

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on 27.09.2021****Order Delivered on 16.11.2021****Cr.M.P. No. 1249 of 2017**

- M/s. K. L. F. Nirmal Industries Pvt. Ltd., P. O. Box No. 40 F.R.S. Dismas Road, Iranjala Kula 68012, District- Trissur (Kerala) through Authorized Representative Shailendra Kumar Swarnakar son of A. L. Swarnakar.o.162, Janta Colony, Gudhyari, Raipur (C.G.)

---- Petitioner**Versus**

- State of Chhattisgarh, Through Dr. Ashwini Kumar Dewangan, Food Security Officer, Food and Drugs Administration, District- Raipur (C.G.).

---- Respondent

For Petitioner : Mr. G. D. Vaswani, Advocate
 For Respondent/State : Mr. Devendra Pratap Singh, Dy. Advocate General.

Hon'ble Shri Justice Narendra Kumar Vyas**Order [CAV]**

1. Petitioner – M/s. K. L. F. Nirmal Industries Pvt. Ltd. has filed present petition under Section 482 of the Cr.P.C. for quashment of Criminal Case pending in the Court of Judicial Magistrate First Class, Durg (C.G.), which was initiated on the basis of complaint filed by Food Security Officer for alleged commission of offence punishable under Section 16 (1) (a) (i) of Prevention of Food Adulteration Act, 1954 (henceforth “The Act, 1954”).
2. The brief facts, as projected by the petitioner, are that respondent/complainant filed a complaint before the Chief Judicial Magistrate, District Korba, (C.G.) for alleged violation of Section 7(i) of the Act, 1954, which is punishable under Section 16 (1) (a) of the Act, 1954 and the Prevention of Food Adulteration Rules, 1955 (in short “Rules, 1955). It has been contended in the

complaint by respondent that on 23.09.2009, the Food Inspector had purchased 4 bottles of packed K.L. Nirmal coconut oil each containing 200 M.L. of oil, from Shri Hiralal Jaswani, S/o Shri Jethanand Jaswani, Proprietor of Ganpati Sales Marwadi School Premises, Motipara, Durg, for being analyzed by the Public Analyst. It has further been contended that label, affixed to bottles of oil, contained a statutory declaration that the oil was manufactured in the month of May, 2009 and was best up to 9 months from its manufacturing. Thus, the shelf life of the article of food was from May, 2009 to the month of January, 2010. Accordingly, one part of the said samples was sent by Local Health Authority to the Public Analyst, Raipur for analysis. The Public Analyst vide its report dated 25.10.2009 reported that the article of food to be adulterated as per standards/provision laid down under the prevention of Food Adulteration Rules, 1955.

3. After receiving of Public Analyst report in which he opined that the sample was found to be adulterated, the sanction was granted by Deputy Director, Food & Drug Administration, Durg on 27.12.2011 for filing the present complaint against the present petitioner. After getting sanction from Deputy Director, Food & Drug Administration, Durg, the complaint was filed on 2.12.2012 before the Judicial Magistrate, First Class, Durg, which was registered as Criminal Case No. 88/2013 for alleged violation of Section 7(i) of the Act, 1954, which is punishable under Section 16 (1)(a) of the Act, 1954 and the Prevention of Food Adulteration Rules, 1955. After filing of the complaint on 02.12.2012, in compliance of Section 13(ii) of the Act the Local Authority has issued notice to the Vendor after filing of complaint on 04.02.2012 advising the petitioner to file an application within 10 days before the concerned court for sending the sample for testing by Central Laboratory. The notice dated 04.12.2012 is extracted below for ready reference:-

