

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

CRIMINAL WRIT PETITION NO.1611 OF 2016

- 1) M/s Sunny Spices Pvt Ltd.
Situating at :
C.C.8/2220 Alathkutti Road,
Cochin-682 002, Kerala State.
- 2) Shri Rajkumar Hariprasad Agrawal
(Resp.No.2 is deleted)
- 3) Sau. Poonam Rajkumar Agrawal
Age: 59 Yrs., occu. Business,
Director of M/s
Sunny Spices Pvt Ltd.
R/o C.C.8/2220 Alathkutti Road,
Cochin-682 002,
Kerala State.

= PETITIONERS
(Orig.Accused Nos.
4, 2, & 3)

VERSUS

- 1) The State of Maharashtra
- 2) Shri Satish V.Khairnar
Food Inspector, F.D.A.
Jalgaon Office of therefore
Asstt.Commissioner, F.D.A.,
Dr.Ambedkar Market,
Jalgaon.

= RESPONDENTS
(Resp.No.2 is orig.
complainant)

Mrs.Rashmi S.Kulkarni, Advocate for Petitioner/s
Mrs.R.P.Gour, APP for Respondent-State

CORAM : SMT.VIBHA KANKANWADI,J.

RESERVED ON : 16th December, 2019
PRONOUNCED ON : 8th May, 2020

JUDGMENT

1. Rule.
2. Rule is made returnable forthwith with consent of

both the parties and matter is taken for final hearing at the stage of admission itself.

3. Present petition has been filed by the original accused, invoking the constitutional powers of this Court under Article 227 of Constitution of India and the inherent powers under Section 482 of Code of Criminal Procedure for quashing and setting aside order passed in Criminal Revision Application No. 55 of 2015 dt. 21-09-2016 by learned Sessions Judge, Jalgaon and also to challenge the order passed below Ex.1 in Regular Criminal Case No. 573 of 2006 dt. 26-11-2014 passed by learned Chief Judicial Magistrate, Jalgaon.

4. The factual matrix, leading to the petition are that, Petitioner No.1 is the private limited company dealing in stocking, selling and supplying food articles. Petitioner Nos.2 and 3 are the Directors of petitioner No.1. They stood prosecuted in the said criminal case filed by present respondent No. 2. (The parties are hereinafter referred to by their nomenclature before the trial Court).

5. Complainant contended that he had visited one shop by name M/s. Ganesh Supari Shop No. 8, Shriram Market, Jalgaon on 27-07-2005 at about 2.00 p.m. with panch witness. Original accused No.1 was at the shop and was found storing 'Black Pepper (whole)' for sale. It was stored in 5 gunny bags. The gunny

bags were tied with jute thread (*sutali*). The bags were labelled as '25 G. S. Swati Best Attom Black Pepper'. Complainant had taken sample of 750 gms of said black pepper, after disclosing his identity, in presence of panch witness. The sample was then divided into three parts in clean polythene bags, separately and then they were sealed. After completing the other formalities, complainant had sent one sample for analysis to the Public Analyst, Pune on 28-07-2005. Report was received by the complainant on 10-10-2005; wherein it was stated that the sample contravenes the provisions of Section 2 (i) (f) of Prevention of Food Adulteration Act, 1954 (hereinafter referred to as PFA Act). After seeking consent from Joint Commissioner (Nasik Division), complaint was filed on 27-11-2006.

6. Learned Chief Judicial Magistrate had issued process against the accused persons by passing order on the same day i.e. 27-11-2006. Thereafter, the learned Magistrate had directed that the proceedings be tried as summary case by passing an order to that effect on 19-09-2009. But then it was observed that since it was orally agreed that the case would proceed as regular trial, evidence before charge was recorded. After considering that evidence, it was observed that there is prima facie case to frame charge and accordingly order was passed on 26-11-2014.

7. Petitioners have contended that the Magistrate had issued summons only to original accused Nos.1 to 4; however, in

his order dt.26-11-2014, it was directed that the charge would be framed against original accused No.5 also i.e. present petitioner No.2. Petitioner No.2 was arrayed as proprietary concern however, petitioner No. 3 is said to be the Director of accused No. 4, private limited company. Thus, learned Magistrate erred in passing the order of framing charge against accused No.5, against whom summons was not issued. It has been further contended that the learned Magistrate failed to consider that the particulars of the product which was collected by complainant had not mentioned that there were either living or dead insects or grubs or leaves or dust in the sample. However, the report of the Public Analyst makes a mention about it. Other discrepancies were not taken into consideration. Another fact was not considered was that the Analyst did not examine the product in 40 days period, which was mandatory in view of Rule 7 (3) of Prevention of Food Adulteration Rules of 1955. The name of the product also differs and therefore, the order, that was passed by the learned Magistrate for framing charge, is wrong. The petitioners have therefore, prayed for setting aside the same.

8. Affidavit-in-reply has been filed by Mr. Milind Damji Shah, Asstt. Commissioner (Food), Food and Drug Administration, Jalgaon on behalf of respondent Nos.1 and 2. The story in the complaint has been narrated again and it has been further stated that sample was properly collected by the complainant in presence of panch witness. 750 gms of black pepper was taken

from the gunny bag having label of 25 G.S. Swati Best Attom Black Pepper. The sample shows that black pepper (whole) had few living and dead insects and grubs when it was analyzed by the Public Analyst. It was sufficient for framing charge against the accused persons. The learned Sessions Judge has rightly dismissed the revision. There is no merit in writ petition, hence, he prayed for its dismissal.

9. Heard learned Advocate Ms.R.S.Kulkarni for petitioners and learned A.P.P. Ms. R.P.Gour for respondents. In order to cut short, it can be said that both of them have made submissions supporting their respective contentions.

