

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

Criminal Application No.2841 of 2006

- 1) Cargill Foods India Ltd.
(Earlier known as M/s Parakh Foods Ltd.)
Through Mr. Arvind Bhanudas Avhad
having its corporate office at
DLF Gateway Towers, 11th and 12th
Floor, DLF City, Phase - III,
Gurgaon - 122 002 (Haryana)
And factory at E-4, MIDC,
Kurkumbh, Pune.
 - 2) Arvind Bhanudas Avhad,
Nominee of M/s Parakh Foods Ltd.
(Now known as Cargill Foods India
Ltd.) at E-4, MIDC, Kurkumbh,
Pune.
- .. Applicants.**

Versus

- 1) The State of Maharashtra.
- 2) Mr. M.N. Bhosale
Local (Health) Authority and
Assistant Commissioner (Food),
FDA Maharashtra State,
Ahmednagar.
- 3) Mr. B.V. Kulkarni,
Food Inspector,
Food and Drug Administration,
Ahmednagar.
- 4) Mr. V.G. Jaybhay
Public Analyst,
Regional Public Health Laboratory,
Pune.

- 5) Mr. S.S. Urankar,
Joint Commissioner (Nashik Division)
Food and Drug Administration,
M.S. Nashik.
- 6) Chandimal Hastimal Mutha,
Proprietor of M/s Dhanlaxmi Traders,
Gala 8, Market Yard,
Ahmednagar.

.. Respondents.

Shri. K.H. Parekh, Advocate, holding for Shri. A.R. Borulkar, Advocate, for applicants.

Miss S.S. Raut, Additional Public Prosecutor, for respondent Nos.1 to 5.

CORAM: T.V. NALAWADE, J.

DATE : 25 JANUARY 2017

JUDGMENT:

1) The proceeding is filed for relief of quashing and setting aside the criminal case bearing RCC No.51/2006 presently pending in the Court of the learned Judicial Magistrate First Class Shevgaon, District Ahmednagar. Relief of setting aside the order made by the Juridical Magistrate on 2-5-2006 like order of issue process is also claimed. Both the sides are heard.

2) The applicants are accused Nos.2 and 3. Learned Judicial Magistrate has taken cognizance of the offence punishable under section 7(1) read with section 2(1)(a),(ia),(m) punishable under section 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter "the Act") and the Prevention of Food Adulteration Rules, 1955 (hereinafter "the Rules"), framed thereunder. One Hostel namely Dr. Babasaheb Ambedkar Boys Hostel Shevgaon, District Ahmednagar was run by one Manohar Tupe. There was a closed box of tin containing 15 liters of Jemini brand refined sunflower oil. From that container sample was collected of sunflower oil by purchasing it from Manohar Tupe. The sample was closed and sealed in presence of panch witnesses after preparing three parts of it. One sample was sent to the Local Health Authority and the report showed that the sample contained linolenic acid 3.2%. As it was found that the sample was not conforming to the standards of sunflower oil as given in the Act and the Rules, inquiry was made with Tupe about the source. Tupe informed that he had purchased the tin box containing the aforesaid oil from accused No.1. On inquiry it revealed that, the tin was supplied by accused No.3

Company and accused No.2 was nominee of accused No.3, Company. Complaint came to be filed after obtaining consent.

3) Learned counsel for the applicants argued on many grounds for getting the relief. He submitted that in view of provisions of section 10(1) and 10(2) of the Act, sample can be collected only from the persons mentioned in these two parts and not from the hostel where the oil was kept for use. He placed reliance on two reported cases on this point. In the case reported as **2014(1) FAC 198 (Rupak Kumar v. State of Bihar)**. The Apex Court held that the Jail Superintendent cannot be prosecuted if the food article is recovered from jail and it is found to be substandard or adulterated. Thus, the prosecution was against the Superintendent of Jail when the jail authority had purchased the food article from other person, vendor. In other case reported as **2005 ALL MR (Cri) 402 (K.R. Venkatachalam v. State of Maharashtra)** this Court at Nagpur Bench has held that the Principal of school cannot be prosecuted if the sample of food article like groundnut oil was purchased by him and was found stored in

residential school. In that case also it was held that he was consumer and the provisions of the Act can be used against vendor. Thus, the facts of these two reported cases were altogether different. Provision of section 12 of the Act needs to be kept in mind. This provision shows the scope of the Act is very wide. In the present case necessarily the person who was running the hostel will be the witness and the case will be tried against the vendor and the manufacturer. Thus, the observations made in aforesaid two cases can be of no use in the present matter.

4) Learned counsel for the applicants submitted that the standards of refined sunflower oil are given Appendix B at A.17.15 and A.17.22 and there the standard of linolenic acid is not mentioned and no tests are prescribed for detecting such substance. He submitted that on this ground the accused are entitled to the relief. This submission is also not at all acceptable. While considering such defence, the Court is expected to consider the definition of "adulterant" given in section 2(i) of the Act and the definition of "adulterated" given in section 2(ia) of the Act. In the present matter there is

allegation that there was adulteration as mentioned in section 2(ia) and (m). Definition of "adulterated" is wide enough to include the substance like the aforesaid acid which can be treated as adulterant and which is not demanded by the purchaser. At this stage it needs to be presumed that the substance is not of the nature or quality which it purports or it represented to be and it falls below the prescribed standard. The contention that such provision of the Act and Rules needs to be specifically mentioned by the Analyst in the report cannot be accepted at this stage in view of the definition given in aforesaid provisions of the Act.

5) On the aforesaid point reliance was placed by the learned counsel for the applicants on the case reported as **2015 (1) FAC 197 (Shantilal Bansilal Bhandari v. The State of Maharashtra)** of Aurangabad Bench of this Court and the case of the Supreme Court reported as **2004(2) FAC 151 (Dinesh v. State of M.P.)**. The substance involved in the case of Shantilal (supra) was *Besan* and on microscopic examination some substance which was not expected to be there in *Besan*

was noticed and there were following substances.