“विषयांतर्गत मेसर्स गणपति सेल्स, मारवाड़ी स्कूल परिसर, मोतीपारा दुर्ग जिला-दुर्ग स्थित श्री हीरालाल जसवानी, आ. श्री जेठानंद जसवानी के हस्ते दिनांक 23.09.09 को श्री अखिलेख कुमार श्रीवास्तव खाद्य निरीक्षक कार्यालय नियंत्रक, खाद्य एवं औषधि प्रशासन छ.ग. रायपुर द्वारा खाद्य पदार्थ पैकड के.एल.एफ. निर्मल कोकोनेट ऑयल का नमूना जांच

वास्ते क्रय कर भेजा गया था । उक्त नमूने का जांच प्रतिवेदन श्री एस.सी. वर्मा लोक विश्लेषक राज्य खाद्य प्रयोगशाला छ.ग. रायपुर के जाँच प्रतिवेदन क्रं./एफ.टी.एल./एस.सी.व्ही./09/एस-849 दिनांक 28.10.09 द्वारा अपमिश्रित घोषित किया गया है ।

अतः आपके विरुद्ध खाद्य अपमिश्रण निवारण अधिनियम 1954 की धारा 7/16 के अंतर्गत प्रकरण माननीय मुख्य न्यायिक दण्डाधिकारी, दुर्ग के न्यायालय में दिनांक 02.02.2012 को दायर किया है जिसका प्रकरण क्रं. 262/12 पर दर्ज किया गया है जिसकी आगामी पेशी दिनांक 16.04.2012 नियत है ।

अस्तु यदि आप उक्त नमूने के द्वितीय भाग को जिसके दो भाग इस कार्यालय में सुरक्षित रखे हैं कि जांच केन्द्रीय खाद्य प्रयोगशाला द्वारा कराना चाहते हैं तो आप इस पत्र प्राप्ति से दस दिवस के अंदर उक्त न्यायालय में इस आशय का आवेदन प्रस्तुत कर आवश्यक कार्यवाही करें । लोक विश्लेषक के जांच रिपोर्ट की एक प्रति संलग्न है ।”

4. Learned counsel appearing for the petitioner would submit that there is violation of Section 13(2) of the Act, 1954 as there is delay on the part of the respondent No.2 / complainant to send the sample for analysis to the Referral Laboratory after expiry of shelf life of the product because the month of manufacturing of sample is May, 2009 and the sample of the product was taken by the Food Inspector/complainant on 23.09.2009 whereas sample was analyzed by the Public Analyst on 25.10.2009 and the complaint was filed against the petitioner on 02.02.2012 The complaint was filed after shelf life of the product i.e. two years & one month from the date of its manufacturing and no opportunity was given to the petitioner for analyzing by the Central Food Laboratory which is violation of Section 13(2) of the Act, 1954 affecting the right of the petitioner adversely as the product went outside it's shelf life in the month of January, 2010, when the complaint was filed, therefore, the proceedings are liable to be quashed by this Court.
5. The State has filed its reply, in which, they have contended that the Public Analyst, State Food Testing Laboratory received the sample on 24.9.2009 and the Deputy Director, Food & Drug Administration, Durg vide its letter dated 04.02.2012 had sent a notice under Section 13(2) of the Act, 1954 to the vendor. Copy of the notice under Section 13(2) of the Act, 1954 is annexed with

the return.

