

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No.833 of 2012**

1. M/s. Parle Biscuits Pvt. Ltd., North Level Crossing Vile-Parle (East), P.S. Vile-Parle, Mumbai (Maharashtra) Through Sandeep Parikh, Nominee, M/s. Parle Biscuits Pvt. Ltd., R/o Ring Road No.1, P.S. Tatabandh, Raipur (CG)
2. Sandeep Parikh, Nominee, M/s. Parle Biscuits Pvt. Ltd., North Level Crossing, Vile-Parle (East), P.S. Vile-Parle, Mumbai (Maharashtra) Through Shri Logistics, Ring Road No.1, P.S. Tatibandh, Raipur (CG)
3. M/s. Parle Biscuits Pvt. Ltd., Bahadurgarh, Jhajair (Haryana) Through Mahendra Saharan, Nominee and Shift Incharge, M/s. Parle Biscuits Pvt. Ltd., Bahadurgarh, P.S. Bahadurgarh, Jhajair (Haryana)
4. Mahendra Saharan, Nominee and Shift Incharge, M/s. Parle Biscuits Pvt. Ltd., Bahadurgarh, P.S. Bahadurgarh, Jhajair (Haryana)
5. Naveen Agrawal, S/o Shri B.M. Agrawal, aged about 34 years, Proprietor, Agrawal Sweets and Daily Needs, Opp. Vimal Talkies, P.S. Dhamtari, Distt. Dhamtari (CG)
6. Jain Agency, M.B. House, Bastar Road, P.S. Dhamtari Dhamtari (CG)
7. Sunil Kumar Jain, Partner, Jain Agency, M.B. House, Bastar Road, P.s. Dhamtari, Distt. Dhamtari (CG)
8. Manish Kumar Jain, Partner, Jain Agency, M.B. House, Bastar Road, P.S. Dhamtari, Distt. Dhamtari (CG)

---- Petitioners

Versus

1. State of Chhattisgarh, through the Food Inspector, Office of the Food and Drugs Administration, Kalibadi, Raipur (CG)
2. Akhilesh Shrivastava, Food Inspector, Office of Food and Drugs Administration, Kalibadi, Raipur (CG)

---Respondents

For Petitioners	:	Mr.Ravindra Agrawal, Advocate
For State/respondent No.1	:	Mr.Chandresh Shrivastava, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****01/04/2019**

1. The petitioners herein are facing trial for an offence under Section 7 (i) read with Section 16(1) (a) (i) of the Prevention of Food Adulteration Act, 1954 (hereinafter called as "Act of 1954") initiated

at the instance of Food Inspector. They are questioning the initiation and continuance of Criminal Case No.228/2011 pending in the Court of Chief Judicial Magistrate, Dhamtari and consequent order dated 27.4.2010 passed by that Court taking cognizance of the aforesaid offence stating inter-alia that initiation and continuance of the said proceeding is in breach of the provisions contained in Section 13(2) of the Act of 1954.

2. Petitioners No.1 and 3 are the incorporated companies under the Companies Act, 1956. Petitioner No.1 is a company which manufactures biscuits for sale under the brand name of "Monaco" amongst other food commodities. Petitioner No.3 is also a company which manufactures biscuits for petitioner No.1 under the same brand name of "Monaco", as such, petitioner No.3 is manufacturing unit. Since "Monaco" biscuits manufactured by petitioner No.3 fall within the description of "Food" within the meaning of Section 2(v) of the Act of 1954, petitioners No.1 and 3 are statutorily obliged under Rule 32 of the Prevention of Food Adulteration Rules, 1955 (hereinafter called as "Rules of 1955") to specify and disclose the shelf life on every package of biscuits manufactured by it in one or several modes prescribed under Rule 32 of the Rules of 1955.
3. It is the case of the petitioners that on 29.7.2008, respondent No.2 herein i.e. Food Inspector purchased the sample of three packets of 240 gm. each Parle Monaco Crisp Light Salted Snacks Biscuit allegedly manufactured by petitioners No.1 and 3 from the shop of petitioner No.5-Agrawal Sweets and Daily Needs, Dhamtari,

