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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL APPLICATION NO.3405 OF 2002

1. Prakash Bondre
16, Swarna Society, Near Gurukul,
Panchpakhadi,
Thane (W) 400 602.
2. Cadbury India Limited, a
Company incorporated under
Indian Companies Act, 1913,
having its Registered Office at
Cadbury House,
19, Bhulabhai Desai Road,
Mumbai 400 026.

...Applicants
(Original Accused Nos.1 & 2)

Versus

The State of Maharashtra at the
instance of Shri S.V Botre,
Food Inspector, C/o. The Joint
Commissioner (Konkan Division)
Food and Drug Administration (M.S.)
E S I S Hospital, 4th Floor,
Wagle Estate, Thane.

...Respondent
(Original Complainant)

Ms.Kirti Parikh a/w Mr.Manik Joshi i/b Mr. Prem J. Ranga, for the
Applicants.

Ms. P. P. Shinde, A.P.P for the Respondent - State.

CORAM : REVATI MOHITE DERE, J.

DATE : 4th NOVEMBER, 2019

ORAL JUDGMENT :

1. By this application filed under Section 482 of Code of Criminal Procedure, the applicants are seeking quashing and setting aside of the order issuing process dated 25th August, 2000, as against the applicants, as well as the the complaint filed by the Respondent.

2. A few facts as are relevant are as under:-

On 16th January, 1997, Food Inspector Mr. S. V. Botre visited the factory of Cadbury India Limited (Applicant No.2) and drew sample of 750 gms of Soya Flour from stitched packed plastic bag kept in the premises of Cadbury India Limited (Applicant No.2). After completing the necessary formalities, the respondent sent the sample to the Public Analyst for analyzing the said sample, on 17th January, 1997. The respondent received the Public Analyst Report dated 14th February, 1997, on 24th February, 1997. On 31st January, 2000, the respondent filed a complaint as against the applicants in the Court of the learned Judicial Magistrate First Class, Thane, for the alleged offences punishable under Section 7(i), Section 2(ia) (a), Section 2 (ia) (h) and Section 17 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the said Act'). The said case was numbered as Criminal Case No.24 of 2000.

3. The aforesaid facts are undisputed. It is pertinent to note that after a lapse of 3 years, the aforesaid complaint was filed by the Respondent.

4. Learned Counsel for the Applicants submits that the complaint was filed belatedly after more than 3 years and as such the applicants valuable right under Section 13(2) of the Prevention of Food Adulteration Act, was frustrated because of the said delay in lodging the complaint, inasmuch as, by the said time the sample was of more than 3 years. Learned Counsel relied on the Judgments in the cases of ***M. Ismail and Others v/s The State of Maharashtra***¹, ***Shivkumar alias Shiwalamal Narumal Chugwani, Proprietor of Kanhaiya General Stores v/s State of Maharashtra***²; ***State of Maharashtra v/s Shivkumar @Shiwalamal N. Chugwani***³, ***Himanshu son of Hemant Acharya and Others v/s The State of Maharashtra***⁴, ***R. Narayan Swamy and Another v/s The State of Maharashtra and Another***⁵, ***Marico Limited and Ors v/s State of Maharashtra and Anr.***⁶, ***Ashutosh Bhailal Rao and Ors v/s The State of***

12007(2) FAC 445

2 MANU/MH/0588/2010

3 Special Leave to Appeal (Cri) No.6332/2010 decided on 13.09.2010.

4 Cr.Appln.559 of 2011 decided on 19.12.2011

5 Cr.Appln.173 of 2012 decided on 15.02.2013

6 2016 SCC Online Bom 12606

Maharashtra⁷, in support of his submission.

5. Learned APP does not dispute the fact, that the complaint was filed after 3 years. She also does not dispute the proposition laid down in the aforesaid Judgments and that the applicants right under Section 13(2) of the said Act, was frustrated because of the said delay in lodging the complaint.

6. As noted above, the Food Inspector had visited the factory of the Applicant No.2 on 16th January, 1997 and had drawn samples of 750 gms of Soya Flour. On 17th January, 1997, the respondent sent the said sample to the Public Analyst; on 24th February, 1997, the respondent received the report of the Public Analyst dated 14th February, 1997 and on 31st January, 2000, the respondent filed a complaint as against the applicants in the Court of the learned Judicial Magistrate, First Class Thane. On 7th February, 2000, the Health Officer, Thane Mahanagarपालिका served a copy of the Public Analyst Report on the applicants. The product was Soya Flour, a perishable item. Admittedly, the complaint was filed almost after 3 years. The copy of the Public Analyst Report was also served on the applicants on 7th February, 2000, by which time, the product had become a

⁷ Cri.Appln. No.2019 of 2006 decided on 11.12.2017.

perishable item. The delay in filing the complaint resulted in annulling the applicants right to get the sample analysed by the Central Food Laboratory as provided under Section 13(2) of the said Act.

7. Having perused the Judgments relied upon by the learned counsel for the applicants, it is evident that even in the present case, the right accorded to the applicants under Section 13(2) of the said Act, was frustrated because of the inordinate delay in filing the complaint, resulting in vitiating the applicants right guaranteed to them under Section 13(2) of the said Act.

8. Accordingly, the application is allowed. The order of issue process dated 25th August, 2000, is quashed and set aside and consequently the complaint filed by the Respondent as against the applicants being Criminal Case No.24 of 2000, is also quashed and set aside.

9. Rule is made absolute in above terms.

10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.