6. It is further contended that as per requirement of Section 13(2) of the Act, 1954, after the institution of prosecution, the Local (Health) Authority shall forward a copy of the report of the analysis to such person or persons against whom the prosecution has been launched informing such person or persons that if so desired, such person or persons may make an application to the Court within a period of ten days from the date of receipt of copy of the report to get the sample of the article of food kept by the Local Health Authority, analyzed by the Central Food Laboratory and thus the contention of the petitioner is denied that in the present case no such notice/report was ever issued to the accused including the present petitioner. It has been further contended that mandatory requirement contained in Section 13(2) of the Act, 1954 has been complied with and the right of the petitioner to get the product re-analyzed has been redressed, as such, the petition is liable to be dismissed by this Court. It has further been contended that despite the above liberty granted to the petitioner as per Section 13(2) of the Act, 1954, the petitioner has failed to examine the product through Central Food Laboratory, Kolkata. Thus, there is no material available on record to show that the petitioner exercised his right to get the sample tested, therefore, the question of delay in submitting the report is not of much significance.
7. I have heard learned counsel appearing for the parties and perused the material available on record carefully.
8. The point required to be determined by this Court is whether noncompliance of Section 13(2) of the Act, 1954 to get the "Product" tested by the Central Laboratory, would entitle quashing of proceedings against the petitioner for offence of distribution of adulterated food as per Section 7(1) of the Act, 1954 ?
9. Before advertng to the factual matrix of the case, it would be appropriate to refer to the relevant provisions of the Act, 1954. It is explained in the Statement of Objects and Reasons of the Act, 1954 prior to its enactment that there were numerous State legislations on the subject of prevention of adulteration of food-

stuffs but these lacked uniformity. Hence the need for a Central legislation was felt which could *inter alia*, provide for a uniform procedure and the constitution of 'a Central Food Laboratory to which food samples can be referred to for final opinion in disputed cases.'

10. Section 8 of the Act, 1954 provides for the appointment of Public Analysis by the Central or the State Government as the case may be, for the purpose of carrying out analysis and testing of food samples in a given local area. Section 9 provides for the appointment of Food Inspectors for the purpose of *inter alia*, carrying out inspection of establishments where food articles are manufactured or sold, and seizing food articles which require analysis. Section 14A mandates vendors of food articles to disclose the name and other particulars of the person from whom the food article was purchased, if the Food Inspector so requires.
11. Section 11 stipulates the procedure to be followed by Food Inspectors while taking food samples for analysis. It is important to note that the first step of the procedure is to immediately notify on the spot, not only the vendor but also the person whose particulars are disclosed under Section 14A (which would include a distributor/marketer such as the petitioner), that a sample is being sent for analysis. The sample is then divided into three parts-while the first part is sent to the Public Analyst, the other two parts are deposited with the Local Health Authority as a contingency in case the first part is lost or damaged.
12. Section 13 of the Act, 1954 prescribes the subsequent procedure to be followed after the Public Analyst prepares their report which are extracted below:

“(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 same of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.

(2B) On receipt of the part or parts of the sample from the Local (Health) Authority under sub-section 2(A), the court shall first ascertain that the mark and seal or fastening as provided in clause (b) of sub-section (1) of Section 11 are intact and the signature or thumb impression, as the case may be, is not tampered with, and dispatch the part or, as the case may be, one of the parts of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the court in the prescribed form within one month from the date of receipt of the part of the sample specifying the result of the analysis.

(3) 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).”

13. Therefore, the purpose of Section 13 of the Act, 1954 is to give a second opportunity to accused persons, against whom the prosecution is initiated under the Act, 1954 based on the Public Analyst's report, to get the relevant food sample tested against by the Central Laboratory. Since the Central Laboratory's report will have precedence over that of the Public Analyst, this is a valuable opportunity for accused persons to claim exoneration from criminal proceedings on account of noncompliance of the same.

14. Thus, from bare perusal of Section 13 of the Act, 1954 under the scheme of the Act, the accused has to be given prior notice, as provided under Section 11, that samples of a food article manufactured and/or sold by them have been sent for analysis, before the Public Analyst prepares their report. The Act, 1954 does not envisage a situation such as in the present case where the sample is sent for analysis, and the Public Analyst's report is also prepared, but the marketer is informed several years later that prosecution is sought to be instituted against them. During such period, the food article being perishable in nature

would most probably be incapable of being sent for retesting to the Central Laboratory which will infringe the right of the petitioner/accused.

