiated by the respondent against the applicants. The criminal proceedings, which are sought to be challenged are pending in the Court of Judicial Magistrate First Class at Navapur, Dist.Nandurbar. The process was issued by the Court for offences under

Sections 7(i) r/w Section 2(ia) (a), 2(ia) (m) punishable under Sections 16 and 17 of the Prevention of Food Adulteration Act, 1954 (For the sake of brevity, hereinafter referred as 'the Act').

2) The applicants are the Directors of the company M/s.Ruchi Soya Industries Ltd. The said company is engaged in the business of manufacturing of edible oils. The company is duly registered under the Companies Act.

3) The brief facts as alleged in the complaint are as follows:-

(a) The complaint was filed by the Food Inspector, Food and Drug Administration, Dhule. The applicants are impleaded as accused Nos.5 to 10 in the complaint being Directors of M/s.Ruchi Soyal Industries Ltd. The accused No.1 and 2 are Partners of M/s.Mahaveer Sons, Navapur. Accused No.3 is M/s.Mahaveer Sons situated at Navapur, Dist.Nandurbar. Accused No.4 is proprietor of M/s.Shri Balaji Agency having its

office at Jyoti Commercial Complex, Nandurbar. Accused No.11 is a Firm namely M/s.Ruchi Soya Industries Limited and accused Nos.12, 13 and 14 are nominees of accused No.11. Accused No.15 is a Firm having office at Sri Ganganagar, Rajasthan.

(b) Accused No.1, who is the partner of M/s.Mahaveer Sons was present at the time of sampling as a vendor. Accused No.3 is a Firm dealing with food articles. Accused Nos.1 and 2 are the partners of accused No.3. Accused No.4 is a Firm, who had supplied Mustard Oil (Mandap Brand) to the Firm of Accused No.3. Accused No.4 has purchased the said Mustard Oil (Mandap Brand) from accused No.11 vide Invoice dated 19.6.2004 and accused No.13 is a Firm, who has marketed said Mustard Oil (Mandap Brand) and accused No.12 is the nominee of accused No.13. Accused No.15 is the manufacturing Firm, who had manufactured and supplied Mustard Oil (Mandap Brand) to the Firm of accused No.11 vide Invoice dated 16.5.2004. Accused

No.14 is the nominee of accused No.15.

(c) On 16.9.2004, the complainant along with independent witness and the Assistant Commissioner visited the shop premises of M/s.Mahaveer Sons, Light Bazar, Navapur, Dist.Nandurbar. Accused No.1 was present in the premises as a vendor and partner, who is managing the business of Firm and selling food article namely pure Mustard Oil (Mandap Brand) Ruchis in 500ml pack bottle. There was stock of 12 bottles of Mustard Oil, which was having label as manufactured by Ruchi Soya Industries Ltd., and marketed by Ruchi Soya Industrial Ltd. Food Inspector, Mr.Joshi disclosed his identity and intention of drawing the samples for testing and analysis to accused No.1. Mr.Joshi demanded and purchased three packs and sealed bottles of 500ml Mustard Oil (Mandap Brand) for testing and analysis from accused No.1. The sample of food article was also drawn. A notice in the Form VI was given to

accused No.1 intimating that samples are drawn for testing and analysis. It is signed by accused No.1, Pancha and Food Inspector. Notice under Section 14-A was also served on accused No.1 to disclose the source of product.

(d) The sealed bottles of Mustard Oil were taken for analysis. After completing the requisite procedure, the Panchnama was prepared at the spot, which is signed by the complainant, Pancha and accused No.1.

(e) On 17.9.2004, one part of the sample was forwarded alongwith Memorandum in Form VII in a sealed packet to the Public Analyst, State Public Health Laboratory, Pune, by registered Post. The complainant also forwarded separately the copy of Form VII and specimen impression of seal used to seal the sample to the Public Analyst on 17.9.2004. The complainant sent remaining two sealed parts of the sample alongwith two copies of Memorandum in Form VII

in a sealed packet to the Local (Health) Authority and Assistant Commissioner, Food and Drug Administration (FDA), Dhule, by hand delivery along with forwarding letter. The complainant also sent two copies of specimen impression of seal used to seal the sample in the sealed packet alongwith forwarding letter to the Local (Health) Authority and Assistant Commissioner, FDA, Dhule.