10 At the outset, it has to be borne in mind that the petitioners are not only challenging the order of framing the charge against them, but also the entire proceedings also. No doubt, the complaint was filed in 2005 against them and no immediate action to challenge the proceedings was initiated by them. Therefore, for the purpose of prayer for setting aside the entire proceedings is concerned, the petition suffers from delay and laches. We are, therefore, required to restrict ourselves to the prayer of challenging the order of framing the charge. Though ground has been taken that though accused No.5 was not summoned, yet charge is directed to be framed against him; yet it is to be noted that name of petitioner No.2 (original accused No. 2 as well as 5) came to be deleted by the order passed by this

Court on 08-11-2019. Therefore, we need not go into that ground now. However, observation can be made that name of accused Nos.2 and 5 is same; however, at one place he has been shown to be the Director of original accused No. 4 and at another place he is said to be the sole proprietor of accused No.4. This shows that complainant had not applied his mind at the time of drafting the complaint. Accused No.4 has been posed as private limited company at one place and at another place it is shown as sole proprietor. This is impossible.

11. Petitioner No. 3 is the Director of petitioner No.1 (original accused No. 4). When we consider the petition for reliefs prayed by petitioner Nos.1 and 3, then the first ground raised by them is that when the sample was taken, the product was described as 'G. S. Swati' as per the receipt. At other places it is stated that the sample of '25Kgs Swati Best Attom Black Pepper'. Therefore, the description does not match. Perusal of the documents would show that there is substance in the said point. The receipt for the purchase of the sample, contents of the panchnama would show that product by name 'G. S. Swati' was purchased. No doubt it is mentioned in the receipt that the said product is 'black pepper'. However, we can not give concession to even minor discrepancy for the simple reason that there are so many products in the market having similar name, look, features, etc. Slight difference may also go to the root of the case. Therefore, advantage of this wrong description should go to

accused persons.

12. The second ground is that the particulars of the product stated in panchnama does not disclose that there was any living or dead insects or grubs; yet, the report of the Public Analyst says so. We are required to consider this ground on the basis of available record. The panchnama rather depicts a picture that there was no such contamination of the product when it was purchased. If there would have been such living or dead insects, then panchnama would have made a specific mention about it. Complainant has given his evidence before charge. There is no explanation about this situation in his examination-in-chief. However, the report of the Public Analyst makes a specific mention. It is important to note that the sample was collected on 27-07-2005. It was sent to Analyst on 28-07-2005. It is stated to have reached the Analyst on 02-08-2005; however, the process of analysis is stated to have started from 19-09-2005 to 23-09-2005. The report was signed on 29-09-2005. Thus, there is no compliance of Rule 7 (3) of the Rules of 1955. It is a mandatory rule, which prescribes sample to be tested within 40 days. The Public Analyst has neither given any explanation for delayed examination/analysis in his report nor he was examined before the Charge. As to which precautions were taken at the office/ laboratory, after the sample was received, has not been mentioned in the report. When there was no contamination when the sample was collected and it has been noticed only when the

sample was taken for analysis, then unless those circumstances are explained, it can not be even a prima facie case for framing charge. This point regarding belated analysis has not even been considered in the consent taken by the complainant for prosecuting accused persons. If there is no compliance of mandatory provisions, then the benefit of the same should go to accused persons only. I do not agree with the observations by the learned Revisional Court that variance between the particulars about contamination and non-contamination of the article in report as well as panchnama will not result in acquittal of the accused, if remains unrebutted. Merely because the accused is yet to complete the cross-examination of prosecution witness, we can not say that we can not look to these major discrepancies and non-explanation of the same by the prosecution. In fact, when the complainant himself in his cross-examination, to whatever extent it has been taken, has admitted that he had not noticed living or dead insects and grubs in the sample. The simple fact is that whenever living or dead insects are found in any food article, then it is obviously not fit for human consumption. Even the report of an expert may not be required under these circumstances. However, in this case, this contamination is noticed by the analyst when he took that sample for examination. When this part remains unexplained, then whether to cross-examine the complainant or not, the result would be acquittal. The offence is very technical offence and it requires strict adherence of Rules those are framed under the PFA

Act itself. The purpose for which the Rules are framed is also obvious as the PFA Act deals with food articles, which have their own shelf life because of the perishable nature. Though in this case, the prosecution evidence has not yet come to an end, yet another fact, that is required to be considered, that when already the sample which was sent to Public Analyst had living or dead insects and grubs, then what is the situation of the other parts of the sample? No doubt, at the stage of framing of charge, the Magistrate is required to consider prima facie case only; however, while considering this prima facie case, if certain explanations are not coming forward in the documents itself, then benefit of the same should be given to accused persons, by holding that prima facie case is not shown for even framing charge.

13. Learned Revisional Court erred in not considering all the points in detail. Learned Revisional Court failed to consider that the non-submission of explanation for contamination of food articles at the time of analysis, non-observance of mandatory provision for analysis are the important points, which, if remain unrebutted, would result in acquittal of the accused persons. The revision petition ought to have been allowed. There is merit in the revision. Order of framing of charge against present petitioners deserves to be set aside. Hence, following order.

ORDER

- i. Writ Petition stands allowed.

- ii. The Judgment and order dt. 21-09-2016 passed by learned Sessions Judge, Jalgaon in Criminal Revision Application No. 55 of 2015, is hereby set aside.
- lii. The said revision application stands allowed.
- iv. The Order of framing of charge, passed against present petitioners in Regular Criminal Case No.573 of 2006 dt. 26-11-2014 by learned Chief Judicial Magistrate, Jalgaon, is hereby set aside.
- v. The present petitioners stand discharged.
- vi. Rule is made absolute on above terms.

(SMT. VIBHA KANKANWADI, J.)

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