15. It is settled by Hon'ble Supreme Court in **Municipal Corporation of Delhi v. Ghisa Ram**, AIR 1967 SC 970, that where inordinate delay in instituting prosecution has resulted in denial of the right under Section 13(2), it is deemed to have caused serious prejudice to the accused such that their conviction on the basis of the Public Analyst's report cannot be upheld. The Hon'ble Supreme Court in para 9 has held as under:-

"9. In the present case, the sample was taken on the 20th September, 1961. Ordinarily, it should have been possible for the prosecution to obtain the report of the Public Analyst and institute the prosecution within 17 days of the taking of the sample. It, however, appears that delay took place even in obtaining the report of the Public Analyst, because the Public Analyst actually analysed the sample on 3rd October, 1961 and sent his report on 23rd October, 1961. It may be presumed that some delay in the analysis by the Public Analyst and in his sending his report to the prosecution is bound to occur. Such delay could always be envisaged by the prosecution, and consequently, the elementary precaution of adding a preservative to the sample which was given to the respondent should necessarily have been taken by the Food Inspector. If such a precaution had been taken, the sample with the respondent would have been available for analysis by the Director of the Central Food Laboratory for a period of four months which would have expired about the 20th of January, 1962. The report of the Public Analyst having been sent on 23rd October, 1961 to the prosecution, the prosecution could have been launched well in time to enable the respondent to exercise his right under s. 13(2) of the Act without being handicapped by the deterioration of his sample. The prosecution, on the other hand, committed inordinate delay in launching the prosecution when they filed the complaint on 23rd May, 1962, and no explanation is forthcoming why the complaint in Court was filed about seven months after the report of the Public Analyst had been issued by him. This, is, therefore, clearly a case where the respondent was deprived of the opportunity of exercising his right to have his sample examined by the Director of the Central Food Laboratory by the conduct of the prosecution. In such a case, we think that the respondent is entitled to claim that his conviction is vitiated by this circumstance of denial of this valuable right guaranteed by the Act, as a result

of the conduct of the prosecution.”

16. In **Girishbhai Dahyabhai Shah v. C.C. Jani** reported in (2009) 15 SCC 64, Hon'ble Supreme Court affirmed that delay in sending a report of the Public Analyst to the accused, such that he is no longer in a position to apply for retesting under Section 13(2) of the 1954 Act, would entitle quashing of criminal proceedings under Section 482 of the Cr.P.C. The Hon'ble Supreme Court in para 7, 8 and 9 of the said judgment has held as under:-

“7. Section 13(1) and (2) of the Prevention of Food Adulteration Act, 1954, reads as follows:

"Section 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."

8. It will be apparent from the above, that only on receipt of the report of the Public Analyst under sub-Section(1) to the 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 10 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 17th July, 1989, by which time the second sample of curd had deteriorated and was not capable of being analysed as was found in the case of Ghisa Ram (supra)

referred to above.”

17. Thus, it is *prima facie* established that the sample of curd was not confirmed to the standard laid down in the item A.11.02.04 of the Rules (1955) read with the Standard of Cow Milk for Gujarat laid down in the table below item No. A.11.01.11 of the Rules (1955) and the sample was found adulterated. All the other contentions raised by the learned counsel for the applicant about delay in filing complaint, sending sample to the analyst, delay by the court of 46 days, sanction granted by the competent authority as without application of mind can be raised before the learned Magistrate and all the contentions are in realm of defence which require evidence to be led and appreciated by the concerned Court. The contention of the learned counsel for the applicant that the Court of learned Magistrate was not functional for about 6-7 years and the applicant was ignorant about the criminal proceedings pending before that Court cannot be a ground for exercising powers under Section 482 of the Code of Criminal Procedure.”

