

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No.312 of 2017**

1. Firm M/s Shalimar Chemical Works Private Ltd., 92E, Alipur Road, Kolkata (West Bangal), Pin-700027
2. Firm M/s Shalimar Chemical Works Private Ltd. 22 Vivekanand Nagar (Presently at : Behind Vasu Logistics, Ring Road No.1, Raipur, District Raipur-13 (CG)
Both Through Petitioner No.3 Lokenath Bhattacharjee Managing Director Firm M/s Shalimar Chemical Works Private Ltd., 93E, Alipur Road, Kolkata (West-Bengal) Pin-700027
3. Lokenath Bhattacharjee, aged 68 yrs, s/o P.N. Bhattacharjee, Managing Director Firm M/s Shalimar Chemical Works Private Ltd., 92E Alipur road, Kolkata (West-Bengal), Pin-700027

---- Petitioners

Versus

State of Chhattisgarh Through Sangharsh Kumar Mishra, Food Inspector, Food and Drugs Department, Chhattisgarh, Raipur District Raipur (CG)

---Respondent

For Petitioners	:	Mr.Sakti Raj Sinha, Advocate
For State/respondent No.1	:	Mr.Ravi Kumar Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****16/05/2019**

1. The petitioners have filed this petition under Section 482 of the CrPC for quashment of Criminal Case No.103/2014 (Sangharsh Kumar Mishra v. Vinod Vaidya and others) pending against them before the Judicial Magistrate First Class, Baikunthpur for offences punishable 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").
2. The respondent/State through its competent authority filed complaint before the jurisdictional criminal Court stating inter-alia that during the course of inspection of M/s Vijay Fancy Stores, three seal packed bottles of Shalimar Kachi Ghani Mustard Oil 500 ml. (Agmark Grade-

1) manufactured by petitioners No.1 and 2 company were seized as sample. Petitioner No.3 is Managing Director of the said company. It is the case of the petitioners that said oil was packed in the month of May, 2009 and shelf life of product in question was best before six months from its packaging. Thereafter sample was sent for chemical analysis and it was examined on 25.9.2009 and according to the report of Public Analyst, sample was found adulterated, but thereafter charge-sheet was filed before the jurisdictional criminal Court as late as on 23.11.2010 and thereby the petitioners are deprived of getting the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory which will prevail the report of Public Analyst, as such, prosecution launched against the petitioners deserves to be quashed.

3. Return has been filed by the respondent/State opposing the averments made in the petition under Section 482 of the CrMP.
4. Mr.Sakti Raj Sinha, 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 that no notice under Section 13 (2) of the Act of 1954 was given, whereas the product has been manufactured in May, 2009. He would further submit that same is solely attributable to the delay of the prosecution/respondent in not sending the notice under Section 13(2) of the Act of 1954 to the petitioners' company or to any other accused before the date indicated on the product and that has caused serious prejudice to the petitioners' company. He would further submit that complaint has been filed even beyond the period

of limitation and by that time, no notice under Section 13(2) of the Act of 1954 was served in the present case and on the date of analysis, the shelf life of the product has already been expired and thus, right of the petitioners' 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 and in light of the provisions contained in Section 13 (3) of the Act of 1954, therefore, initiation of proceedings against the petitioners deserves to be quashed.

5. On the other hand, learned State Counsel would oppose the petition and submit that cognizance has rightly been taken by learned Magistrate against the petitioners and no interference is called for and the instant petition deserves to be dismissed.
6. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the record with utmost circumspection.
7. 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).”

8. 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.

9. The law on this point is very well settled. Way back, in the matter of **Municipal Corporation of Delhi Vs. Ghisa Ram**¹, the Supreme Court has held that the right of accused 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. 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.”

10. Similarly, in the matter of **Girishbhai Dahyabhai Shah Vs. C.C.Jani and another**² the Supreme Court has held as under:-

“8. It will be apparent from the above, that only on receipt of report of the Public Analyst under sub-section (1) of the

1 AIR 1967 SC 970

2 (2009) 15 SCC 64

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.”

- 11.** 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.”

- 12.** 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

³ (2016) 7 SCC 474

⁴ (2017) 13 SCC 367

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.

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

- 14.** 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'

⁵ (2018) 15 SCC 93

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 May, 2009, sample was taken by the Food Inspector on 24.6.2009, but notice under Section 13(2) of the Act of 1954 was not served to the petitioners and on 30th November, 2009, product had lost its shelf life as sample was to be used before 30th November, 2009, as such, there is no 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 as report under Section 13(3) of the Act of 1954 will prevail over the report of Public Analyst under Section 13(2) of the Act of 1954 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.

- 15.** For the foregoing reasons, proceedings initiated by the Judicial Magistrate First Class, Baikunthpur in Complaint Case No.103/14 against the petitioners are hereby quashed.
- 16.** The CrMP is allowed to the extent sketched hereinabove. No cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE