

COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1260 of 2017**

M/s Ramdev Food Products Pvt. Ltd. Spice World, Sarkhej
Bavla, Highway Changodar, District Ahmedabad through
Umesh Bhat, S/o Shri Navinchandra Bhatt, Liaison Manager
and Authorized Signatory, Gujarat --- **Petitioner**

Versus

State of Chhattisgarh through Shri V. K. Jain, Food
Inspector, Office of Food & Durg Administration, Bilaspur
Chhattisgarh. Chhattisgarh --- **Respondent**

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

Hon'ble Shri Justice Goutam Bhaduri

ORAL ORDER

17-08-2018

1. Instant petition is against the continuation of the proceeding against the petitioner on a complaint filed under Section 7(1), 7(5) read with section 12(A), 16(1)A(I)(II) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the 'Act of 1954')
2. The facts of the case are that on 27.06.2003 the Food Inspector V.K. Jain had purchased 3 packets of Ramdev Agmark Turmeric Powder each containing 200 gms from one Annapurna Provision Stores, Agya Nagar, Bilaspur. It is alleged that the said Turmeric Powder was manufactured and marketed by the present

petitioner. After purchase of the article as per the Act and the Rules made thereunder one sample was sent to the Public Analyst for analysis. The Public Analyst vide its report dated 06.08.2003 in Form-III under Rule 7(3) of the Prevention of Food Adulteration Rules, 1955 had reported that the powder so sent for analysis was adulterated. The same was received by the Food Inspector on 23.08.2003. Thereafter, a complaint was filed under section 16(1)(a)(i) of the Act of 1954 on 25/07/2003 before the C.J.M., Bilaspur against Deepak Kumar Gupta, the vender, Javes Mirani, proprietor of Gurudev Sales , Pandri, Raipur and M/s. Ramdev Food Products Private Ltd, the manufacturer the petitioner herein. The said complaint was filed on 09.08.2004.

3. Learned counsel for the petitioner would submit that the seizure of the article was made while the article was seized. After purchase of the said Article, the notice of intention to take sample for analysis was given in Form VI of Rule 12 of the Act, 1955 which would disclose that the shelf life period was of 8 months i.e., expiry from the date of manufacture from 22.05.2003, thereby the same would be automatically expired on 21.01.2004. It is stated that since the complaint was filed in the Court on 09.08.2004 as such the right to get the sample analysed, as per the section 13 of the Act, 1954, was taken away as the complaint itself was lodged after the shelf life period expired. It is stated that under the circumstances, the continuation of proceedings of Prevention of Food Adulteration Act needs to be quashed as it has taken away the valuable right accrued to the petitioner under the Statute.

4. 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 desire may make an application to the court wherein the prosecution is launched 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 the prosecution itself was launched after the shelf life period and further gross violation of such mandate u/s 32 of the Act, 1954 was committed. It is further stated that as per sub-section (3) of section 13 of the Act, certificate issued by the Director of Central Food Laboratory shall supersede the report of the public analysis. It is further stated that the declaration of life period which was existing on the packet of food had already expired and after expiry of the period, the prosecution was launched, as such, the prosecution cannot be continued and is liable to be quashed.

5. 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.

6. Perused the documents and records of the court below. As per complaint filed by the Food Inspector, 3 packets of 200 grams of Ramdev Agmark Turmeric Powder was purchased on 27/06/2003. Form-VI which is made under rule 12 shows that it is a prescribed format whereby the packets so purchased was sent for analysis. Rule 12 of Rules, 1955 purports that notice of intention to take sample for analysis is to be issued in Form VI to the person from whom the sample was collected by the Food

Inspector. Form VI which contains the details of food shows that the date of packing was mentioned as 22.05.2003. So far as it relates to validity period of consumption, it was mentioned in Form VI that “best before within 8 months from the date of packing” whereby the shelf-life period of the article was existing on 21st January, 2004 and thereafter the expiry period of the product would begin from 22nd January, 2014.

7. Section 13 of the Prevention of Food Adulteration Act, 1954 would be relevant in this case. Relevant extract of the section is 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.

(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 the prosecution against the persons from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under section 14A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so 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 analysed by the Central Food Laboratory.

(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.]”

8. Reading of sub section-2 of the Section 13 would show that it gives a right to the persons who are prosecuted that if they 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 send 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.

9. Supreme Court in case of **Municipal Corporation of Delhi Vs. Ghisa Ram** reported in **AIR 1967 SC 970** 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.”

10. 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.

11. The Bombay High Court in *State of Maharashtra v. Shivkumar @ Shiwalamal N. Chugwani* (Criminal Application decided on 21.06.2010) has dealt with the aspect wherein the complaint was instituted by the Food Inspector after a reasonable period from the date of taking a sample. In that case, the Court held that the complaint was filed after shelf-life of product is over and when this action was put to challenge by contending that valuable right u/s 13(2) of the PFA Act was lost or taken away, the prosecution has become worthless. The said judgment of Bombay High Court was further affirmed when the State filed an appeal before the Supreme Court vide *Special leave to Appeal (Cri) No.6332/2010 – State of Maharashtra Vs. Shiv Kumar @ Shiwalamal N. Chugwani* which was dismissed on 13th Sept. 2010. The said decision is also relied on by the M.P. High Court in *Sri Prakash Desai and another v. State of M.P.*, 2017 FAJ 49 (M.P.).

12. Applying the aforesaid principles in the instant case, apparently it appears that the prosecution was launched after shelf-life period of the product expired which automatically took away the right guaranteed u/s 13(2) of the P.F. Act. The shelf-life period having been expired on 22.01.2004 and the prosecution was launched on 09.08.2004, the administrative delay, if any, cannot override the statutory mandate.

13. In the result, the Court is of the opinion that the prosecution cannot be continued as valuable right of the petitioner was taken away by the prosecution itself. Consequently the petition is allowed and the proceedings of Criminal case bearing No.192 of 2011 pending before the JMFC, Bilaspur stands quashed.

Sd/-

**GOUTAM BHADURI
JUDGE**

R a o