who is retailer of the food commodities, in exercise of powers conferred under Section 10 of the Act of 1954 in accordance with the Rules of 1955. After completing necessary formalities, sample was sent to the Public Analyst, Raipur for analysis on 30.7.2008 and separately sent a memorandum in Form No.VII and impression of seal used in sealing the packets to the Public Analyst as required by Rules 17 and 18 of the Rules of 1955. After due analysis, the Public Analyst has submitted his analysis report on 4.9.2008 to the State Food (Health) Authority & Controller, Food and Drugs Administration, Raipur in which samples of the biscuits are found to be adulterated. Thereafter on 27.4.2010, a complaint was filed before the jurisdictional Magistrate under Sections 7 (I), 7 (v) read with Section 16(1) (a) (i) & (ii) of the Act of 1954 in which cognizance was taken by learned Magistrate by order dated 27.4.2010 and thereafter, on 11.5.2010 (Annexure P/3), a copy of analysis report was forwarded to the petitioners by the Controller, Food and Drugs Administration, Raipur as required under Section 13(2) of the Act of 1954 to avail the right to get the sample re-analyzed by the Central Food Laboratory. It is further case of the petitioners that in accordance with Rule 32 of the Rules 1955, shelf life of biscuit was six months from July, 2008, it was best before six months from packaging, but complaint was filed after 1 year and 9 months and information under Section 13(2) of the Act of 1954 was given on 11.5.2010 i.e. after a long delay of expiration of shelf life period of the sample. The statutory right of the petitioners has been denied by the act of the respondents, as such, criminal proceedings are liable to be quashed.

4. Return has been filed on behalf of respondent No.1/State stating inter-alia that initiation and continuance of criminal proceedings against the petitioners are in accordance with law, as such, the petition under Section 482 of the CrPC is liable to be dismissed.
5. Mr.Ravindra Agrawal, learned counsel for the petitioners, would submit that the petitioners' right to get second sample of the product re-analyzed from the Central Food Laboratory stands defeated/vitiated on account of issuance of notice under Section 13 (2) of the Act of 1954 as late as on 11.5.2010, whereas the product has been manufactured in July, 2008. He would further submit that same is solely attributable to the delay of the prosecution/second respondent in not sending the notice under Section 13(2) of the Act of 1954 to the petitioner company or to any other accused before the date indicated on the product and that has caused serious prejudice to the petitioner company. He would further submit that complaint has been filed even beyond the period of limitation and by that time, notice was served under Section 13(2) in the present case, the product in question had already more than 1 year and 9 months old and thus, right of the petitioner company to get the second sample of the product re-analyzed from the Central Food Laboratory stands defeated/vitiated and they have been deprived of their statutory right to get re-analyzed the second sample from the Central Food Laboratory and inordinate and unexplainable delay that resulted in passing of 'Use before' date of the sample product much before the petitioner company entered into appearance before the trial Court,

therefore, entire prosecution against the petitioners deserves to be quashed.

6. On the other hand, learned State Counsel would oppose the petition and submit that cognizance has rightly been taken by learned Magistrate and no interference is called for.
7. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the record with utmost circumspection.
8. In order to decide the plea raised at the Bar, it would be appropriate to notice the provisions contained in Section 13 (1), 13(2) and 13(3) of the Act which states 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 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 54 [under sub-section (2B)] shall supersede the report given by the public analyst under sub-section (1)."

9. From a careful perusal of Section 13(2) of the Act of 1954, it would appear that right of reanalysis of the samples at the instance of accused as provided is an indefeasible right of the accused in the matters relating to food adulteration. Sub-section (3) of Section 13 of the Act of 1954 clearly provides that 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). Sub-section (2A) of Section 13 of the Act of 1954 obliges the Court to refer the second sample to the Central Food Laboratory and report is submitted under sub-section (2B) of Section 13 of the Act of 1954.

10. The law on this point is very well settled. Way back, in the matter of Municipal Corporation of Delhi Vs. Ghisa Ram¹, the Supreme Court has held that the right of accused is a valuable one,

¹ AIR 1967 SC 970

because the certificate of the Director supersedes the report of the Public analyst and is treated as conclusive evidence of its contents.

It was observed 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.”

11. Similarly, in the matter of Girishbhai Dahyabhai Shah Vs.

C.C.Jani and another² the Supreme Court has held as under:-

“8. It will be apparent from the above, that only on receipt of report of the Pubic Analyst under sub-section (1) of the effect that the article of food is adulterated, can a prosecution be launched and a copy of the report could be supplied to the accused. Sub-section (2) also indicates that on receipt of the report the accused could, if he so desired, make an application to the court within a period of ten days from the date of the receipt of the copy of the report to get the sample of article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.

