

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19359 of 2014

Arising Out of Case No. -4 Year- 2011 Thana -GOVERNMENT OFFICIAL COMP. District-
PURNIA

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Mukesh Kumar Agrawal, S/o Sri Raghubir Prasad Agrawal Prop.- M/S Shri Shyam
Agro Oil Mills, Marketing Chowk, N.H.-31, P.S.- Gulab Bagh, Dist.- Purnea

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

with

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Criminal Miscellaneous No. 18829 of 2014

Arising Out of Case No. -5 Year- 2011 Thana -PURNIA COMPLAINT CASE District- PURNIA

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Mukesh Kumar Agrawal, S/o Sri Raghubir Prasad Agrawal, Prop.- M/s Shri Shyam
Agro Oil Mills, Marketing Chowk, N.H. 31, P.S- Gulab Bagh, Distt- Purnea.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.19359 of 2014)

For the Petitioner/s : Mr. Aditya Prakash Sahay, Advocate.

For the Opposite Party/s : Mr. Nirmal Kumar Sinha, APP

(In Cr.Misc. No.18829 of 2014)

For the Petitioner/s : Mr. Aditya Prakash Sahay, Advocate.

For the Opposite Party/s : Mr. Nirmal Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

CAV JUDGMENT

Date: 05-04-2018

Heard learned counsel for the petitioner and learned
counsel for the State.

2. Both applications have been filed by petitioner
Mukesh Kumar Agrawal, under Section 482 Cr.P.C., 1973, for
quashing order dated 03.01.2011 passed by the learned Chief Judicial
Magistrate, Purnea in Complaint Case No. B-III-04 of 2011 dated



03.01.2011 and in Complaint Case No. B-III-05 of 2011 dated 03.01.2011, thereby taking cognizance of offence in both the cases under Section 16(1)(A) of the Prevention of Food Adulteration Act, 1954.

3. The brief fact giving rise to both cases is that on 04.12.2010, the Food Inspector, Purnea collected samples of 11 items of different edible oils including mustard oil and the same was sent to Public Analyst, seeking analysis report regarding adulteration. The Public Analyst report dated 10.12.2010 indicates that all 11 samples did not confirm to the prescribed standard, as laid down under the Prevention of Food Adulteration Act and Rules, including the mustard oil. On receipt of report, the local health authority i.e., Civil Surgeon-cum-Chief Medical Officer, Purnea sent a notice dated 29.12.2010 to the petitioner, which was received on 08.01.2011 informing him regarding adulteration found in the sample of the mustard oil so the oil is substandard and not fit for human consumption and petitioner was given liberty to get the second sample re-analysed by the Central Food Laboratory, if desired.

4. The prosecution report was already filed by the Food Inspector, Purnea on 03.01.2011, after receipt of the Public Analyst report. The petitioner, after receiving notice from the Civil Surgeon, filed an application on 12.01.2011 in the court of S.D.J.M., Purnea for



sending the second sample to be analysed by the higher authorities to the Central Food Laboratory rather sent to wrong forum, ultimately it was sent to the Central Food Laboratory, Ghaziabad, the prescribed forum on 22.02.2014 and as per report dated 22.03.2014, sample of mustard oil does not confirm to the standard laid down under the provision of the Prevention of Food Adulteration Rules, 1955 for the reason, B.R. Reading at 40° C was found 62.1% whereas prescribed limit is in between 58-60.5%. Saponification value also exceeded by .81 from the prescribed standard limit as the prescribed standard limit is 168-177. Further Bellier Test (Turbidity temperature- Acetic acid method) also exceeded marginally as the result is 28.1°C , whereas prescribed standards is in between 23.0°-27.5°C. In the first case, B.R. Reading at 40° C was found 62.0 5whereas prescribed limit is in between 58-60.5. So it exceeded from 1.5% and all rest parameters are within the prescribed standards.

5. Learned counsel appearing on behalf of the petitioner submits that 11 samples of the mustard oil were taken by the Food Inspector and for that separate 11 cases were instituted against the petitioner and in five cases, cognizance order dated 03.01.2011 have been quashed by co-ordinate Benches of this Court vide order dated 19.07.2017 passed in Cr. Misc. No. 20424 of 2014 along with analogous cases and vide order dated 25.08.2017 passed in Cr. Misc.



No. 19752 of 2014 with one analogous cases. It is contended that in the packet of edible oil, it is categorically mentioned that edible oil is to be used best before one year, in other words, not to be used after expiry of one year and the scheme of the Act is to analyze the sample within a reasonable time as prescribed under Section 13 of the Act.

6. Learned counsel placed reliance on the case of ***Girishbhai Dahyabhai Shah vs. C.C.Jani & Anr.*** reported in ***(2009) 15 SCC 64***. It is contended that in the said case sample of curd had deteriorated as the same was sent for second analysis after lapse of six months, so further examination of such sample becomes meaningless which means depriving him of the valuable right conferred on him by Section 13(2) of the above Act.

7. Having considered the rival submissions and on perusal of record, the admitted fact is that Food Inspector collected sample of mustard oil from the premises of the petitioner on 04.12.2010 and sent those samples to Public Analyst for report. Petitioner was sent notice regarding the report dated 10.12.2010 of Public Analyst received by him on 08.01.2011 and on 12.01.2011; he filed application before SDJM, Purnea for sending the second sample for analysing as per scheme of the Act and Rules. However, the court finds that sample was sent to the Central Food Laboratory, Ghaziabad on 07.02.2014, which was received there on 24.02.2014, which means



after lapse of three years from the first report of the Public Analyst.

8. The Scheme, under Section 13 of the Act, is that after receipt of notice regarding first report of the Public Analyst, the accused within a period of ten days from the date of receipt of the first report, may apply to the court for second analysis report regarding adulteration by the Central Food Laboratory. The second sample is required to be sent to the court by local health authority within a period of five days from the date of receipt of such requisition sent by the Court, further on receipt of the sample being verified its seal and signature or thumb impression of the accused, if not found tampered then it is dispatched to the Director, Central Food Laboratory immediately, thereafter the Central Food Laboratory has to send a certificate to the court within one month from the date of receipt of sample giving details of the result of the analysis.

9. In the present case, there is long delay of three years in sending the second sample to Central Food Laboratory, Ghaziabad which was received thereon 24.02.2014 with regard to sample collected by the Food Inspector on 04.12.2010 and the report of the Public Analyst is dated 22.03.2014. The sample of oil was found free from separated water, suspended matter and sediments and there was absence of moisture, mineral oil, argemone oil and other tests were also found negative, except in one test B.R. Reading at 40° C, the oil



was found on higher side marginally as 62%, whereas prescribed limit is in between 58-60.5, so it was higher side by only 1.5%, whereas in the second sample, B.R. Reading at 40°C was 62.1% and Saponification value was marginal higher side to .81 and Bellier Test (Turbidity temperature- Acetic acid method) also marginally higher to 1.6%, which is result of deterioration of the quality of sample by passage of time as after lapse of three years, it was sent for second analysis which amounts to depriving the petitioner of the valuable right conferred by Section 13(2) of the Act and rest other five cases with regard to samples of mustard oil taken from the premises of the petitioner was already quashed by this Court earlier. So continuation of the criminal proceeding in the matter would be abuse of the process of the court.

10. Hence, criminal proceedings of both the aforesaid cases inclusive of cognizance order dated 03.01.2011 are hereby quashed. The applications stand allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	AFR
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