(f) On 31.12.2004, the complainant received the Public Analyst's report of Mustard oil from State Public Health Laboratory, Pune through Local (Health) Authority. The Public Analyst opined that the sample does not conform to the standards of Mustard oil as per the Prevention of Food Adulteration Rules.

(g) The accused No.1 informed the office by letter dated 28.1.2005 that the Mustard oil is purchased by them the Firm of accused No.4 i.e. M/s.Shri Balaji Agency having its office at Jyoti Commercial Complex,

Nandurbar, vide Invoice dated 30.8.2004. Hence, the notice u/s 11(i)(a) was sent to the Firm of accused No.4 on 1.2.2005. The complainant collected the information of Firm of vendor from Licensing Authority and also from Assistant Commissioner, FDA, Dhule, and also collected information of other concerned Firms.

(h) The complainant submitted all relevant documents to Local (Health) Authority and Assistant Commissioner, FDA, Dhule, for forwarding the same to Joint Commissioner (Nashik Division), FDA, Nashik, for obtaining consent u/s 20 of the Act to prosecute the accused. The documents were forwarded on 15.12.2005. On 27.3.2006, the complainant received the consent order dated 23.3.2006 from the Joint Commissioner, FDA, Nashik, for launching prosecution against the accused.

(i) The Mustard oil is a food article within the

meaning of Section 2(v) of the Act. The accused Nos.1 to 3 sold the adulterated food article from shop to the complainant on 16.9.2004 and thereby accused have committed the offences u/s 7(i) r/w 2(ia)(a), and 2(ia)(m) punishable u/s 16 and 17 of the Act. The accused Nos.4 to 11 were charged for the same offences for supplying and distributing adulterated Mustard oil to the Firm of accused No.3. Accused Nos.12 to 15 were charged for the offences for manufacturing, selling, distributing and marketing of the adulterated Mustard oil. The complaint was filed on 21.4.2006.

4) The learned Magistrate issued the process for the aforesaid offences against the accused. The applicants were original accused Nos.5 to 10 have invoked inherent powers of this Court to assail the said prosecution initiated by the respondent.

5) The learned counsel for the applicants submits that

the learned Magistrate has committed an error in issuing the process and taking cognizance of the complaint. It is submitted that the applicants were impleaded as accused being Directors of M/s.Ruchi Soya Industries. It is submitted that there is no mention of applicants or their status in the entire complaint, except mentioning in the cause title of the complaint. There is no allegation of any overt act against the applicants. There are no requisite averments or evidence that the applicants are Incharge and responsible for the business of the Company. In the absence of any averments or evidence in that regard, no vicarious liability can be fastened against the applicants in accordance with Section 17 of the Act. It is further submitted that the Company has nominated the nominees for their registered Office and their Factory, who are also impleaded as accused nos.12 to 15 in the complaint. In the circumstances, the prosecution of the applicants was not warranted. It is further submitted that there is gross violation of Section 13(2) of the said Act. On receipt

of the report of Public Analyst to the effect that food article is adulterated, the Local (Health) Authority after the institution of prosecution shall forward a copy of report of analysis to the accused persons informing such persons that if they desire, they can make an application to the Court within a period of 10 days from the receipt of report for forwarding the samples to Central Food Laboratory for reanalysis. The sample was drawn on 16.9.2004 and was analysed on 20.11.2004 and the complaint was filed on 21.4.2006. It is further submitted that the shelf life of the Mustard oil in question was 12 months from the date of packing, which is apparent from the recital of label. The date of packing is April 2004. The best before date is 12 months from packing. Thus, the shelf life of the product was upto April 2005. However, the complaint was filed in April 2006 i.e. after almost 12 months after expiry of shelf life. Thus, in view of delay in filing the complaint, the right granted to the accused vide Section 13(2) of the Act stands nullified. It is therefore, submitted

that the prosecution of the applicants for the said offences is not tenable in law and the same deserves to be quashed and set aside.