18. Hon'ble Supreme Court in the matter of **M/s Alkem Laboratories Ltd. v. State of Madhya Pradesh**¹ has held as under:-

“Applying the abovementioned test to the present case, it has to be seen whether first, the Appellant was entitled to apply for testing of the Jelly by the Central Laboratory under Section 13(2); second, whether the denial of the right was the Respondents’ fault and third, whether such denial is prejudicial to the Appellant’s case. With respect to the first point, the Respondents have relied upon the Public Analyst’s Report which states that the Jelly contains ‘sugar/sucrose’, so as to institute a complaint for misbranding under Section 2(ix)(g) of the 1954 Act. This is because the label on the packaging claims that the Jelly is ‘sugarless’. Hence, the Public Analyst’s finding on whether ‘sugar’ as an ingredient is present in the Jelly sample is crucial to proving the offence of ‘misbranding’ against the Appellant. Thus, the Appellant ought to have had the opportunity to make an application under Section 13(2) for a second opinion from the Central Laboratory on the contents of the Jelly sample.”

With respect to the second point, we are of the view that Respondent No. 2 erred in not making query to the Retailer, at the first instance, about the marketer of the Jelly, as she was empowered to do under Section 14A of

1 S.L.P. (Cr.) No. 3995 of 2018 decided on 29.11.2019

the 1954 Act. If she had done so, the Appellant could have been notified in 2008 itself that the Jelly is being taken for analysis. Even if this lapse is condoned, once the Retailer had intimated the Respondents that the Appellant was the marketer of the Jelly, they ought to have made more efforts in notifying the Appellant of the alleged irregularity found in the Jelly sample, as per Section 13(2). We do not find merit in the Respondents' submission that the delay in informing the Appellant was because the Appellant was deliberately avoiding service of notice. Even if the address produced by the Retailer was of the Appellant's Indore Branch, the label on the packaging of the Jelly clearly indicated that the official address for communication would be "Alkem House, Senapati Bapat Marg, Lower Parel, Mumbai 400013". Hence even if no response was being received from the Indore branch, the Respondents could have attempted to send the details of the Public Analyst's Report to the Appellant's Mumbai address. Thus it is clear that the Appellant lost their chance to get the Jelly sample retested under Section 13(2) on account of the Respondents' negligence.

Finally, with regard to the third point, it is true that non compliance with Section 13(2) would not be fatal in every case, if it is found that the sample is still fit for analysis (*T. V. Usman v. Food Inspector, Tellicherry Municipality, Tellicherry*, (1994) 1 SCC (754). However, the Respondents have not disputed that the shelf life of the Jelly sample would have, in all probability, expired at this stage. Hence we find that this is a fit case for quashing of proceedings against the Appellant on account of denial of their valuable right under Section 13(2).

19. This Court in the matter of **Sandeep Tiwari v. State of Chhattisgarh**² has held in paragraph 30 as under :-

"30. Finally, reverting the facts of the present case in light of the aforesaid principles of law laid down by Their Lordships of the Supreme Court, it is quite vivid that the valuable right of the petitioner under Section 13(2) of the Act of 1954 to get the second sample analysed by the Central Food Laboratory is lost as the product in question 'Bru Instant Coffee Chicory Mixture' was manufactured in March, 2008 and it was best before 18 months from the date of packaging and thereafter the product in question had lost its shelf life as it was to be used before September, 2009, and the complaint was filed before the jurisdictional criminal court on 27/04/2010, as such, the petitioner has been deprived of his valuable and indefeasible right to get the second sample of the product reanalyzed from the Central Food Laboratory under Section 13(2) of the Act of 1954 as the report from the Director of the Central Food Laboratory supersedes the report of the Public analyst by virtue of Section 13(3) of the

² Cr.M.P. No. 1050 of 2019, decided on 23.11.2020

Act of 1954 and consequently, the petitioner has suffered great prejudice in defending himself in the prosecution launched against him, as such, the entire prosecution against the petitioner deserves to be quashed on this short ground alone.”