9. In other words, in the instant case, the appellant was prevented from applying for analysis of the second sample before 17-7-1989, by which time the second sample of curd had deteriorated and was not capable of being analysed as was found in Ghisa Ram referred to above.”

² (2009) 15 SCC 64

- 12.** Recently, the principle of law laid-down in Girishbhai Dahyabhai Shah (supra) has been followed with approval by the Supreme Court in the matter of Hindustan Unilever Limited Vs. State of Rajasthan and another³ and it has held as under:-

“7.The aforesaid view is also warranted by the fact that in the prevailing situation it will be a sheer waste of time and an empty formality to get the third sample also declared as deteriorated, by CFL. There may also be cases like the present one where the number of accused is more than three. In such cases there is no possibility of complying with individual prayers of all the co-accused to send different samples for reanalysis by CFL because statute requires preparation of only three samples.

8. For the aforesaid reasons we of the considered opinion that the view taken by the High Court in this case was erroneous and contrary to law. The view taken by us in this case gets support from a judgment of this Court in Girishbhai Dahyabhai Shah v. C.C. Jain though rendered in a different factual matrix. The impugned order is, therefore, set aside. As a sequel, the payer of the appellant before the High Court for quashing the criminal complaint stands allowed. The criminal appeal is also, thus, allowed.”

- 13.** In the matter of Mahyco Vegetable Seeds Limited (Now known as Maharashtra Hybrid Seeds Company Private Limited) and others v. State of Maharashtra and others⁴ the Supreme Court while considering pari-materia provisions contained in Section 16(2) of the Seeds Act, 1966, has held that vested right of accused/complainant to make an application to the court for sending a part of the sample to the Central Seed Laboratory is mandatory and since the sample has lost its shelf life, the accused is deprived of his valuable right of reanalysis and quashed the prosecution.

- 14.** Similarly, in the matter of Laborate Pharmaceuticals India

³ (2016) 7 SCC 474

⁴ (2017) 13 SCC 367

Limited and others v. State of Tamil Nadu⁵ considering Sections

25(3), 23(4) and 18-A of the Drugs and Cosmetics Act, 1940, while quashing the prosecution held as under:-

“7. The cognizance of the offence(s) alleged in the present case was taken on 4-3-2015 though it appears that the complaint itself was filed on 28-11-2012. According to the appellant the cough syrup had lost shelf life in the month of November 2012 itself. Even otherwise, it is reasonably certain that on the date when cognizance was taken, the shelf life of the drug in question had expired. The Magistrate, therefore, could not have sent the sample for reanalysis by the Central Laboratory.

8. All the aforesaid facts would go to show that the valuable right of the appellant to have the sample analysed in the Central Laboratory has been denied by a series of defaults committed by the prosecution; firstly, in not sending to the appellant manufacturer part of the sample as required under Section 23(4) (iii) of the Act; and secondly, on the part of the Court in taking cognizance of the complaint on 4-3-2015 though the same was filed on 28-11-2012. The delay on both counts is not attributable to the appellants and, therefore, the consequences thereof cannot work adversely to the interest of the appellants. As the valuable right of the accused for reanalysis vested under the Act appears to have been violated and having regard to the possible shelf life of the drug we are of the view that as on date of prosecution, if allowed to continue, would be a lame prosecution.”

- 15.** Reverting to the facts of the present case in the light of principle of law laid down by Their Lordships of the Supreme Court in the above-stated judgments (supra), it is quite vivid that the petitioners' right to get second sample analyzed by the Director of Central Food Laboratory is lost as product in question was manufactured in the month of July, 2008, sample was taken by the Food Inspector in July, 2008, but notice under Section 13(2) of the Act of 1954 was served to the petitioners on 11.5.2010 and in December 2008, product had lost its shelf life as sample was to be

5 (2018) 15 SCC 93

used before December, 2008, as such, there is inordinate delay in serving the notice under Section 13(2) of the Act of 1954 by which the petitioners have been deprived of their valuable and indefeasible right to get second sample of the product reanalyzed from Central Food Laboratory and they suffered great prejudice in getting the second sample analyzed specially when the report of the Director of the Central Food Laboratory supersedes the report of the public analyst, as such, entire prosecution against the petitioners deserves to be quashed on this ground alone.

16. For the foregoing reasons, proceedings initiated by the Chief Judicial Magistrate, Dhamtari by order dated 27.4.2010 and consequential proceedings against the petitioners are hereby quashed.

17. The CrMP is allowed to the extent sketched hereinabove. No cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE