

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.53844 of 2013

Arising Out of PS.Case No. -1 Year- 2011 Thana -GOVERNMENT OFFICIAL COMP. District-
PURNIA

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1. 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.- Purnia

.... Petitioner/s

Versus

1. The State Of Bihar
2. Food Inspector, Purnia, P.S.- Purnia, Dist.- Purnia

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Aditya Prakash Sahay, Adv.
For the Opposite Party/s : Mr. Pranav Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
CAV JUDGMENT

Date: 11-04-2018

Heard learned counsel for the parties.

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing of order dated 03.01.2011 passed by the learned Chief Judicial Magistrate, Purnia in Complaint Case No. B III-01 of 2011 whereby the learned court below took cognizance against the petitioners under Sections 16(1)(A) of Prevention of Food Adulteration Act.

The brief facts of this case is that altogether eleven (11) samples of different edible oils were collected from the business premises of the petitioner by the Food Inspector, Purnia for examination by a Public Analyst in order to ascertain the purity of



the said edible oil and for that eleven different complaint cases have been filed against the petitioner for the same set of facts. In every cases, the petitioner has raised the issue of violation of mandatory provisions as contained in Section 13(2) of the Prevention of Food Adulteration Act, (hereinafter to be referred to as 'the Act') which reads as follows:-

“13. Report of Public Analyst-

(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 persons, if any, whose name, address and other particulars have been disclosed under Section 14-A, forward, in such manner as may be prescribed, a copy of the result of the analysis to such person or persons, as the case may be, 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 analyzed by the Central Food Laboratory.” Hence, the complainant left with no option lodged the complaint case”

Learned counsel for the petitioner has submitted that although the sample of edible oil has was collected from the business premises of the petitioner on 04.12.2010 but the report of the analysis was received on 08.01.2011, informing that sample of edible oil has been found to be sub-standard and is not fit for



consumption, after lapse of more than a year. It is further submitted that the life of edible oil is one year and after one year of sending the second sample for analysis in terms of Clause (2) of Section 13 of the Act by the Central Food Laboratory is useless and amounts to denial of fair procedure prescribed under Clause (2) of Section 13 of the Act. It has further been submitted that the mandatory requirement of Section 13(2) of the Act is to provide one more opportunity to the person against whom there is adverse report in the first analysis to prove that the food item is not adulterated and if the second sample of food item is not sent within the reasonable time it may render the second analysis useless and frustrate the object of the Section 13(2) of the Act. Here in this case the despite the request of the petitioner in terms of Section 13(2) of the Act, the second sample was not sent for analysis by the authorities prescribed under the Act and as such the entire prosecution, based on prosecution report only not supported by the analysis of second sample, is unsustainable and proceeding against the petitioner is an abuse of process of law. Learned counsel for the petitioner in support his contention placed a reliance of the Judgment of this Court in the case of *Sharwan Kumar Vs. The State of Bihar* reported in *1997(1) PLJR 453* wherein a Bench of this Court relying upon the Judgment of the apex Court reported in *A.I.R 1991 Suppl. (2) SCC 569* has held out



that the order taking cognizance is bad and in the absence of second analysis from the Central Food laboratory in terms of Section 13(2), the prosecution is unsustainable. Moreover, it is pertinent to mention here that several different proceedings arise out of same set of facts against the petitioner have already been quashed by the different co-ordinate Benches of this Court in Cr. Misc. No. 20424 of 2014 and analogous cases and Cr. Misc. No. 19752 of 2017 and analogous cases. On the above ground, it is submitted that the cognizance order dated 03.01.2011 passed in Complaint Case No. B III-01 of 2011 by the learned Chief Judicial Magistrate, Purnia, is bad in law and is deserves to be quashed.

From perusal of the material on record and looking into the facts of the case, it is quite apparent that the case of the petitioner is squarely covered by judgment rendered in the case of ***Sharwan Kumar Vs. The State of Bihar*** reported in ***1997(1) PLJR 453*** and Section 13(2) of the Act as in the instant case despite request made by the petitioner, the second sample was not sent within the time prescribed under the Act and no sample was sent to obtain report of analysis by the Central Food Laboratory. Moreover, in similar cases, the Hon'ble Apex Court has quashed the prosecution considering the mandate of law in the case of ***Girish Bhai Dangra Bhai Sah Vs. C.C. Jani & Anr.*** reported in ***(2009) 15***



SCC 64.

In view of the above, I find substance in the submission of the counsel for the petitioner and considering the binding precedent on this issue, as discussed above, this Court quash the order taking cognizance dated 03.01.2011 passed in Complaint Case No. B III-01 of 2011 by the Chief Judicial Magistrate, Purnia.

This application is, accordingly, allowed.

(Arvind Srivastava, J.)

Brajesh/-

AFR/NAFR	NAFR
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