20. The Various High Courts have reiterated the same view that it is necessary on the part of the prosecution to afford an opportunity to the accused for sending the sample under Section 13 (2) of the PFA Act, 1954 to the Central Food Laboratory during the shelf life of the product in question, if no such opportunity is granted to the accused, the petitioner has to suffer great prejudice in defending himself in the prosecution launched against him and on this count alone, the entire prosecution launched against the petitioner deserves to be quashed.
21. Coming back to the facts of the present case in light of the aforesaid principles of law laid down by Their Lordships of the Hon'ble Supreme Court, this Court has to examine whether there is violation of Section 13(2) of the Act, 1954 or not. It is quite clear that petitioner has been charged for commission of offence punishable under Section alleged violation of Section 7(i) of the Act, 1954, which is punishable under Section 16 (1)(a) of the Act, 1954 and the Prevention of Food Adulteration Rules, 1955 the allegation that petitioner-Company has manufactured adulterated coconut oil and distributed the same through its stockiest. The Section 2(ia) of the Act, 1954 defined the term “adulterated”, which is extracted below :-

“[ia] “adulterated”- an article of food shall be deemed to be adulterated -

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be;

(b) if the article contains any other substance which affects, or if the article is so processed as to affect, injuriously the nature, substance or quality thereof;

(c) if any inferior or cheaper substance has been substituted wholly or in part for the article so as to affect injuriously the nature, substance or quality thereof;

(d) if any constituent of the article has been wholly or in part abstracted so as to affect injuriously the nature, substance or quality thereof;

(e)if the article had been prepared, packed or kept under insanitary conditions whereby it has become contaminated or injurious to health;

(f)if the article consists wholly or in part of any filthy, putrid, rotten, decomposed or diseased animal or vegetable substance or is insect-infested or its otherwise unfit for human consumption;

(g) if the article is obtained from a diseased animal;

(h)if the article contains any poisonous or other ingredient which renders it injurious to health;

(i) if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health'

(j) if any colouring matter other than that prescribed in respect thereof is present in the article, or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits of variability;]

(k) if the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits;

(l) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability, but which renders it injurious to health:]

(m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health:-

Provided that, where the quantity or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause."

22. The month of packaging of the product is May, 2009 and the sample of the product was taken by the Food Inspector/complainant on 24.9.2009 and sample was analyzed by the Public Analyst on 25.10.2009 whereas the shelf life of Product was best before 9 months from its packing. The product in question went outside its shelf life/expiry date by two years & one month, when the complaint was filed, thereafter, the prosecution vide its notice dated 4.2.2012 has informed the petitioner that they may make an application to the Court within a period of ten days from the date of receipt of copy of the report to get the sample of the product kept by the Local Health Authority analyzed

by the Central Food Laboratory. Thus, the notice asking for analysis of product by Central Food Laboratory has been issued after the shelf life of the product which is clear case of violation of Section 13(2) of the Act, 1954 as well as law laid down by the Hon'ble Supreme Court and various High Courts. Therefore, the prosecution for noncompliance of Section 13(2) of the Act, 1954 is liable to be quashed.

23. The submission of learned counsel for the State that compliance of the provisions contained in Section 13(2) of the Act, 1954 is not mandatory in every case is to be applicable to the present facts of the case as shelf life of the product is expired much prior to filing of the complaint. If the product has shelf life when the notice was issued then the submission may be considered. Hon'ble Supreme Court in the matter of **T.V. Usman v. Food Inspector, Tellicherry Municipality, Tellicherry**, reported in **(1994) 1 SCC 754** after analyzing the provisions contained in Section 13(2) of the PFA Act, 1954 and the Prevention of Food Adulteration Rules, 1955 has held that Rule 7(3) (as amended in 1977) is only directory and not mandatory when the product has shelf life but shelf life is over then compliance is mandatory. The Hon'ble Supreme Court has held in para 11 of the said judgment as under :-

