

CRR 2183 of 1999

In the matter of : Dipak Agarwal

Mr. Milon Mukherjee
Mr. Smartajit Sarkar ... for the petitioner

Mr. N. P. Agarwala
Mr. Pratick Bose ... for the State

This is an application under Section 482 of the Code of Criminal Procedure. The petitioner seeking quashment of a proceeding in Complaint Case No. C-38/99 under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 pending before the learned Chief Judicial Magistrate, Suri, Birbhum.

Briefly stated on 13.1.1999 the Food Inspector of Dubrajpur Municipality, Birbhum had been to the premises of M/S. Dipak Oil Mill situated at Ranjan Bazar for inspection wherefrom the Food Inspector purchased a sample of Mustard oil and one part of sample was sent to the Public Analyst, Birbhum who after chemical analysis submitted a report vide Report No. 226(4) dated 16.2.99 stating inter alia that the Mustard oil was adulterated. Accordingly, the food inspector initiated a proceeding under the Prevention of Food Adulteration Act. Learned Chief Judicial Magistrate was pleased to take cognizance of the offence despite the fact that the complainant did not comply with the provision of Section 13(2) of the Prevention of Food Adulteration Act, 1954. It is further contended that upon receipt of notice sent by local (health) authority the petitioner approached the learned Chief

Judicial Magistrate, Suri and prayed for order to send seized mustard oil to the central food laboratory for reanalysis but it was not adhered to. The certified copy of the application filed before the learned Chief Judicial Magistrate seeking order to send the sample to the central food laboratory has been annexed to the petition as 'Annexure - B'. But the learned Trial Court though accepted the petition filed under Section 13(2) did not pass any judicial order.

Section 13(2) & (2A) of Prevention of Food Adulteration Act, are as follows:-

“(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.

“(2A) When an application is made to the court under sub-section (2), the court shall require the Local (Health) Authority to forward the part or parts of the sample kept by the said Authority and upon such requisition being made, the said Authority shall forward the part or parts of the sample to the court within a period of five days from the date of receipt of such requisition.”

It goes without saying that a mandate given under the statute is to be complied with and an act is required to be done the way it is directed to be done under the statute and not otherwise.

Learned Trial Court failed to exercise jurisdiction vested upon it by showing its stoic indifference towards the prayer of the accused person and thereby deprived him of a statutory right conferred upon him

Under such circumstances, the proceeding pending before the learned Trial Court in my view, if is allowed to remain in force, it would be an abuse of process of law amounting to miscarriage of justice. Invoking the inherent jurisdiction under Section 482 of Code of Criminal Procedure, I am inclined to quash the proceeding pending before the learned Chief Judicial Magistrate, Suri Birbhum being Complaint Case No. C-38/99 under Sections 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954.

With the aforesaid observation, the revisional application is disposed of.

Interim order, if any, stands vacated.

The copy of the order be sent down to the learned Trial Court for information and necessary action.

The parties shall act upon the server copy duly downloaded from the official website of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, upon completion of requisite formalities.

(Siddhartha Roy Chowdhury, J.)