

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.3197 OF 2009

Chandrabhan s/o Harishchandra Gupta,
Age 47 years, Occu: Trader,
R/o. M/s. Gupta Sweet Shop,
At and Post : Nimbhora, Tal. Raver,
District: Jalgaon.

...Applicant
Original accused

Versus

The State of Maharashtra,
Through the Food Inspector,
Food and Drugs Administration,
Jalgaon.

...Respondent

...

Mr.Y.K. Kanade h/f Mr. Hemant Surve, Advocate for Applicant.
Mr. A.S. Shinde, APP for the Respondent-State.

...

**CORAM : N.B. SURYAWANSHI, J.
DATED : 11th DECEMBER, 2019.**

ORAL JUDGEMENT:-

. By this application, the applicant challenges the order passed below Exhibit-1 by the learned Judicial Magistrate, First Class, Raver in R.C.C. No.139 of 1999, thereby directing to frame charge against the accused-applicant for offence under Section 7(i) r/w Section 2(ia)(a) and 2(ia)(j) and Section 7(v) r/w Rule 23, 27, 29 and Section 7(v) r/w Rule 5 of Maharashtra Prevention of Food Adulteration Rules, 1962 punishable under Section 16 of Maharashtra Prevention of Food Adulteration Act (in short 'said Act, said Rules').

2. The prosecution case in short is that on 14.08.1998 at 13.00 hrs, the complainant visited the premises of the accused. The accused is a manufacturer of the Bundi Laddu, which was stored in his premises for sale. The complainant purchased 1500 gms Bundi Laddu and paid the consideration amount of Rs.25/-. Notice under Form-VI was issued by the complainant to the accused intimating that the sample was taken for analysis. The sample of Bundi Laddu was divided into three parts and one part was sent to the Public Analyst, Jalgaon. On 17.09.1998, report was received from the Public Analyst stating that the sample does not conform the prescribed standards and contains synthetic colour viz metanil yellow and hence contravenes Rule 23 of P.F.A. Rules. Thereafter, consent was sought by the complainant, which according to him was received on 10.08.1999 and thereafter, the complaint was filed on 30.08.1999, which was numbered as Criminal Case No.139 of 1999 in the Court of learned J.M.F.C., Raver.

3. Evidence before charge was recorded. The complainant examined two witnesses in support of the complaint including the complainant himself and one panch witness.

4. After recording the evidence, the learned Trial Court heard both the sides on the point of framing of charge

and came to the conclusion that there is sufficient material on record to proceed against the accused and hence, proceeded to frame charge against the accused for the offences as mentioned above.

5. The present application challenges the order of framing of charge. Heard the learned counsel for the applicant, who assailed the impugned order mainly on the ground that there was delay in sending the sample to the Public Analyst in terms of Section 11(3) of the said Act. The sample has to be sent on the next working day whereas, though the sample was taken on 14.08.1998, it was belatedly forwarded to the Public Analyst, on 17.08.1998. The report of the Public Analyst was received after one month on 17.09.1998. Thereafter, the consent was granted almost after a lapse of one year, so also the complaint was lodged after the lapse of one year. No opportunity was given to the applicant to get the sample analyzed from the Central Food Laboratory, as no notice in that behalf was given to the applicant within prescribed time. Belatedly on 01.09.1999 after lodging of the complaint, notice under Section 13(2) was given to the applicant stating that, if the applicant so desires he may get the sample analyzed from the Central Food Laboratory in terms of Section 13(2). Even this notice was issued after one year from the date of taking

sample and from the receipt of the Public Analyst report. Thus for violation of provisions of Section 11(3) and 13(2) of the said Act, the prosecution is liable to be quashed, so also the impugned order of the learned Magistrate directing to frame charge against the present applicant.

6. The learned APP on the other hand supports the impugned order and states that the learned Trial Court has given cogent reasoning and has properly applied its mind to the complaint, evidence before charge and no fault can be found with the order impugned in the present application.

7. Perused the criminal application and the annexures annexed thereto with the able assistance of both the learned counsel.

8. It is admitted fact on record that the sample was taken on 14.08.1998 and it was belatedly sent to the Public Analyst on 17.08.1998, in terms of Section 11(3) of the said Act, the sample has to be sent on the next working day, which is not done in the present case. Similarly, though the report of the Public Analyst was received on 17.09.1998, the consent was granted only on 10.08.1999 i.e. after almost one year after the report was received. Thereafter, the complaint came to be lodged on 30.08.1999, which is also one year after the sample was taken and the report of the Public Analyst was received. For the first time the applicant

was called upon to get the sample analyzed through Central Food Laboratory, vide communication/notice dated 01.09.1999, which was also beyond one year from the date of receipt of the Public Analyst report. Therefore, the applicant was deprived of his valuable right of getting the sample analyzed from the Central Food Laboratory and there is clear violation of Section 13(2) of the said Act and on this ground alone, the prosecution is liable to be quashed and set aside.

9. Even if the evidence before charge is taken into consideration, the food inspector has given vital admissions in his cross-examination stating that, the copy of the report of Public Analyst is not sent to the accused by him either by R.P.A.D. or personally. He did not request the Local Health Authority specifically to send copy of the report of the Public Analyst to the accused. He was not in a position to say after going through Exhibit-37, whether that letter was received by the accused or not. His admissions are fatal to the prosecution case as violation of Section 13(2) of the said Act is admitted by him. So far as PW-2 is concerned, he has turned hostile and is of no help to the prosecution.

10. In the facts and circumstances of the case, the learned Trial Court appears to have erred in directing framing of charge against the accused, in absence of any

material on record to frame charge. The learned Trial Court has failed to appreciate that on the part of the complainant there is violation of Section 11(3) and 13(2) of the said Act. The complainant has failed to follow the procedure mandated in law due to which the accused was deprived of his right to get the sample analyzed in Central Food Laboratory. In these circumstances, the learned Magistrate ought to have discharged the accused. The impugned order passed by the learned Trial Court is therefore unsustainable in law and facts of the case.

11. The learned counsel for the applicant was justified in placing reliance in the case of ***“Chandrakant Gulabchand Pardesi and Another Vs. State of Maharashtra and Another, 2008(4) Mh.L.J.(Cri) 345”***, wherein in the similar facts the Division Bench of this Court has come to the conclusion that, the prosecution failed to establish the mandatory requirement under Section 13(2). It is held that mere forwarding of the Public Analyst report along with notice under Section 13(2) to the accused is not sufficient in absence of evidence of receipt of the same by the accused. On the ground of non-compliance of Section 13(2), this Court confirmed the order of the Trial Court holding that there was non-compliance of provisions of Section 13(2) of the Act.

12. In light of the above discussion, as notice under Section 13(2) was given to the applicant after the shelf life of Bundi Laddu was over, there is clear violation of the provisions of Section 13(2) of the said Act. Hence the impugned order is unsustainable and the prosecution lodged against the applicant is liable to be quashed and set aside. Hence, the following order:

ORDER

- I) The impugned order passed by the learned Magistrate below Exhibit-1 in R.C.C. No.139 of 1999 is hereby quashed and set aside.
- II) The proceedings of R.C.C. No.139 of 1999 pending on the file of the learned J.M.F.C. Raver, District Jalgaon are hereby quashed and set aside.
- III) Rule made absolute in the above terms.
- IV) There shall be no order as to costs.

(N.B. SURYAWANSHI, J.)