“11. In Rule 7(3) no doubt the expression "shall" is used but it must be borne in mind that the Rule deals with stages prior to launching the prosecution and it is also clear that by the date of receipt of the report of the Public Analyst the case is not yet instituted in the court and it is only on the basis of this report of the Public Analyst that the concerned authority has to take a decision whether to institute a prosecution or not. There is no time limit prescribed within which the prosecution has to be instituted and when there is no such limit prescribed then there is no valid reason for holding the period of 45 days as mandatory. Of course that does not mean that the Public Analyst can ignore the time limit prescribed under the Rules. He must in all cases try to comply with the time limit. But if there is some delay, in a given case, there is no reason to hold that the very report is void and on that basis to hold that even prosecution can not be launched. May be, in a given case, if there is inordinate delay, the court may not attach any value to the report but merely because the time limit is prescribed, it can not be said that even a slight delay would render the report void or inadmissible in law. In this context it must be noted that

Rule 7(3) is only a procedural provision meant to speed up the process of investigation on the basis of which the prosecution has to be launched. No doubt, Sub-section (2) of Section 13 of the Act confers valuable right on the accused under which provision the accused can make an application to the court within a period of 10 days from the receipt of copy of the report of Public Analyst to get the samples of food analysed in the Central Food Laboratory and in case the sample is found by the said Central Food Laboratory unfit for analysis due to decomposition by passage of time or for any other reason attributable to the lapses on the side of prosecution, that valuable right would stand denied. This would constitute prejudice to the accused entitling him to acquittal but mere delay as such will not per se be fatal to the prosecution case even in cases where the sample continues to remain fit for analysis inspite of the delay because the accused is in no way prejudiced on the merits of the case in respect of such delay. Therefore it must be shown that the delay has led to the denial of right conferred under Section 13(2) and that depends on the facts of each case and violation of the time limit given in Sub-rule 3 of Rule 7 by itself can not be a ground for the prosecution case being thrown out.”

24. The Hon'ble Supreme Court in **Criminal Appeal No. 1312/2021** in case of **Narayana Prasad Sahu Vs. The State of Madhya Pradesh** decided on **29.10.2021** has held as under:-

“Under Sub-Section (2) of Section 13, it is mandatory for the Local (Health) Authority to forward a copy of the report of the Public Analyst to the person from who the sample of the food has been taken in such a manner as may be prescribed. Further mandate of sub-Section (2) of Section 13 is that a person to whom the report is forwarded should be informed that if it is so desired, he can 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 analysed by Central Food Laboratory. The report is required to be forwarded after institution of prosecution against the person from whom the sample of the article of food was taken. Apart from the right of the accused to contend that the report is not correct, he has right to exercise an option of sending the sample to Central Food Laboratory for analysis by making an application to the Court within ten days from the date of receipt of the report. If a copy of the report of the Public Analyst is not delivered to the accused, his right under sub-Section (2) of Section 13 of praying for sending the sample to the Central Food Laboratory will be defeated. Consequently, his right to challenge the report

will be defeated. His right to defend himself will be adversely affected. This Court in the case of Vijendra (Supra) held that mere dispatch of the report of the accused is not a sufficient compliance with the requirement of Sub-Section (2) of Section 13 and the report must be served on the accused.”

25. From the return filed by the State, it is quite clear that respondents are not disputing that the shelf life of the product has already been expired on the date of filing of the complaint, therefore, it is a fit case for quashing of the proceedings against the petitioner on account of denial of his valuable right to get the second sample of the product analysed from the Central Food Laboratory under Section 13(2) of the Act, 1954.
26. In view of the aforesaid legal analysis, I have no hesitation to hold that the prosecution case against the petitioner M/s. K.L.F. Nirmal Industries Private Limited deserves to be quashed and in exercise of jurisdiction conferred under Section 482 of Cr.P.C. Consequently, the criminal Case No. 88/13 pending before the Judicial Magistrate, First Class, Durg (C.G.) is hereby quashed.
27. Accordingly, the petition filed under Section 482 of Cr.P.C. is allowed.

Sd/-
(Narendra Kumar Vyas)
Judge

Amita