

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1177 of 2017

M/s Ramdev Food Products Pvt. Ltd., Through : Umesh Bhatt,
Manager (Liaison), Ramdev Food Products Pvt. Ltd., Ahmadabad

---- Petitioner

Versus

State of Chhattisgarh Through K. N. Mishra, Food Inspector, District
Flying Squad Food And Health Chhattisgarh

---- Respondent

For petitioner – Shri G.D. Vaswani, Advocate.
For State- Shri Ashish Shukla, Dy.A.G.

Hon'ble Shri Justice Goutam Bhaduri

Order

27/07/2018

Heard.

1. Instant petition is against the continuation of the proceeding against the petitioner on a complaint filed under Section 16(1)(a)(i) of Prevention of Food Adulteration Act, 1954 read with Section 7(1) and Rules 50 sub section-1 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the 'Act of 1954')
2. Facts of this case, in brief is that on 18/02/2001 one K.N. Mishra Food Inspector had purchased 3 packets of Ramdev Agmark Turmeric Powder each containing 200 gms of Turmeric Powder from Nanak Kirana Stores, Torwa, Bilaspur. It is alleged that said Turmeric Powder was manufactured by the present petitioner. After purchase of the article as per the Act and the provisions of the Act and Rules one of the sample was sent to the Public Analyst for being analysed. Public Analyst vide its report dated 26/03/2001 had reported the same to be adulterated. Thereafter, the complaint was filed by the Food Inspector under section 16(1)(a)(i) of the Act of 1954 on 25/07/2003 before the JMFC, Bilaspur. The said complaint

was registered and the summons were issued to the petitioner alongwith the other accused persons.

3. It is contended on behalf of the petitioner that after report of the Public Analyst is filed and after institution of the prosecution it has to be informed to the persons who are prosecuted and the prosecuted persons if so desires may make an application to the court within a period of 10 days from the date of receipt of the copy of the report of public analyst to get the sample again examined by the Central Food Laboratory. It is stated that in the instant case there is a gross violation of such mandate under Section 13(2) of the Act of 1954. It is further contended that as per Section 13 (2A) when such application is filed sample so kept by the Local (Health) Authority has to be sent to the Central Food Laboratory if accused so desire. He further stated that as per Section 13 sub section-3 of Act, the certificate issued by the Director of the Central Food Laboratory shall supersede the report of the Public Analyst. It is further contended that declaration of life period which was existing on the packet of food article was that the date of packing was 27/11/2000 and it was specifically endorsed that the contents were certified to be best before expiry of 8 months. So shelf period of the food article would be from 27/11/2000 to 26/07/2001. It is further submitted that after the prosecution suffers from gross violation as the complaint was filed after expiry of shelf period of the food article, therefore the petitioner could not avail the remedy available to him under Section 13(2) of the Act of 1954. It is prayed in a result the prosecution cannot be continued and is liable to be quashed.

4. Per contra, learned State counsel opposes the argument and would submit that the prosecution cannot be quashed on this ground only and petitioner is liable to face the prosecution.

5. Perused the documents and order of the court below. As per complaint filed by the Food Inspector purchase of 200gms of 3 packets of

Ramdev Agmark Turmeric Powder was made on 19/02/2001. Thereafter, first part of the sample was sent to the Public Analyst at Bhopal on 20/02/2001 whereas remaining two parts were deposited with the Local (Health) Authority. As per document R-1 filed by the State report of the Public Analyst was received on 26/03/2001. Thereafter, sanction was accorded on 30/10/2002 and the prosecution was filed on 25/07/2003.

6. Section 13 of the Prevention of Food Adulteration Act, 1954 would be relevant in this case. Relevant extract of the section are reproduced as under:-

“13. Report of public analyst.— [(1) The public analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis.

(2A) When an application is made to the court under sub-section (2), the court shall require the Local (Health) Authority to forward the part or parts of the sample kept by the said Authority and upon such requisition being made, the said Authority shall forward the part or parts of the sample to the court within a period of five days from the date of receipt of such requisition.

(3) The certificate issued by the Director of the Central Food Laboratory [under sub-section (2B)] shall supersede the report given by the public analyst under sub-section (1).

(5) Any document purporting to be a report signed by a public analyst, unless it has been superseded under sub-section (3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under sections 272 to 276 of the Indian Penal Code (45 of 1860):

[Provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory [not being a certificate with respect to the analysis of the part of the sample of any article of food referred to in the proviso to sub-section (1A) of section 16] shall be final and conclusive evidence of the facts stated therein.]”

7. Reading of the sub section-2 of the Section 13 would show that it

gives a right to the person who are prosecuted that they if so desire may make an application to the court within a period of 10 days from the date of receipt of copy of the report of Public Analyst to sent the article kept with the Local (Health) Authority to be analysed by the Central Food Laboratory and it is the duty of the Local (Health) Authority if such request is made in turn to send the other one of the kept article of sample within a period of 5 days from the date of receipt of the requisition to Central Food Laboratory Sub section-3 of Section 13 speaks that the report of the Director Central Food Laboratory shall supersede the report given by the Public Analyst under sub section-1 and sub-section 5 of Section 13 gives the finality to the report and makes it conclusive evidence. In this case facts and order sheet as would reveal that prosecution was lodged on 25/07/2003 which shows that complaint was lodged after exorbitant delay which apparently takes within its sweep to the violation of compliance of Section 13(2) of the Act of 1954.

8. Supreme Court in case of **Municipal Corporation of Delhi Vs. Ghisa Ram** reported in **AIR 1967 SC 970** in para 7 has laid down as under:-

“7. It appears to us that when a valuable right is conferred by s. 13 (2) of the Act on the vendor to have the sample given to him analysed by the Director of the Central Food Laboratory, it is to be expected that the prosecution will proceed in such a manner that that right will not be denied to him. The right is a valuable one, because the certificate of the Director supersedes the report of the Public Analyst and is treated as conclusive evidence of its contents. Obviously, the right has been given to the vendor in order that, for his satisfaction and proper defence, he should be able to have the sample kept in his charge analysed by a greater expert whose certificate is to be accepted by Court as conclusive evidence. In a case where there is denial of this right on account of the deliberate conduct of the prosecution, we think that the vendor, in his trial, is so seriously prejudiced that it would not be proper to uphold his

conviction on the basis of the report of the Public Analyst, even though that report continues to be evidence in the case of the facts contained therein.”

9. The ratio of rights was also recognised in case of **State of Haryana Vs. Unique Farmaid (P) Ltd.** reported in **(1999) 8 SCC 190** & **Medicamen Biotech Ltd. vs. Rubina Bose** reported in **2008 (3) Scale 563** wherein it is held that valuable right of the accused person created under statute cannot be taken away. In this case the complaint was filed after shelf life period of the product, as the seizure of the goods were made on 18/02/2001 and filing of the complaint was in the year 2003. The facts ipso facto suggest that the complaint was filed after shelf life of the product was over. Consequently, the right of the petitioner under section 13(2) of the Act of 1954 was automatically buried and taken away. For the reasons as aforesaid, this court is of the opinion that the prosecution against the petitioner cannot be sustained as valuable statutory right of the petitioner who is prosecuted was taken away by the prosecution itself. Consequently, the petition stands allowed and Criminal Case bearing No.3334/2013 pending before JMFC, Bilaspur against the petitioner stands quashed.

Sd/-

(Goutam Bhaduri)

JUDGE