

HIGH COURT OF CHHATTISGARH, BILASPUR**CR.M.P. No. 746 of 2014**

Rajendra Kumar, S/o. Shri Amarnath, Aged About 78 Years, Manager/
Nomeene, Shaktibhog Foods Limited, 72A, Shikshak Coloney, Gali No.
6, Samaepur, Delhi 110042.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through District Magistrate, Durg, Chhattisgarh
2. Khadya Evam Aushadi Prashashan, Police Station- Durg, District :
Durg, Chhattisgarh

---- Respondents

For Petitioner	: Mr. Praveen K. Dhurandhar, Advocate
For State/Respondents	: Mr. Anant Bajpai, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****15.01.2019**

Heard

1. The instant petition is against the order dated 20.06.2014 passed in Criminal Revision No.252/2013 by the Additional Sessions Judge, Durg, whereby the prosecution which was sought to be quashed was allowed to be continued. Further, it is contended that the case pertains to the Prevention of Food Adulteration Act, 1954 (*for short "the Act, 1954"*) and after samples were seized the prosecution was launched after self-life period of the product so seized, therefore, the prosecution itself cannot continue which needs to be quashed.
2. The brief facts of this case are that on 09.04.2004 the Food Inspector seized 1500 gm. of Shaktibhog Atta from opening 5 Kg bag from Sanjay Provision Stores, Titurdih, Durg. Thereafter, according to the rules, one part sent to the State Analysis Laboratory wherein on 22.06.2004 a report was received that the product so analyzed was adulterated. Subsequently, the prosecution was launched on

06.01.2005. The order sheet would show on 11.02.2006 the petitioner herein was enlarged on bail. Subsequently, he filed an application to send one of the seized article to the Central Food Laboratory for analysis, however, the petitioner since absented, as such, arrest warrant was issued. Subsequently, the petitioner again presented himself on 13.02.2013 and was bailed out and further filed an application to send the seized goods to the Central Food Laboratory. In response to it, the Food Inspector replied that since the seizure was made on 09.04.2004 and after 9 years, the seized article has lost its efficacy and also the entire papers were damaged, therefore, the second part of the seized article could not be produced and as such, the said application was rejected.

3. The present petition is against continuation of the prosecution. It is contended by the petitioner that Shaktibhog Atta was seized on 09.04.2004 and as per the seizure itself Annexure A-6, the self-life period was of four months, therefore, as per the manufacture date 08.04.2004 it would have expired on 08.08.2004. It is contended that the complaint was filed on 07.01.2005 after the self-life period itself has expired. Therefore, the petitioner lost his valuable right under Section 13(2) of the Act, 1954, as such, the prosecution cannot continue as it would be abused of process of law. Learned counsel for the petitioner relied on in case of ***M/s. Ramdev Food Products Pvt. Ltd. v. State of Chhattisgarh*** decided on ***17.08.2018 in CRMP No.1260 of 2017***.
4. Learned State counsel opposes the argument and submits that it is for the default of the petitioner itself, the goods could not be sent for analysis as after initial appearance on 11.02.2006 though the application was filed to send one of the sealed packet to the Central

Laboratory, the petitioner himself absented and again appeared in the year 2013. By the time, the product itself has lost its entire character. Consequently, the benefit of Section 13(2) of the Act, 1954 cannot be given to the petitioner.

5. Perusal of the documents would show that as per Annexure P-6, 1500 gm. of Shaktibhog Atta were seized on 09.04.2004. The self-life period of the same product was shown from the packet which is reported that best within four months from the date of manufacture. The packaging date of Shaktibhog Atta was shown to be 08.04.2004, therefore, the self-life period would expire in the month of August, if it is taken from 08.04.2004 to 08.08.2004.
6. 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.]”

7. 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, the order sheet would show that the complaint was filed on 06.01.2005. Further the order sheet would show that the Food Inspector received the information from the local Laboratory on 22.06.2004 and on that basis the prosecution was lodged on 06.01.2005. Therefore, it would show that after expiration of the self-life period of the product, the prosecution was lodged.

8. 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.”

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.

10. 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).
11. 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 under Section 13(2) of the Act, 1954. Therefore, the administrative delay, if any, cannot override the statutory mandate.
12. 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.863 of 2008 pending before the J.M.F.C., Durg stands quashed.

Sd/-
(Goutam Bhaduri)
Judge