6) The learned counsel placed reliance on the decision of the Supreme Court in the case of *Pepsico India Holdings Private Limited Vs. Food Inspector and Another* [(2011) 1 Supreme Court Cases 176] and another decision of this Court dated 3.8.2017 delivered in Criminal Application Nos.5503 of 2004 and 5505 of 2004 in the case of *Bharat Puri and others Vs. The State of Maharashtra and Another*.

7) Learned APP opposed the reliefs. It is submitted that the submissions advanced by the applicants cannot be considered at this stage.

8) On perusal of the documents, I find that there is merit in the submissions advanced by the learned Advocate for the applicants. It would be an abuse of process of

law to continue such prosecution against the applicants. The applicants are impleaded in the complaint as accused Nos.5 to 10 apparently being Directors of M/s.Ruchi Soya Industries Ltd., Mankeshwar Warehousing Co., 44/2,3,4 Uruli Devachi, Tal.Haveli, Dist.Pune. The title of the complaint provides the designations of the applicants. Apart from that, there is averment in the complaint with regards to the vicarious liability of the applicants. It is nowhere mentioned that the applicants are Incharge and responsible for the said Company, which is also impleaded as accused No.11 in the complaint. The prosecution has invoked Section 17 of the Act. However, to substantiate the vicarious liability embodied vide Section 17 of the Act, neither there is averment in the complaint nor there is any material to fasten the liability of the applicants. The proceedings are therefore not tenable in law against the applicants.

9) It is further noted that the valuable right granted to the accused to challenge the report of Public Analyst

in accordance with Section 13(2) of the Act, has been nullified and on that ground also, the proceedings are deserves to be quashed and set aside. It can be seen that the sample was drawn on 16.9.2004. The report of Public Analyst was received as stated in the complaint on 31.12.2004. In the said report, it was opined that the sample does not conform to the standards of Mustard oil as per the Prevention of Food Adulteration Rules. The complainant, however, submitted the documents to the Local (Health) Authority and Assistant Commissioner, FDA, Dhule, for forwarding the same to the Joint Commissioner, FDA, Nashik Division, Nashik, for obtaining necessary consent u/s 20 on 15.12.2005. The consent was thereafter received on 27.3.2006 and the complaint was filed on 21.4.2006. There was no prompt action on the part of the authorities to initiate the prosecution against the accused. The Mustard oil has shelf life of 12 months from the date of packing, which was clear from the recital of label. The date of packing was in April 2004, and therefore, the product was best for use before 12

months from the date of packing. Considering the aforesaid aspect, the shelf life of the product was upto April 2005. However, the complaint was filed after 12 months i.e. after the expiry of shelf life. Hence, in view of delay in filing the complaint, the accused has lost the right to re-analysis the sample in accordance with Section 13(2) of the Act. The complaint was filed after the expiry of the shelf life and therefore, the question of forwarding the sample for re-analysis does not arise. The violation of the right u/s 13(2) of the Act vitiates the prosecution.

10) In the case of *Pepsico India Holdings Private Limited* (supra), the Supreme Court has considered the aforesaid aspect and it was held that the Directors can be prosecuted on account of vicarious liability provided that there is material to show that they are responsible to the Company for its day-to-day business. It was also observed that it is mandatory to the Central Government to prescribe Laboratories u/s 23(1-A) for testing food

samples/adulterants and to prescribe methods of analysis.

11) In the decision of this Court in the case of *Bharat Puri and Others* (supra) reference was made to the several decisions and it was observed that in the complaint against the Company and it's Directors, the complainant has to indicate in the complaint whether the Directors are Incharge or responsible to the Company for day-to-day management or whether they are responsible to the Company for conduct of its business.

12) In the present case, the complaint was absolutely silent about vicarious liability of the applicants. For both the reasons stated herein above, the proceedings will have to be quashed and set aside and this is a fit case to exercise inherent powers u/s 482 of Code of Criminal Procedure to do so. Hence, I pass the following Order:-

ORDER

(I) Criminal Application No.2019 of 2006 is allowed.

(II) The impugned proceedings in Regular Criminal Case No.37 of 2006 pending in the Court of Judicial Magistrate First Class, Navapur, Dist.Nandurbar are quashed and set aside.

(III) Rule is made absolute.

(IV) Application stands disposed of.

[PRAKASH D.NAIK, J.]