"Appearance - Creamish coloured coarse powder.

(1) Total Ash - 2.42%.

(2) Ash insoluble in HCL - 0.22%

(3) Microscopic Examination - Gram starch + Foreign starch observed.

(4) Test for B.O.A.A. Negative

(5) Test for colour - No extraneous colour and I am of the opinion that the sample of "Besan" bearing Code No. ABD/22/N and Sr. No.5255 does not confirm to the standards of "BESAN" as per Item No. A.18.04 of the Appendix 'B' of the P.F.A Rules, 1955".

The Hon'ble Judge observed that the Public Analyst was not expected to adopt microscopic test. With due respect to the Hon'ble Judge this Court holds that these observations cannot be used in the present matter.

6) In the case of Dinesh (supra) the Apex Court held that ingredients found in the mixture of *Kesari Dal* were within prescribed limit. There were other substances like the powder of *Kesari* found in a particular percentage had changed quality of the food article or had made it injurious. Provision of Rule 44A was not applicable in the

State at the relevant time in this regard and so it was held that the provision of Rule 44A could not have been used. These facts were totally different and there was question of use of some prohibition made by State of M.P. by making one rule and that rule was not in existence when the sample was collected. Thus, the cases on which reliance is placed are of no use to the present applicants.

7) Learned counsel for the applicants submitted that the oil was manufactured on 22-6-2004 and the shelf life was six months but the complaint was filed after 16 months and so the right given under section 13(2) of the Act was lost. This contention is also not acceptable. Report of the Public Analyst shows that the sample sent was fit for testing. At this stage, it needs to be presumed that the procedure as laid down in section 13 of the Act was followed. It is not the case of the applicants that the applicants wanted to avail the right and they had followed the procedure as laid down in section 13(2) for sending the second sample. Further, in the present matter the substances mentioned in the report were found in the edible oil. At this stage it cannot be said that such

substance is a bye-product when such oil is extracted from seeds. Mixture of such substance is apparently not permissible. In view of these circumstances the accused ought to have exercised the right given under section 13(2) of the Act as the Local Health Laboratory had given report that the sample was fit for testing and the sample was found to be adulterated.

8) Learned counsel for the applicants placed reliance on some reported and un-reported cases. In the case reported as **1985 Cr.L.J. 1255** (Bombay High Court) (**Y.M. Koli v. D.A. Kokani**) the Court held that the accused was entitled to acquittal if on account of delay in filing complaint the remaining samples had become unfit for analysis. The substance involved was milk. In the case reported as **2010(2) FAC 239** (Nagpur Bench) (**Shivkumar vs. State of Maharashtra**) the matters involving substances like mixed fruit jam, Rex Pineapple jam, Anik ghee and Nutrela Vanaspati were considered. Samples were apparently collected in April 1996 and prosecution was instituted on 7-7-1999. It was held that there was no compliance of section 13(2) of the Act as the report of the

Public Analyst was not sent to the person from whom sample was taken. In view of the facts of those cases criminal applications were allowed and the prosecution and the cases were quashed. It needs to be observed that in view of provisions of section 13(2) and 13(2-A) right needs to be exercised by the accused and there is no provision in the Act showing that the Court needs to act with the presumption that after shelf life period, the food article gets destroyed, it becomes unfit for testing. Food substance may be different in each case. What can be true in case of milk collected from container or curd collected from container may not be true in respect edible oil collected from closed tin after opening it. Further, as already observed, in view of the definition of adulterant, in some cases things which are found as adulterant cannot come in existence due to process of decomposition. Unless there is report of the laboratory that the sample is not fit, the Court cannot raise such presumption. Each case needs to be dealt with separately on the facts and circumstances of that case. So, with due respect this Court observes that the observations made in the cases cited supra are of no use in the present matter. It was

submitted that the proceeding filed to challenge the decision of the High Court by the State was dismissed by the Apex Court. Copy of such order is produced. As the material involved in the present case is different, this Court observes that the observations made by other Hon'ble Single Judge are of no use in the present matter. It can be said that in the present matter the applicants failed to go for the test through Central Laboratory. Similar observations are made by other Hon'ble Single Judge of this Court in **Criminal Application No.559 of 2011** decided at Nagpur Bench (**Himanshu Hemant Acharya v. State of Maharashtra**) and **Criminal Application No.836 of 2011** decided at the Principal Seat (**Sanjeev Bhatt v. State of Maharashtra**). In the first matter even the substance was not mentioned. In the second matter the substance involved was black pepper (whole) and it was collected from mall. Accused were managers, directors of the said mall. The nature of adulteration is not mentioned in the decision and only it is mentioned that the sample did not conform to the standards laid down under the Act and the Rules. Prosecution was launched after the expiry of shelf life

period and so order was made for quashing of the proceeding and relief was granted. It is already observed that each case needs to be decided on the facts of that case. So this Court holds that the observations are of no use in the present matter. In other case like **Criminal Application No.1197 of 2011** decided at Principal Seat (**Himanshu Rambabu Prasad vs. State of Maharashtra**) the substance involved was jaggery and the substance Sulphur Dioxide which was expected to be there in jaggery was found but the percentage had exceeded as per Local (Health) Laboratory report. Due to delay caused in lodging complaint, which was one and half years, right to get the sample analyzed through Central Food Laboratory was lost and so benefit was given to the accused.

9) In view of the discussion made above, this Court holds that in the present matter, the proceeding cannot be quashed. In the result, the application stands dismissed. Rule stands discharged.

Sd/-
(**T.V. NALAWADE, J.)**

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