

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

254 CRIMINAL APPLICATION NO. 5205 OF 2011

Manish s/o Nandkishor Pediwal,
Prop.: Gayatri Agencies,
Age : 33 years, Occu.: Busines,
R/o.: Shop No.7, Poonamraj Arked,
Jafargate, Aurangabad. ... APPLICANT

VERSUS

1. The State of Maharashtra,
Through : Food Inspector,
Food and Drugs Department
Maharashtra State :
Mr. Laxman Angadrao Darade,
Nath Super Market, Aurangpura,
Aurangabad.
2. Vimalkumar s/o B. Jain,
Age : Major, Occu.: Business,
Owner and supplier of
M/s. Vishal Enterprises,
9/1, ware house road, Indore (M.P.) ... RESPONDENTS

...
Mr. R. R. Chandak, Advocate for Applicant
Mr. A. S. Shinde, APP for Respondent No.1-State
Mr. Avinash Patil h/f Mr. S. S. Chapalgaonkar, Advocate for
respondent No.2

...

CORAM : N. B. SURYAWANSHI, J.

DATE : 10th DECEMBER, 2019

ORAL JUDGMENT :-

1. Learned counsel Mr. R. R. Chandak, states that Mr. P. K. Lakhotiya is appointed as AGP and hence he files Vakalatnama on behalf of the applicant. The same is taken on record.
2. The learned counsel representing respondent No.2 states that respondent No.2 is no more and this fact is recorded in the final order passed in Criminal Application No. 4075 of 2013, dated 12th March, 2014.
3. The learned counsel for the applicant states that during the pendency of the present criminal application, the proceeding is transferred to the Court of Judicial Magistrate, First Class, Corporation Court, Aurangabad and renumbered as SCC No. 199 of 2010. He, therefore, prays for leave to amend the prayer clause. Leave to amend is granted. Amendment to be carried out forthwith.
4. Heard learned counsel for the applicant and the learned APP. Perused the criminal application and annexures

thereto.

5. This application is filed seeking quashing of the complaint SCC No. 3803 of 2010 (now numbered as SCC No. 199 of 2010) pending in the Court of JMFC, Corporation Court at Aurangabad and the order of issuance of process therein.

6. Admitted facts can be summarized as follows :

The applicant, retailer purchased sealed packet of 1Kg and 500 grams of 'Sangam' brand pure Ghee from respondent No.2 on 12.01.2010. On 15.01.2010, the Food Inspector visited the shop of the applicant and purchased three 1Kg jars and three 500 grams jars of 'Sangam' pure ghee. On the same day, two samples were forwarded to the Public Analyst. Report of the Public Analyst dated 09.02.2010 was received by the Food Inspector on 04.03.2010. After completing necessary formalities, the Food Inspector lodged complaint under Sections 7(i), 2(ia)(a), 2(ia)(m) and Section 16 of the Prevention of Food Adulteration Act, 1954 (for short 'said Act') against the applicant.

7. On 05.07.2010 notice under Section 12(2) of the said Act was issued to the applicant by the complainant, which was received by the applicant on 13.07.2010. It is pertinent to note that, by that time the shelf life of the ghee had already expired.

8. The complainant Food Inspector, lodged two separate complaints, one in respect of the purchase of three packets of 1Kg ghee which was numbered as SCC No.199 of 2010 and the second complaint was lodged in respect of 500 grams ghee packets i.e. SCC No.200 of 2010.

9. The learned counsel for the applicant challenged the complaint mainly on the ground that since the complaint was lodged after the expiry of the shelf life of the ghee, valuable right of the applicant to get the sample analyzed from the Central Food Laboratory is violated and in view of the authoritative pronouncements of this Court, the prosecution is unsustainable and the same is liable to be quashed and set aside.

10. The learned counsel for the applicant pointed out decision of this Court in Criminal Application No. 4075 of 2013, wherein the present applicant had challenged the initiation of prosecution, in respect of 500 grams ghee containers, which was allowed by this Court vide order dated 12.03.2014. By placing reliance on the same, the learned counsel for the applicant would urge that since facts are identical so also the parties and as that criminal application was allowed, the present application needs to be allowed.

11. The learned APP while opposing the application urge that in terms of Section 19, the prosecution will discharge its burden at the time of trial and in terms of Section 13(2) the Food Inspector has made all necessary compliance and hence, the present application being meritless deserves to be dismissed.

12. On going through record it is clear that 'Sangam' pure ghee, purchased by the first respondent was manufactured in January, 2010 and it was in sealed packets and it was printed on the packet that the same is best before six months from the

date of manufacture. Though Public Analyst report dated 09.02.2010 was received by the first respondent, on 04.03.2010 the complaint was belatedly lodged on 23.06.2010. Notice under Section 13(2) of the said Act was issued to the applicant only on 05.07.2010, and it was received by the applicant on 13.07.2010, which was after expiry of shelf life of the 'Sangam' pure ghee. Thus, a valuable right accrued to the applicant in terms of Section 13(2) of the said Act was defeated due to the delay caused by the complainant-first respondent and on this ground alone, the application deserves to be allowed.

13. So far as the argument of learned APP that in terms of Section 19, burden will be discharged by the complainant during trial is concerned, the same cannot be accepted in the facts of the present case when violation of Section 13(2) of the said Act is apparent on the fact of record, there is no question of permitting the prosecution to continue which according to this Court would be abuse of process of law.

14. It is a matter of record that two cases were filed by the first respondent for the same visit, in which 500 grams sealed jars and 1 Kg jars of brand 'Sangam' ghee were seized on 15.01.2010. Admittedly, the initiation of the complaint in respect of 500 grams jar was challenged by the applicant by filing Criminal Application No. 4075 of 2013, which was allowed by this Court. The facts of the present case being identical, the present application needs to be allowed in terms of the order passed in Criminal Application No. 4075 of 2013. Hence, the following order.

ORDER

- I) Criminal Application is allowed in terms of prayer clause "C".
- II) Rule is made absolute in the above terms with no order as to costs.

(N. B. SURYAWANSHI, J.)

vsm/-